Report on the State of Human Rights in the Czech Republic in 2005

Contents

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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. The 2005 Report on the State of Human Rights is thus the eighth of its kind. Like previous reports, it is primarily an update and is chiefly intended for the Government of the Czech Republic to help it in making decisions on priorities in the area of human rights protection. As such, it does not repeat general statements on fundamental democratic freedoms in the Czech Republic or the list of rights guaranteed by the Charter of Fundamental Rights and Freedoms (hereinafter referred to as 'Charter');[1] instead, it primarily addresses the progress achieved in the past year in areas which have been criticized in the past, and ongoing deficiencies.

The progress achieved in the past year and ongoing deficiencies are evaluated predominantly in the light of international treaties on human rights of which the Czech Republic is a signatory. For this purpose, the Report also usually contains an evaluation made by the bodies controlling compliance with these treaties, which are the only bodies authorized 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 organizations involved in the area of human rights. Besides their evaluating role, these organizations also present their recommendations on how to achieve 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 have implemented the supervisory bodies' *de facto* manual.

As in the Reports on the State of Human Rights in the Czech Republic published in previous years,[2] the layout of this Report is a compromise between the systemic and content-based 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 a conceptual or a legislative nature, which are directly or indirectly related to issues of human rights protection in the Czech Republic. 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 in separate reports.[3]

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[1] Resolution of the Presidium of the Czech National Council No 2/1993 on the declaration of the Charter of Fundamental Rights and Freedoms as part of the Constitutional order of the Czech Republic, as amended by Constitutional Act No 162/1998.

[2] As the name of the report is relatively long, reports on the state of human rights in the Czech Republic are referred to throughout the text of this Report by as 'Report for the Calendar Year'. The word 'Report' means this 2005 Report.

[3] The Ministry of the Interior produces yearly reports on extremism; these are available on the Ministry's website (http://www.mvcr.cz – presentation – documents – extremism). Reports on the situation of national minorities and on the situation of Roma communities are available on the Government's website (http://www.vlada.cz – working and advisory bodies of the Government – Government Council for National Minorities – Documents – Council Documents, and http://www.vlada.cz – working and advisory bodies of the Government – Inter-Ministerial Commission for Roma Community Affairs – Documents – Report on the Situation of Roma Communities).

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

2. Institutional safeguards

Of those institutions that could unequivocally be viewed as independent national human rights institutions, probably only the position of ombudsman meets the international criteria for such bodies. In addition, there exists a raft 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
- Inter-Ministerial Commission for Roma Community Affairs
- Government Council for Equal Opportunities for Women and Men.[4]

Although not directly involved in human rights, the ombudsman plays an important role in protecting the rights of individuals in relation to public administration. As well as resolving individual complaints, the ombudsman is authorized to submit advice to the Government on specific matters. The advice generally also contains a proposal for rectification. Since 2005, the ombudsman's remit has included systematic inspections of detention facilities.[5] The ombudsman also makes an annual report on his activities to the Chamber of Deputies.[6]

3. The international dimension of human rights

3.1 Reports on the fulfilment of obligations under international human rights treaties and discussion thereof held before supervisory bodies

Further to a discussion of the Third Periodic Report of the Czech Republic on the Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the period 1998 – 2001, which was held in May 2004[7], the Committee against Torture asked the Czech Republic to provide the Committee with comments on some of its final recommendations within a year of the discussion on the report.[8] These recommendations concerned activities aimed at combating racial intolerance

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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 No 175 of 20 February 2002 on the analysis of Government advisory and working bodies (http://racek.vlada.cz/usneseni/). Since 2003, reports on the activities of 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] Act No 381/2005 amending Act No 349/1999 on the ombudsman, as amended, and certain other laws (see Chapter II/4.7 of the Report

[6] The report on the activities of the ombudsman is available on his Office website (www.ochrance.cz).

[7] see Chapter 3.1.1 of the 2004 Report

[8] see Government Resolution No 1171 of 24 November 2004 on the final recommendations of the Committee against Torture – the supervisory body of the Convention against Torture and other Cruel, Inhuman or Degrading 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 English version of the

and xenophobia, the Antidiscrimination Act which was being prepared, the system used to investigate complaints about ill-treatment by police officers and other public officials, the system used to investigate racially motivated crimes, investigations into complaints about the excessive use of force in connection with demonstrations during the meetings of the International Monetary Fund and World Bank in Prague in September 2000, the obligation of prisoners to cover the cost of their imprisonment and detention, and conditions at facilities used to detain foreigners. In April 2005, the Government's comments were presented to the Committee against Torture.[9]

In June 2005, the Czech Republic presented the Committee on the Rights of the Child with the Czech Republic's Report on the Fulfilment of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts.[10] This is the Czech Republic's introductory report, containing summary information about the action taken by the Czech Republic to implement the Protocol. The report provides information on the Conscription Act and the scope the obligation to take a direct part in hostilities, and defines the security corps, the enlistment duty and the method used to train members of the armed forces. Future periodic reports on the implementation of the Protocol will be delivered to the Committee on the Rights of the Child as part of the periodic report on the fulfilment of obligations under the Convention on the Rights of the Child.

In 2005, the secretariat of the Government Council for Human Rights drew on background documentation from the competent ministries to produce the Sixth and Seventh Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination[11], which was presented to the Committee on the Elimination of Racial Discrimination, and the Second Periodic Report on the Implementation of Obligations under the International Covenant on Civil and Political Rights[12], which will be presented to the Committee on Human Rights.

In 2005, the supervisory bodies did not discuss any reports from the Czech Republic on the implementation of obligations under international human rights treaties.

3.2 Report on the Implementation of Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT') in 2005, Resulting from the CPT's Visit in 2002

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document CAT/C/CR/32/2 of 3 June 2004 is available on the website of the UN High Commissioner for Human Rights at www.uhnchr.ch.

[9] Government Resolution No 316 of 16 March 2005 on the Czech Republic's comments concerning certain recommendations of the Committee against Torture – the supervisory body of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (http://racek.vlada.cz/usneseni/)

[10] Government Resolution No 625 of 25 May 2005 on the Czech Republic's Report on the Fulfilment of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (http://racek.vlada.cz/usneseni/)

[11] Government Resolution No 1433 of 9 November 2005 on the Sixth and Seventh Periodic Report on the Implementation of Obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (http://racek.vlada.cz/usneseni/)

[12] Government Resolution No 15 of 4 January 2006 on the Second Periodic Report on the Implementation of the Obligations under the International Covenant on Civil and Political Rights (http://racek.vlada.cz/usneseni/)

The CPT's second regular visit to the Czech Republic took place on 21 to 30 April 2002.[13] In December 2002, the Czech Republic was presented with a final report from the visit, which sums up the observations of the CPT delegation made during the visit and contains inter alia recommendations aimed at reinforcing the rights and improving the conditions of persons deprived of freedom which the Czech Republic has undertaken to respect.[14]

The report on the implementation of the CPT's recommendations in 2005 was prepared by the secretariat of the Government Council for Human Rights with the use of materials provided by the Ministry of Interior, the Prison Service of the Czech Republic, the Ministry of Health, the Ministry of Labour and Social Affairs, the Governor of the Moravskoslezsko Region and the ombudsman. The report on the implementation of the CPT's recommendations in 2005[15] responds to the requests for information, recommendations and comments contained in the final report from the CPT's visit to the Czech Republic in 2002 and follows up on the reports on the implementation of CPT recommendations in 2003[16] and 2004[17] by containing only new data describing developments in the relevant areas that occurred in 2005. The CPT's next regular visit to the Czech Republic is planned for 2006.

3.3 Contractual basis

3.3.1 Adoption of new commitments under international law

The Czech Republic did not ratify any international human rights treaties in 2005. The Czech Republic has signed the following international treaties and their ratification is pending:

● Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[18] (hereinafter referred to as 'Optional Protocol'), creating a two-tier system for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. At international level, the Optional Protocol is set up by the Subcommittee on the Prevention of Torture, part of the Committee against Torture, with a mandate to make inspection visits to all detention facilities in the jurisdiction or under the control of the parties to the Optional Protocol, and commits all the signatories to implement one or more similar mechanisms at national level. The commitment to create a national mechanism required a change in national law, entailing the adoption of an amendment to the

[13] see chapter I/3.2. of the 2002 Report

[14] Government Resolution No 619 of 23 June 2003 on the Report to the Government of the Czech Republic on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 21 to 30 April 2002 (http://racek.vlada.cz/usneseni/)

[15] Government Resolution No 16 of 4 January 2006 on the Report on the Implementation of the Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2005, Resulting from the Committee's Visit to the Czech Republic in 2002 (http://racek.vlada.cz/usneseni/)

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

[17] Government Resolution No 247 of 2 March 2005 on the Report on the Implementation of the Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 2004, Resulting from the Committee's Visit to the Czech Republic in 2002 (http://racek.vlada.cz/usneseni/)

[18] No 143/1988

Ombudsman Act[19], under which the ombudsman has been made responsible for the supervisory body's activities in places where persons are deprived of their freedom by a decision of a public authority or in accordance with the care they receive. Since 1 January 2006 the ombudsman, assigned this expanded competence, has thus met all criteria concerning national prevention mechanisms imposed by the Optional Protocol, and it will therefore not be necessary to take any further steps towards the implementation of this Protocol after its ratification.[20]

● Protocol No 12 to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter also referred to as 'Convention'), 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 submission of Protocol No 12 to the Convention on the Protection of Human Rights and Fundamental Freedoms Parliament to Parliament for approval of the ratification thereof. The Minister for Foreign Affairs requested the postponement of ratification due to the instrument's incompatibility with certain Czech laws. The decision on postponement was not reviewed in 2005.

● Protocol No 12 to the European Convention on the Protection of Human Rights and Fundamental Freedoms, the aim of which is to enhance the effectiveness of the Convention's implementation by reforming the mechanism used to discuss complaints at the European Court of Human Rights, the number of which continues to rise. The higher number of complaints is due to the expansion in states parties to the Convention and to the greater proficiency of persons under the jurisdiction of the states parties to defend their rights. The kernel of the change is that the method used in the decision-making process of the European Court of Human Rights is changing. The changes are intended to improve the functioning of the system, whereby the European Court of Human Rights is provided with further procedural means and greater flexibility required for the timely processing of all complaints. At the same time, the Court can concentrate on the most important cases where deeper investigation is essential. In place of the current decision-making possibilities of the Court as a Committee, Chamber or Grand Chamber, decision-making by a single judge is also being introduced. There is also currently a shift in the procedural status of individual decision-making components so that only one decision-making component – single judges – addresses the Court's jurisdiction in relation to complaints. Besides the organization of the Court's work, Protocol No 14 changes, for example, the term of office of judges from six to nine years and does not permit the re-appointment of a judge; it also formalizes the status of judges' assistants. The Protocol always opens up the way for the EU's accession to the Convention.[22]

● European Charter for Regional or Minority Languages (ETS No 148), the aim of which is to promote the use of regional and minority languages. The preparations for the Charter's ratification were resumed at the beginning of 2005 after the adoption of significant new legal

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[19] Act No 381/2005 amending Act No 349/1999 on the ombudsman, as amended, and certain other laws (see Chapter II/4.7 of the Report

[20] The Czech Republic signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 13 September 2004; the Government approved the ratification of the Optional Protocol in Resolution No 1545 of 30 November 2005 on the proposal for the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (http://racek.vlada.cz/usneseni/).

[21] The Prime Minister approved the postponement of ratification until 30 July 2007.

[22] The Czech Republic signed Protocol No 14 to the European Convention on the Protection of Human Rights and Fundamental Freedoms on 29 June 2005 pursuant to Government Resolution No 665 of 1 June 2005 (http://racek.vlada.cz/usneseni/), and the Senate approved its ratification on 1 December 2005.

regulations in the field of minority rights – the Code of Administrative Procedure[23] and the Education Act.[24] As part of the preparations for ratification, the secretariat of the Government Council for National Minorities, in cooperation with the Ministry of Foreign Affairs, held a seminar in June 2005 for state administration representatives and the representatives of national minorities, with the participation of experts on the Charter; the aim of the seminar was to clarify certain issues connected with its implementation.[25] [26]

3.3.2 Preparation of new international conventions

In 2005, further meetings were held by the Ad Hoc Committee of the UN General Assembly for the preparation of a Convention on the Rights of Disabled People.[27] In January 2005, the second session of the working group of the UN Commission on Human Rights took place to assess the possibilities of preparing an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, regulating the mechanism for notifying the inadequate implementation of these rights.

3.3.3 Complaints against the Czech Republic before the European Court of Human Rights[28]

The office of the European Court of Human Rights (hereinafter referred to as the 'Court') reported 1,443 complaints against the Czech Republic in 2005, which was only a slight rise on 2004.[29] Of the registered complaints, the Court communicated 146 to the Czech Government. Compared to 2004, the number of communicated complaints thus increased by almost 70%. Of the total 29 judgments delivered in 2005, in one case the Court concluded that the Czech Republic had not infringed the complainant's rights. In the other 28 judgments, it held that the Czech Republic had infringed at least one of the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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[23] Act No. 500/2004, the Code of Administrative Procedure, as amended by Act No 413/2005

[24] Act No 561/2004 on preschool, primary, secondary, further vocational, and other education (the Education Act), as amended by Act No 383/2005

[25] A collection of contributions from the seminar held on 7 June 2005 in Prague, 'Ratification of the European Charter for Regional or Minority Languages in the Czech Republic', was published by the Office of the Government in August 2005. This publication is available on the website of the Office of the Government (advisory and working bodies – Government Council for National Minorities – documents – publications)

[26] The Government approved the ratification of the Charter in Resolution No 1574 of 7 December 2005 on the proposal for the ratification of the European Charter for Regional or Minority Languages (ETS 148), open for signature by the Member States of the Council of Europe in Strasbourg on 5 November 1992 (http://racek.vlada.cz/usneseni/).

[27] Reports from the meetings of the Ad hoc Committee and the draft text of the Convention have been posted at http://www.un.org/esa/socdev/enable/.

[28] The Ministry of Justice draws up separate reports on the handling of complaints filed against the Czech Republic at the European Court of Human Rights; these reports are published on the Ministry's website (http://portal.justice.cz). In August 2005, a report was prepared for the period from 1 January to 30 June 2005. The report for the second half of 2005 will be presented to the Government in February 2006. This chapter was drawn up on the basis of the Report for the period from 1 July to 31 December 2005 concerning the handling of complaints filed against the Czech Republic at the European Court of Human Rights, the article 'Strasbourg's criticism of the Czech Republic in 2005' [*Štrasburské výtky na adresu Èeské republiky v roce 2005*] published in the periodical *Justièní aktuality*, Issue 1, Volume 2, pp. 15 -17, and on the basis of information provided by the Office of the Government Commissioner for the Representation of the Czech Republic before the European Court of Human Rights.

[29] In office of the Court does not conduct statistical evaluations of all complaints filed, and therefore their structure – unlike the communicated complaints – is not known.

The most frequently cited infringement, as in 2005, was the breach of the right to a hearing within a reasonable time (in fifteen cases); in four cases the court brought attention to the absence of effective national means to remedy breaches of this right. In seven cases, the Court concluded that the complainant's right of access to a court had been infringed as a result of the dismissal of a constitutional complaint by the Constitutional Court, and in three cases the Czech Republic was criticized for breaching aspects of the right to a fair trial (Article 6 of the Convention). In two cases, the Court held that there had been an infringement of the right to liberty and security of person (Article 5 of the Convention); this was related to the duration of the judicial decision-making process and the activities of state authorities. The brief characteristics of certain judgments against the Czech Republic are given below:

● The judgment of a Chamber of the Second Section of the European Court of Human Rights issued on 25 January 2005 in the case of *Balbir Singh and Bakhschisch Singh v. the Czech Republic* concerned the excessive length of their detention pending deportation (Article 5(1)(f)) and the right to a speedy ruling on the applicants' applications for release from detention pending deportation (Article 5(4)). Considering the circumstances of the case, the Court found that the Czech authorities had not proceeded with due care and that detention pending deportation lasting two and a half years could not be considered proportionate. Given the duration of the proceedings, the Czech authorities had also failed to comply with the requirement of a speedy ruling on the applications for release from detention. The Court awarded each of the applicants EUR 5,000 for non-pecuniary damage and EUR 3,000 jointly for costs and expenses.

● In its judgment in the case of *Ivan Soudek v. the Czech Republic* issued on 15 March 2005, the European Court of Human Rights concluded that the Constitutional Court's approach in assessing the admissibility of a constitutional complaint was a violation of the applicant's right of access to a court (Article 6(1)). The Constitutional Court had rejected the applicant's constitutional complaint as being out of time, as the time limit for lodging a constitutional complaint had begun to run from the date on which the appeal court had given its decision, and not from the date of delivery of the Supreme Court's dismissal of the appeal, which in the opinion of the Constitutional Court was not a decision on a final procedural remedy available under the law. The Court awarded the applicant EUR 500 as just satisfaction.

● The judgment of a Chamber of the Second Section of the Court in the case of *Zdeněk Herbst and others v. the Czech Republic* issued on 12 April 2005 concerned the right to a prompt trial (Article 6(1)). The Court held that, although the case contained a certain degree of complexity as regards the facts, the protractions in the proceedings, the relevant duration of which was in excess of 13 years, caused by national authorities had resulted in the violation of the applicants' right to judicial proceedings within a reasonable time; therefore the Court awarded them just satisfaction of EUR 8,500.

● In its judgment in the case of *Václav Houbal v. the Czech Republic* issued on 14 June 2005, the European Court of Human Rights concluded that the length of three proceedings maintained by the applicant was disproportionate (Article 6(1)) and also stated that there was an absence of an effective national remedy to the disproportionate length of proceedings (Article 13). The Court awarded the applicant EUR 8,000 for non-pecuniary damage.

3.3.4 Notices filed against the Czech Republic with the Human Rights Committee

In 2005, the Human Rights Committee[30] did not communicate any new individual notices to the Czech Government. In two cases, the Human Rights Committee assumed an opinion on an individual notice. In the *Czernin* case a decision was made on the violation of the applicant's right to a fair trial; in the *Kříž* and *Mařík* cases the restitution condition of Czech citizenship was criticized. The *Šoltés* notice was found to be unacceptable.

3.3.5 Implementation of decisions of international supervisory bodies by the State

The number of Court judgments against the Czech Republic should be reduced by an amendment to the Act on liability for damage caused in the exercise of public authority by a decision or incorrect official procedure,[31] which was prepared by the Ministry of Justice in 2004 and debated by the Chamber of Deputies in 2005.[32] This bill responds to the Court's most frequent judgments against the Czech Republic, in which the Court has stated that the applicant's right to a hearing within a reasonable time (Article 6 of the Convention) has been violated, that there is no national remedy to a breach of this right (Article 13, in conjunction with Article 6(1) of the Convention), and that the right to liberty and security of person has been infringed (Article 5 of the Convention).

In particular, the amendment should make it possible to seek compensation for non-pecuniary damage and appoint the State's liability for damage caused by incorrect official procedure, lying in the failure to deliver a ruling within a reasonable time. At the same time, the conditions related to the State's liability for the unlawful deprivation of liberty should be expanded so that the State is liable for violations of the right to personal liberty caused by an unlawful ruling or incorrect official procedure, not only as regards the procedures of authorities in criminal proceedings, but also in non-criminal proceedings, e.g. in proceedings on the placement and detention of a person in a medical institution.

As yet, the issue of reopening cases in non-criminal matters (i.e. in civil-law areas in the broader sense and in administrative cases) in the scope of implementing the Court's judgments has not been resolved. The complete absence of this possibility could threaten the return of the applicant's situation to the situation preceding the ascertained breach of the Convention (restitutio in integrum), which the State is obliged to ensure in certain circumstances. Nor has a solution been found to the implementation of decisions issued by non-judicial international supervisory bodies in individual cases where such decisions are not of a legally binding nature directly from the body of the relevant agreement.

4. The European Union

As was stated in the 2004 Report on the State of Human Rights, the importance that the European Community/EU places on human rights continues to grow. This trend was confirmed in 2005.

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

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

[32] Parliamentary Press No 1117 (http://www.psp.cz/forms/tmp_sqw/2c4c003e.doc)

In 2005, the EU Council adopted the seventh EU Annual Report on Human Rights.[33] The report covers the period from 1 July 2004 to 30 June 2005 and addresses all aspects of human rights within the activities of the Community/EU, i.e. both the internal and international dimensions. For the first time, the Report covers information about the work done by the European Parliament in this sphere. The Report is drawn up thematically.[34] Inter alia it mentioned the adoption of the EU's legislative acts with a significant human rights dimension[35] and the relevant legislative proposals.[36]

With regard to the reinforcement of the role played by human rights in the EU's foreign-policy issues, on 17 January 2005 Javier Solana, the EU's High Representative for the Common Foreign and Security Policy, appointed Michael Matthiessen as his Personal Representative for Human Rights in the field of the common foreign and security policy.

In 2005, the Commission and the Council worked intensively on the fulfilment of the European Council's decision of December 2003 to transform the European Monitoring Centre on Racism and Xenophobia (EUMC)[37], based in Vienna, into the *EU Agency for Fundamental Rights*. The Commission published a proposal for the relevant legislative regulations on 30 June 2005.[38] In further talks by the Council and the European Parliament, it will essential to find a balance between the Agency's independence and its responsibility vis-à-vis EU institutions, to appoint mechanisms of efficient cooperation with the Council of Europe in order to prevent the duplication of activities and promote synergy, and to reach an agreement on the Agency's geographical reach. The Agency is due to begin operating as of 1 January 2007.

The 2004 Report on the State of Human Rights also provided information on the work of a network of independent experts on fundamental rights, set up by the European Commission at the request of the European Parliament in 2002. In January 2005, the network published a Report on the Situation of Fundamental Rights in the European Union in 2004[39] and, in April 2005, a synthesis report containing summaries and recommendations.[40] In 2005,

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[33] Council of the European Union: *Annual Report on Human Rights - 2005*. Luxembourg: Office for Official Publications of the European Communities, 2005.

[34] The Report includes the following themes: capital punishment, torture and other inhuman or degrading treatment or punishment, the rights of children, including the rights of children in armed conflicts, defenders of human rights, women's rights, human rights and terrorism, human rights and trade, the punishment of crimes in accordance with international law, the democracy of elections, the right to development, asylum and migration, racism and xenophobia, the disabled, the rights of minorities, questions of indigenous people, trafficking in human beings. It also address in detail the relationship between the EU and international events, and issues concerning relations with specific countries.

[35] In 2005, this included Council Regulation No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

[36] In 2005, this included the Proposal for a Regulation of the European Parliament and of the Council establishing a European Institute for Gender Equality, COM 2005(81) final.

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

[38] Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights and proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on European Union, COM(2005)280 final.

[39] Report on the situation of fundamental Rights in the European Union. January 2005. This document is structured in accordance with the Charter of Fundamental Rights of the European Union. Available from http://europa.eu.int/comm/justice_home/cfr_cdf/doc/report_eu_2004_en.pdf

[40] Synthesis Report: Conclusions and recommendations on the situation of fundamental rights in the European Union and its Member States in 2004. Available from http://europa.eu.int/comm/justice_home/cfr_cdf/doc/synthesis_report_2004_en.pdf

the network also drew up several opinions on topical issues, such as combating racism and xenophobia in EU Member States through criminal law, or the requirements of fundamental rights in the scope of preventive measures against the radicalization and recruitment of potential terrorists,[41] and thematic comments on the protection of minorities in the EU.[42] The work of the experts is of significant value in gaining an insight into the European (Community and Union) dimension of fundamental rights – the future of the network should be ensured by its suitable interlinking with the activities of the planned EU Agency for Fundamental Rights.

In 2005, the European Monitoring Centre on Racism and Xenophobia (EUMC) published its first annual report, which also addresses the situation in the Czech Republic. [43] The report describes the situation in the EU-25 countries in five areas: employment, housing, education, legislation and racially motivated violence. The report mentions that the Czech Republic is one of the countries where the segregation of the Roma is an acute housing problem. It takes note of the new Education Act, which is intended to eliminate the drawbacks suffered by Roma children in education. It also mentions that the Czech Republic is one of the few new EU Member States (along with Hungary, Poland and Slovakia) which collects and evaluates information about racially motivated violence and crime, and notes that manifestations of anti-Semitism are also addressed in the Czech Republic.

[41] Four of the five opinions from 2005 are available from http://europa.eu.int/comm/justice_home/cfr_cdf/list_opinions_en.htm.

[42] Thematic Comment No 3. The protection of minorities in the EU. This report also contains information on the situation of national minorities in the Czech Republic, especially the Roma, which it places in a European context. Available from http://europa.eu.int/comm/justice_home/cfr_cdf/doc/thematic_comments_2005_en.pdf

[43] Racism and xenophobia in the EU Member States. Trends, developments and good practice. 2005. Available from http://eumc.eu.int/eumc/material/pub/ar05/AR05_p2_EN.pdf.

II. Special part

1. Fundamental civil and political rights

1.1 Property rights

1.1.1 Cancellation of "the definitive end of restitution proceedings"

At the suggestion of a group of MPs and senators, the Constitutional Court repealed[44] that part of the Land Act which imposed a time limit on the right to the transfer of State-owned land vis-à-vis original restituents and their heirs.[45] An amendment to the law in 2003[46] provided that the time limit for the transfer of land would end on 31 December 2005 and that, after this time limit expired, there would be no entitlement to the transfer of land; only financial compensation would be available.[47] The removal of the time limit for seeking the right to the transfer of land, in accordance with the finding of the Constitutional Court, applies only to original eligible persons, i.e. persons who had a claim to another (replacement) parcel or a parcel which could not be issued to them,[48] and their heirs, not persons who purchased restitution claims from the original restituents. Previously, the law did not distinguish whether a claim was filed by an original restituent or a person who had purchased the claim.

The Constitutional Court justified the decision to repeal part of the Land Act for the above group of persons by citing lack of conformity with the principle of protecting legitimate trust in the law and lack of conformity with the principle of legitimate expectation in the application of property law.[49] In its grounds of the decision that, unlike original restituents (and their heirs) derogation reasons do not apply to transferees, the Constitutional Court drew on its previous findings[50] and stated that, with regard to the purpose of the Land Act, the legal status of the original restituents and their transferees was different under the law, and therefore, in relation to persons who purchased claims from original restituents, no inconsistency can be found between the Land Act and the above-mentioned constitutional principles.

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[44] Finding of the Constitutional Court of 13 December 2005, published in the Collection of Laws under number 531/2005.

[45] Section 13(6) and (7) of Act No 229/1991 on the regulation of ownership relations to land and other agricultural assets, as amended

[46] Act No 253/2003 amending Act No 95/1999 on conditions for the transfer of agricultural parcels and forestland from the ownership of the State to other persons and amending Act No 569/1991 on the Land Fund of the Czech Republic, as amended, and Act No 357/1992 on inheritance tax, gift tax and real estate transfer tax, as amended, in the wording of Act No 253/2001, and certain other laws

[47] The time limit for the transfer of land expired on 31 December 2005 in cases where a decision of the Land Authority had entered into force or a claim to a transfer was filed before Act No 253/2003 entered into effect (i.e. before 6 August 2003). In other cases the time limit for the filing of a claim was set at two years as of the date on which the decision of the Land Authority entered into force.

[48] Section 11(2) of Act No 229/1991 on the regulation of ownership relations to land and other agricultural assets, as amended

[49] This principle stems from Article 1 of the Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[50] for example, Rulings of the Constitutional Court I. ÚS 406/2000, I. ÚS 439/04

1.1.2 Developments in the relationship between property rights and the public interest

With effect as of 29 August 2005, the Constitutional Court cancelled the determination of the construction of a waterway on the River Labe as a public interest under the Inland Shipping Act. [51] In assessing the question of whether an uncertain legal term can be defined by a law in an individual case, the Constitutional Court addressed the following aspects: the definition of the uncertain legal term ('public interest') under the law, the division of power and intervention in other rights protected by the international-law obligations of the Czech Republic.

In the case of the definition of the uncertain legal term 'public interest' under the law, the Constitutional Court arrived at the conclusion that the amendment to the Inland Shipping Act did not meet the requirement of the universality of a legal provision. *'Therefore, materially it is not a legal regulation, but the contested provision is de facto an individual administrative act.'* This conclusion to the assessment of a feature of a general requirement that legal theory places on a legal provision was used by the Constitutional Court in its assessment of the matter of intervention by a legislative power in executive power and, as the following implies, in judicial power. The Constitutional Court stated that the fulfilment of public interest must be assessed in each individual case with respect for a myriad of other full and partial interests and could not be determined *a priori* in advance. The determination of public interest is an issue which falls within decision-making (executive) activity, not legislative activity, which does not have the means to assess individual cases. Hence the Constitutional Court arrived at the conclusion that the amendment to the Inland Shipping Act, by defining public interest in an individual case, resulted in an intervention by legislative power in executive power.

The fact that the amendment to the Inland Shipping Act is de facto an individual decision that also results in a systemic intervention by legislative power in executive power, leads to an infringement of rights protected by Czech law. The possibility of automatic expropriation due to a public interest declared by law significantly intervenes not only in the right to the protection of ownership, including protection from expropriation (Article 11 of the Charter), but also in the right to peaceful use of property in accordance with the Additional Protocol to the ECHR (Article 1). The definition of an individual case as a public interest under the law significantly infringes the right to judicial review (Article 36 of the CFRF and Article 6(1) of the ECHR) as, for example, administrative decisions will continue to be reviewable by a court, but not as regards whether or not public interest is involved because the answer to this question is provided not by an administrative court but by the law – which is binding upon the court.

In the light of this decision by the Constitutional Court, the legal life of the law on the expropriation of land in order to construct the landing/takeoff runway at Prague-Ruzyně Airport will be interesting.[52] *It should also be noted that the conceptually identical bill on the*

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[51] Section 3a of Act No 114/1995 on inland shipping, as amended

[52] Act No 544/2005 on the construction of the takeoff and landing runway 06R - 24L at Prague-Ruzyně Airport, Parliamentary Press No 984 (http://www.psp.cz/sqw/historie.sqw?o=4&T=984). This was an initiative of the legislative, with which the executive expressed its disagreement. The executive used de facto the same arguments as the Constitutional Court in repealing the amendment to the Inland Shipping Act – see Government Resolution No 723 of 8 June 2005.
(http://racek.vlada.cz/usneseni/usneseni_test.nsf/6802db4c27cf71ffc1256f220067f94a/a17432349679ddd5c125701500359886?OpenDocument)

construction of motorways and expressways, which was meant to label all expressways and motorways as 'public interest', was not passed in the end.[53]

1.2 Moral rights

1.2.1 Right of access to healthcare documentation

The Government Bill on Health Care[54] was meant to resolve the deficiencies in existing legislation, which does not stipulate with any clarity in which way patients have the right to be acquainted with the information collected in the healthcare documentation kept on them. The lack of uniformity in the practices of medical institutions as regards the provision of information from healthcare documentation has been described in the 2003 Report on the State of Human Rights in the Czech Republic.[55]

According to the bill, patients would be expressly permitted to peruse their healthcare documentation and make copies and extracts, with the exception of information from authorized psychological methods and the description of treatment by psychological means. The bill also covers the issue of who pays the cost of making copies and extracts and sets time limits in which healthcare facilities are obliged to arrange for copies and extracts. At the same time, patients would have the right to appoint other persons to whom information can be disclosed about the patients' state of health and to name persons who are not permitted to receive information.

Compared to the current legislation, the bill anticipates the express specification of the right of next of kin to information about the state of health of a patient who dies, the cause of death, and the right to peruse healthcare documentation and make copies and extracts from this healthcare documentation. In cases where a deceased patient, prior to death, expressly forbade the disclosure of information about his/her state of health, the right of next of kin to information about the state of health will be limited solely to information necessary to protect their health or the health of others. The right of access to healthcare documentation should be comprehensively regulated by the Health Care Act.[56]

The problem of access to healthcare documentation was also addressed by the Attorney General's Office, which in 2005 issued an interpretation of the obligation of confidentiality imposed on medical personnel.[57] In this opinion, the Attorney General's Office concluded that under legislation in force the right to peruse the healthcare documentation of a deceased person belonged to the surviving spouse and children and, if not to them, to the parents of the deceased, inter alia based on the provisions of the Civil Code concerning the right to personal confidentiality.[58]

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53 Parliamentary Press No 373 (http://www.psp.cz/sqw/historie.sqw?o=4&T=373); Chapter II/1.2.2 of the 2003 Report

54 Parliamentary Press No 1045 (http://www.psp.cz/forms/tmp_sqw/43710009.doc)

55 see Chapter 1.4.2 of the 2003 Report

56 Parliamentary Press No 1151 (http://www.psp.cz/sqw/text/orig2.sqw?C=1477&T=k2002psp4t&E=doc)

57 Opinion No 7/2005 of the Attorney General's Office on the obligation of healthcare personnel under Section 55(2)(d) and (3) of Act No 20/1966.

58 Section 15 of Act No. 40/1964, the Criminal Code, as amended

1.3 Freedom of assembly

1.3.1 The case of CzechTek 2005

1.3.1.1 Description and evaluation of events

On 29 July 2005, the traditional open-air dance event called CzechTek, which lasts for several days, began in the municipalities of Mlýnec and Újezd nad Přimdou on land by the D5 motorway. For several years, typical features of this event have been that outwardly it has no organizer, it is non-commercial, it attracts thousands (even tens of thousands) of participants, it has an on-off relationship as regards respect for land ownership rights[59] and there are problems with the observance of hygiene regulations (especially noise limits); nevertheless it tends to be relatively peaceful. On the other hand, it should be noted that in the past the public authorities have not been able to respond to the non-compliance with rules of public order.[60]

It took the Czech Police Force several hours after the arrival of the first participants to respond to the fact that the event participants were moving around and staying on land where the owner had not given permission and to the misdemeanours of some of the participants; the police blocked the access road and part of the motorway in an attempt to counter this. The police force's efforts to restore public order resulted in police intervention, under a united command, against the participants in the afternoon and evening of 30 July 2005. About a thousand police officers were deployed in this action, during which several dozen participants and eight police officers were injured.

The police were criticized for the intervention, which was considered inappropriate and, in a number of situations, unlawful.[61] At the beginning of the event, the police were slated for being inactive and for not making any effort to concentrate the participants on the legally leased land. Further criticism then focused on the method of the police action under a united command. The police force was condemned for the excessive use of force by individual police officers, the use of excessive coercive means and the breach, by some officers, of the duty to wear a uniform bearing their identification number.[62] The police were also viewed in a negative light for the way they communicated with the public and the media during and after the police action, in particular for providing false information and for changing their reasons for taking the action they did.

Doubts about the legitimacy and adequacy of the intervention kindled a vigorous response from society – demonstrations, political discussions, and media coverage. In this discussion, the Ministry of the Interior and the Czech Police Force essentially took the view that the intervention was legitimate and took place in accordance with the law. The

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[59] In various years, a (sub-)lease agreement has been negotiated with the land owner or lessee (e.g. 2002 – the municipality of Andělka na Frýdlantsku); at other times the event has taken place without the permission of these persons (e.g. 2004 – the municipality of Boněnov na Tachovsku).

[60] Every year the media document the cleanup of the land after the event (e.g. see Zpravodajství Novinky, 12 August 2004, online: http://dovolena.novinky.cz/03/79/45.html) and the state of the land several weeks later (e.g. see online: http://zpravodajstvi.centrum.cz/kultura/clanek.phtml?id=37839).

[61] For example, the police were criticized by the participants, some politicians, nongovernmental organizations and the media.

[62] Section 10(2) of Act No 283/1991 on the Czech Police Force, as amended.

ombudsman assessed the police force's approach in a report published on 25 January 2006.[63] In his investigation, the ombudsman discovered that the '*Czech Police Force was authorized to act, but, prior to this forceful solution, failed to exhaust all feasible means of restoring order without the use of force*[64]*. This fact renders the Czech Police Force's procedure excessive.*'[65] Besides the breach of the principle of subsidiarity in relation to the use of force expressed as an obligation in the Czech Police Force Act[66] the report stated that the police had erred in a number of excesses of police officers during the intervention and in the lack of documentation about the intervention. The investigation by the ombudsman also found deficiencies in the police's communication with the participants (the police appeals were hard to hear) and with the public (the failure to offer a uniform reason for blocking the access road to the site).

1.3.1.2 Investigation and rectification of events

Criminal prosecutions were launched against several[67] CzechTek participants for the criminal offences of attacking a public servant, personal injury, and damage to the property of another person. In the pre-trial proceedings, the case against the temporary lessee of the land used to hold CzechTek was dropped by the public prosecutor following the quashing of the resolution on the commencement of criminal prosecution due to its unlawful and unjustified nature. This criminal prosecution was originally brought against the accused for organizing the event, although this conduct was found not to result in the crime of damaging another's property[68]. Seven cases – conduct qualified as the crime of an attack on a public servant – reached the stage of court proceedings. In one case the accused was acquitted in full[69], in the other cases no verdict has been delivered yet.

As a result of the police action against the CzechTek participants, several dozen participants were injured. Several of the claimants lodged complaints against police officers for conduct resting in the use of excessive use of force, personal injury or damage to property.[70] In these cases, the investigation centres on whether the police exceeded their

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63 The report ('Final opinion of the ombudsman concerning the Czech Police Force's approach to the participants of CzechTek 2005') was published on the website of the Office of the Ombudsman (http://www.ochrance.cz/dokumenty/dokument.php?doc=361).

64 In particular, the ombudsman considers the following to be means that could have been considered in the case of CzechTek 2005 prior to the use of force: a specification of the space where the participants could legally assemble, requests to the participants to refrain from specific breaches of the law (e.g. from occupying land that had not been hired, from exceeding noise limits, etc.) and to relocate to the specified leased area, and an express warning that failing to heed the requests would result in the use of force (Final opinion of the ombudsman concerning the Czech Police Force's approach to the participants of CzechTek 2005, p. 16)

65 Final opinion of the ombudsman concerning the Czech Police Force's approach to the participants of CzechTek, p. 16

66 Section 38(4) and (5), Section 6(1) of Act No 283/1991 on the Czech Police Force, as amended.

67 From the figures cited in the reports of the Ministry of Justice and the regional public prosecutor's office, it can be derived that eleven criminal prosecutions were brought.

68 The resolution on the commencement of the criminal prosecution was quashed due to significant factual and legal defects and the case was subsequently shelved.

69 The judgment of the District Court in Tachov, Chamber 2 T, of 23 January 2006 has not yet entered into force.

70 There are 25 cases, covering excesses such as arbitrary intentional damage to a vehicle by police officers, the beating of a passive person, or serious personal injury with permanent consequences as a result of the use of coercive means.

powers or directly misused the powers of a public servant[71]. The Inspection of the Minister of the Interior is still in the pre-trial phase of assessing the circumstances and has not yet filed any instigation to commence criminal prosecutions. Two participants are fighting the intervention as such through administrative actions, in which no ruling has yet been delivered.[72]

1.3.1.3 Legislative ramifications

Bill on the conditions concerning the holding of certain assemblies

The legislative reaction to the events described above has been swift. On 15 August 2005, the Ministry of the Interior placed a bill on the conditions for the holding of certain assemblies in interdepartmental comment procedure.[73] The valid Right of Assembly Act[74] is not applicable to such kind of events; the participants and conveners have the rights laid down in Article 19 of the Charter of Fundamental Rights and Freedoms[75] and the obligations under diverse public-law regulations. The bill was found to be unconstitutional by many parties approached in the comment procedure as it de facto sought to introduce the principle of requiring permission to assemble. Besides the criticisms about the legislative quality of the bill and the evident pragmatics of a bill prepared in the space of two weeks with no analysis of the need for such a piece of legislation, the parties in the comment procedure pointed out the vagueness of some of the terms and conditions in the bill,[76] obligations imposed on conveners which are very difficult to meet[77] and other institutions de facto deterring the organization of this type of assembly.[78] As a result, the bill was not presented to the Government and the legislative process was thus terminated.[79]

Draft amendment to the Code of Administrative Procedure

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71 Video recordings documenting, for example, the kicking and beating of a person lying on the ground who is offering no resistance, or the threatening of another person with a firearm in a situation where this was not necessary were released on the Internet soon after the intervention, including on www.policejnistat.cz, as well as in other media.

72 The actions are filed at the Municipal Court in Prague under reference numbers 5 Ca 235/2005 and 5 Ca 234/2005.

73 A time limit of just four days was set for comments and suggestions to be sent. Although the Government's legislative rules allow the chair of the Governmental Legislative Council to set a time limit of shorter than 20 working days in exceptional cases (Article 78), the legislative rules also provide that if the Government orders a bill to be drawn up in a period which does not permit the general time limit of 20 working days to be respected on the grounds of urgency, the time limit must not be shorter than five working days (Article 8(5)). One of the obvious reasons for such a time limit is that it is de facto impossible in a shorter time to study a legislative bill and draw up and deliver comments.

74 Act No 84/1990 on the right of assembly, as amended

75 This provision guarantees the right of peaceful assembly, forbids making this right contingent on permission from a public administration authority, and permits such an authority to place restrictions in cases where assemblies are held in public places, but only for the specifically mentioned important reasons.

76 e.g. the terms 'places intended for the organization of an assembly', 'an assembly during which harassment may occur beyond an extent proportionate to the conditions'

77 in particular, the convener's obligation to secure opinions from a number of public administration authorities, and to provide a specific list of organizers at a rate of ten organizers per thousand participants

78 inter alia the convener's special liability for damage caused by participants, high penalties and stringent conditions for their enforcement

79 Twenty-three of the parties in the comment procedure raised significant comments about the bill; overall 24 significant comments (19 types of significant comments) could not be resolved.

The events surrounding CzechTek 2005 also resulted in a legislative initiative from the Senate[80] – a draft amendment to the Code of Civil Procedure.[81] The bill expands the restrictive conditions for the bringing of actions against a 'different intervention by a public authority' with an emphasis on enhancing protection from unlawful interventions by units.[82]

Other norm-setting and other acts

The approach adopted by the police to similar events should be harmonized in the future by means of internal norm-setting.[83] Further to an amendment to the binding guideline of the Police President, there should be a shift in the level of management – to selected police officers from the regional administration – in cases of policing measures where forces and means beyond the scope of the district headquarters are deployed to conduct an intervention under a united command. The commander responsible for a policing measure should also be held liable for the provision of timely, objective and, where possible, sufficiently detailed and comprehensive information to the media. The structure and competences of the management team will also be defined for large-scale policing measures.[84] The Ministry of the Interior is also preparing a model decree for municipalities on whose territory events like CzechTek are held; this decree should lay down in detail the way the events should be regulated.

2. Judiciary, right to judicial and other protection

2.1 Cancellation of the exclusion of a judicial review by the Council of State Attorneys General as the appellate body against a decision of the National Security Authority not to grant a security check for contact with confidential information[85]

With effect as of 6 June 2005, at the instigation of the Regional Court in Brno the Constitutional Court cancelled the exclusion of a judicial review of a decision by the Council of Public Prosecutors ('Council') of the Attorney General's Office as the appellate body against a decision of the National Security Authority not to grant a security check for contact with confidential information.[86] At this point it is necessary to point out that the Constitutional Court had already quashed the general exclusion of a judicial review of the National Security Authority – as of 30 June 2002.[87] At that time, the Constitutional Court

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80 a proposal from Senator Jan Horník (Senate Press No 141)

81 Act No 150/2002, the Code of Administrative Procedure, as amended

82 This bill removes the condition of admissibility of an action resting in the fact that an intervention or its consequences must exist at the time the petition is filed or there must be a threat of repetition (a change to Section 82 of the Code of Administrative Procedure); it expressly permits actions solely to determine whether an intervention is unlawful (a change to Sections 85 and 87(2) of the Code of Administrative Procedure).

83 The Czech Police Force is preparing an amendment to Binding Guideline of the Police President No 121/2003 regulating the procedure to be applied by the Czech Police Force in safeguarding internal order and safety in connection with the organization of assemblies or other events involving a large number of persons.

84 In the scope of international police cooperation, based on the past experience of Berlin police the Czech Police Force will experiment with 'anti-conflict teams' (i.e. police negotiation in a crowd) as a new form of preventive action aimed at precluding unlawful conduct at events involving a larger number of persons and at precluding the need for intervention with coercive means. In connection with the deployment of anti-conflict teams, a change is also being prepared to the tactics for interventions under a united command. If these teams are assessed in a positive light, they will be introduced at all regional police authorities.

85 Section 77k(6) of Act No 148/1998 on the protection of confidential information, as amended

86 Finding of the Constitutional Court, published in the Collection of Laws under number 220/2005. New legislation effective as of 1 January 2006 (Act No 412/2005 and Act No 413/2005) no longer contains decision-making on a remedial measure by the Council of Public Prosecutors of the Attorney General's Office.

87 Finding of the Constitutional Court, published in the Collection of Laws under number 322/2001.

primarily addressed the question of the admissibility of an intervention in the right to legal protection (Article 6(1) of the ECHR, Article 36(2) of the Charter) and in the right to the free choice of employment (Article 26 of the Charter). This time, the Constitutional Court addressed the issue of whether the Council, as a sui generis body, complies not only with the formal, but also the material, conditions for the fulfilment of the requirements for its assessment as an independent, impartial tribunal (Article 6(1) of the ECHR), where the Confidential Information Act (Section 73(2))[88] also permits a judicial review of decisions of the Council by an administrative court in accordance with the Code of Administrative Procedure.[89] Therefore the Constitutional Court assessed not only the formal, but also the material conditions of safeguarding the impartiality and independence of the Council as a body whose decisions intervene in the rights and obligations of persons.

From the formal aspect, the Constitutional Court stated that the Council's decision cannot be considered a decision of an independent and impartial body of a judicial type primarily because, according to the Constitution of the Czech Republic[90] (Article 80), in terms of the division of power in the legislative, executive and judiciary, the public prosecutor's office belongs to the executive and not the judiciary. Therefore the Constitutional Court also analysed the material guarantees of the impartiality and independence of the Council's decision-making.

In its examination of material impartiality and independence, the Constitutional Court focused on whether the formal guarantees of impartiality and independence contained in the Act on the Public Prosecutor's Office[91] are fulfilled materially. The Constitutional Court arrived at the conclusion that this was not the case, primarily on the following grounds:

- The assignment of public prosecutors to the Attorney General's Office is a decision in the competence of the Minister for Justice, i.e. a member of the Government as the supreme body of executive power;
- Public prosecutors at the Attorney General's Office are subordinate to the Attorney General, whom the Government appoints and removes without specifying its reasons;
- The Attorney General and the Minister for Justice are both entitled to commence disciplinary proceedings with any public prosecutor at the Attorney General's Office, i.e. including with a member of the Council;
- Public prosecutors – Council members – are appointed and may be removed by the Government at the proposal of the Minister for Justice; their tenure is generally two years, and they must successfully undergo security screening by the National Security Office, i.e. the institution whose decisions they are then required to review;
- The National Security Office grants security clearance for a period of five years, which may be revoked at any time without a specification of the reasons for such a decision. The director of the National Security Office is appointed by the Government and is accountable directly to the Prime Minister, i.e. the head of the supreme body of executive power;

88 Section 73(2) and Section 77k(6) of the Confidential Information Act: Section 77k(6) 'Neither Council decisions in proceedings on a remedial measure or other decisions and measures under this Act, with the exception of decisions on fines, are subject to judicial review'; Section 73(2) 'An action against a decision not to issue certification may be brought within 15 days of the date on which the decision is delivered. The participation of persons involved in proceedings is not permitted in the procedure concerning this action.'

89 Act No 150/2002, the Code of Administrative Procedure, as amended

90 Constitutional Act No 1/1993, the Constitution of the Czech Republic, as amended

91 Act No 283/1993 on the public prosecutor's office, as amended

- Public prosecutors are bound to protect the public interest, which security by means of confidentiality can generally be considered to be; this can lead to doubts as to their impartiality when assessing a conflict with a private interest, which is an intervention in fundamental rights and freedoms.

The Constitutional Court stated that *'these legal instruments objectively form a line allowing for potential influencing of the free judgment of a member of the Council, which … guarantees of formal independence… can do nothing to change.'* From the aspect of the stability of Council members, the Constitutional Court concluded that *'…the Council does not honour the requirements of the relative stability of its composition, which is intended to prevent the influencing of the outcome of decision-making by means of a change to the composition of the Council; this implies that it cannot respect the requirement of the stability of the decision-making body…'* The Constitutional Court also considers this to be a breach of the right to a 'legitimate judge' (Article 38(1) of the Charter). In conclusion, the Constitutional Court stated, with reference to the case law of the European Court of Human Rights, that an independent and impartial review of decision-making should be undertaken in cases where there is a conflict between fundamental rights and a national security interest.[92]

2.2 Winding-up of the system for the investigation of complaints in pre-trial criminal proceedings

Since 1 October 2005, the method used to make decisions on complaints against a decision of a law enforcement agency in the pre-trial and judicial stage of criminal proceedings has been cancelled (Section 146(2) of the Rules of Criminal Procedure).[93] In the opinion of the Constitutional Court, the dismantled system of decisions on complaints did not satisfy the condition of reviews of complaints by an independent and impartial tribunal in accordance with the right to a fair trial (Article 6(1) of the ECHR, Article 36(1) and (2) of the Charter, because in the pre-trial criminal proceedings concerning a complaint, unlike the judicial phase of the criminal proceedings, decisions were in the competence not of the court, but of the public prosecutor. The status of the public prosecutor in the hierarchy of the division of power does not comply with the requirement of an independent and impartial tribunal because, with regard to the decisions of police bodies, decisions on complaints were made by the public prosecutor who oversaw the course of criminal proceedings and had no

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92 see, for example, ECHR Ruling on Complaint No 9248/91, Leander v. Sweden, Ruling of the Grand Chamber of the ECHR on Complaint No 28341/98 Rotaru v. Romania, ECHR Ruling on Complaint No 5029/71, Klas and others v. Federal Republic of Germany

93 Act No 141/1961, the Rules of Criminal Procedure, as amended; Section 146: *'(1) The body against whose resolution a complaint has been made, may uphold the complaint of its own accord if the change to the original resolution does not affect the rights of another party to the criminal proceedings. In the case of a resolution of a police body which has been issued with the prior permission of the public prosecutor or on the instructions of the public prosecutor, the police body may uphold the complaint of its own accord solely with the prior permission of the public prosecutor. (2) If the time limit for the submission of a complaint has expired for all entitled parties and a complaint has not been upheld in accordance with paragraph (1), the case shall be submitted for a decision a) by the police body to the public prosecutor who is responsible for oversight of the pre-trial proceedings, and in the case of a complaint against a resolution in respect of which the public prosecutor has granted permission or an instruction, through this public prosecutor to a superior public prosecutor, b) by the public prosecutor to a superior public prosecutor or court, c) by the president of the district court to a superior regional court, by the president of the regional court to the superior high court, and by the president of the high court to the Supreme Court; where necessary, a copy of the complaint is delivered to the public prosecutor and to any party who could be directly affected by a decision on the complaint, d) by a public prosecutor at the Attorney General's Office to the Attorney General.'*

objections to the procedure applied by police bodies in the matter of complaint. In cases regarding decisions by a public prosecutor, decisions on complaints were made by a superior public prosecutor, i.e. from a hierarchically superior level.

The Constitutional Court also cancelled that part of the system for decisions on complaints which entrusted decisions on complaints to a court in the judicial phase of criminal proceedings; this was because this dual arrangement did not safeguard an identical status for the accused and the defendant in decisions regarding their remedial means due to the phase of the criminal proceedings. In the opinion of the Constitutional Court, the Rules of Criminal Procedure thus infringed the principle of equality in rights (Article 1 of the Charter). In assessing constitutionality and compliance with international-law obligations, the Constitutional Court did not expressly comment on the matter of possible discrimination in criminal proceedings; however, this can be derived from the stated inequality in rights.

2.3 The right to an independent review of a decision on the imposition of a fine

With effect as of 1 October 2005, the Constitutional Court withdrew the mechanism for reviews of complaints, contained in the Rules of Criminal Procedure, against fines imposed in criminal proceedings by a police body. The Constitutional Court cancelled this mechanism after examining the whole system – complaints as a remedial means in criminal proceedings. After the Constitutional Court had judged a fine to be a penal measure for a delict, it stated that whereas in the judicial phase of criminal proceedings persons who have been fined by a court have the opportunity to lodge a complaint with a superior court competent to assess complaints, in pre-trial criminal proceedings decisions on complaints are made by the public prosecutor. However, given the formal status of the public prosecutor (subordination to executive power), he/she does not comply with the condition of an independent and impartial tribunal within the meaning of the right to a fair trial (Article 6(1) of the ECHR and Article 36 of the Charter) and thus also breaches the right to an effective remedy (Article 13 of the ECHR).

The Government responded to this ruling of the Constitutional Court by proposing an amendment to the Rules of Criminal Procedure[94] so that complaints against a fine imposed by a police body are also in the competence of the court and not the public prosecutor. Thus since 1 October 2005, the whole system of decision-making on complaints has ceased to be valid on the one hand, while on the other there has been a change to the Rules of Criminal Procedure which removed those deficiencies in legislation in force which were criticized by the Constitutional Court.

2.4 Decisions on the transfer of criminal proceedings to another country at the stage after an indictment has been brought

In 2005, the Supreme Court handled a dispute on whether, in situations not covered by an international treaty binding on the Czech Republic, the Ministry of Justice (the Minister for Justice) is entitled to make a decision on the transfer of a criminal case to another country, after an indictment has been brought, on its (his) own initiative, i.e. without a proposal or

[94] see Parliamentary Press No 1042 (http://www.psp.cz/sqw/historie.sqw?o=4&T=1042). The amendment to the Rules of Criminal Procedure was published in the Collection of Laws as Act No 394/2005 with effect as of 1 October 2005.

cooperation from a court.[95] After the Minister for Justice decided to transfer criminal proceedings concerning an accused citizen of Qatar to Qatar in April 2005, in accordance with a request from a competent body from that country, the matter was addressed by the District Court for Praha 2 in the scope of a decision on the accused's request to be released from detention, by the Municipal Court in Prague as the court of second instance in the scope of a decision on a complaint from the accused against this resolution, and by the Supreme Court in the scope of a decision on a complaint against a breach of law, in which the Minister for Justice challenged the resolution issued by the Municipal Court in Prague.

Both the District Court for Praha 2 and the Municipal Court in Prague adjudged the Justice Minister's decision to transfer the criminal proceedings to be null and void, and this did not respect it in their rulings.[96] Both courts argued that, once an indictment has been brought, the Minister for Justice cannot decide to transfer criminal proceedings without a proposal from the competent court in the proceedings, as the Ministry of Justice only plays a mediating and service role in proceedings on the transfer of a criminal case to another country. Any interpretation to the contrary would mean that the judiciary is not independent, and that it is dependent on the executive or even on the decisions of bodies from a foreign power, and such an approach would be a violation of Articles 38 and 40 of the Charter and Article 90 of the Constitution. The fact that the court's role is not expressly stated in the relevant provision of the Rules of Criminal Procedure is a loophole in the law which needs to be plugged with an interpretation. The Attorney General's Office – which commented on the case in proceedings before the Supreme Court – essentially agreed with this argument. Furthermore, the Attorney General's Office referred to current practice, where the Ministry of Justice had never previously acted in proceedings on the transfer of a criminal case to another country without first receiving a proposal from a court, and no formal decision signed directly by the Minister had ever been issued.

The Supreme Court concluded that the Minister for Justice is entitled to transfer a criminal case to another country after an indictment has been brought if contractual relations to not exist; therefore it quashed the relevant parts of the rulings issued by the courts of lower instance, stayed the criminal prosecution of the accused, and released him.[97] Its basis was the legal wording of Section 448(1) (and other provisions) of the Rules of Criminal Procedure, where the approach adopted by the Minister for Justice is not contingent on a proposal, approval or other activity of a court. It backed up this conclusion with an interpretation in relation to Section 448(2), which entitles a court, pursuant to an international treaty, to transfer criminal proceedings to another country after an indictment has been brought, and in relation to the regulation of extradition proceedings, where the Rules of Criminal Procedure expressly enshrine the division of competences between the courts and the Ministry of Justice. The Supreme Court further argued that assessments of the aspects relevant to the transfer of a criminal case to another country do not just constitute an evaluation of narrowly criminal-law contexts, but also an evaluation of the specific interests of the countries concerned, including, for example, issues of foreign-policy interests that exceed the authorization of the judiciary.

The Supreme Court adjudged current legislation to be too scrappy and recommended that additions and elaborations be made to expressly define the competences of the executive and the judiciary, including limits for decision-making by the Minister for Justice (e.g. based

[95] Section 448(1) of Act No 141/1961 on criminal proceedings (Rules of Criminal Procedure), as amended

[96] Resolution of the District Court for Praha 2 No 7 T 30/2005 of 30 May 2005, Resolution of the Municipal Court in Prague No 8 To 312/2005 of 19 July 2005.

[97] Judgment of the Supreme Court No Tz 117/2005 of 22 August 2005

on the amount of the punishment). According to the Supreme Court, the law should also make a distinction between cases where the accused is in the Czech Republic or is in custody, and cases where the accused is in another country' for the first group of cases it should regulate the court's approach to transfer, especially as regards the further duration of custody. Legislation should also contain guarantees for the accused, so that a decision by the Minister for Justice should be bound to the accused's consent, or the accused should be entitled to seek a judicial review of such a decision.

2.5 Introduction of the institution of lodging a deposit in the submission of an application for the issue of an interim order

Under an amendment[98] to the Code of Civil Procedure[99] the new institution of lodging a deposit was introduced, which means that all petitioners seeking an interim order are required to deposit a financial sum of CZK 50,000 (or CZK 100,000 in commercial cases) for the subsequent coverage of any damage incurred. The lodging of a deposit is a formal requirement for a court to hear a petition for an interim order.

This new legislation can be criticized primarily because it is overly rigid, i.e. non-payment of the deposit can be requested only in those cases where the petitioner seeking the interim order also applies for exemption from court fees and the court upholds this request. However, this only occurs in cases where the petitioner has funds that are de facto at the subsistence level. All other petitioners are obliged to pay the deposit. Therefore, on the one hand the new institution of lodging a deposit does not take account of the fact that the court makes decisions on interim orders, and hence the court should be capable of assessing and deciding in each case whether the nature of the interim order could cause damage; on the other hand, it does not consider whether the petitioner has a financial situation enabling him/her to pay the deposit. Most of the population which entitled to make use of an interim order issued by a court to protect their claimed rights are thus restricted by their financial resources. As of the end of the 1990s, the obligation of a court to make a decision on an interim order petition within seven days became an effective means of protecting claimed rights in a situation where judicial proceedings in the Czech Republic are protracted.

The introduction of the institution of lodging a deposit could result not only in a restriction of the right to a fair trial, but also a limitation of the right of access to justice in general. Therefore it would be advisable to adjust this institution to make it facultative (i.e. not obligatory) and to set an upper and lower limit of the deposit amount, whereby the courts could derogate from the lower limit depending on the nature of the case in which the interim order is to be issued. Legal situations should also be defined where the lodging of a deposit will not be required at all because damage or injury other than property damage is at issue in the case. These cases should primarily be domestic violence, decisions on the legal arrangement of relations between parents and their children, and cases connected with housing, irrespective of the type of legal relationship, because today the Code of Civil Procedure automatically exempts labour cases, actions for compensation for personal injury and for maintenance payments, and cases where a court makes decisions without a petition from the requirement of lodging a deposit.

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98 Act No 59/2005 amending the Code of Civil Procedure; this was a parliamentary initiative by the MP Ivan Langer – see Parliamentary Press No 643/3 (http://www.psp.cz/sqw/historie.sqw?o=4&T=643).

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

3. Persons whose freedom has been restricted

3.1 Detention and imprisonment

3.1.1 Prison numbers and prison capacity

During 2005, the trend of a rising number of prisoners continued. The highest number of prisoners at any one time came to 19,526. This adverse development can be attributed primarily to a rise in the number of sentenced prisoners, while the number of remand prisoners is slowly dropping. In 2005, the average remand period was 152 days, which was nine days longer than in 2004.[100] The following table shows the development in the number of prisoners and the percentage of accommodation capacity filled in 2005:

Prisoner numbers and the percentage of accommodation capacity filled in 2005[101]

date	remand prisoners				sentenced prisoners				inmates total
	men	women	total	use of capacity	men	women	total	use of capacity	
1. 1. 2005	3084	185	3269	94.5%	14437	637	15074	103.0%	18343
1. 4. 2005	3073	202	3275	96.6%	15331	710	16041	107.7%	19316
1. 7. 2005	2859	172	3031	91.0%	15735	738	16473	109.8%	19504
1. 10. 2005	2569	152	2721	83.5%	15554	728	16282	107.7%	19003
31. 12. 2005	2697	163	2860	85.8%	15336	741	16077	107.1%	18937

It ensues from these figures that in 2005 the decree laying down the Rules of Confinement was not respected as regards the minimum accommodation area of 4 m^2 per sentenced prisoner; as a rule, an exemption was applied which is permitted under the decree for cases where the total number of convicted prisoners sentenced to imprisonment in prisons of the same type within the country exceeds the set capacity of the prisoners.[102] Figures on the average use of capacity do not reflect overcrowding in individual prisons, where the accommodation capacities in 2005 were exceeded by between ten and thirty per cent.[103] At the end of 2005, the Prison Service was 539 places short for convicted prisoners; it is expected that the number of sentenced prisoners will continue to rise.[104] In contrast, as a result of the falling number of remand prisoners, there was no need to apply the exemption from the provision on the minimum living space of 4 m^2 per remand prisoner.[105]

The Prison Service resolved the lack of capacity for convicted prisoners by increasing the accommodation capacity on the basis of an examination of the efficient use of space within prisons and remand prisons. In 2005, the Prison Service acquired the former barracks in Rapotice (in the Třebíč district) from the Ministry of Defence by means of a free transfer; it

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100 see Chapter 4.1.1 of the 2004 Report

101 The calculation of the average filled capacity of prisons is based on an accommodation capacity of 4 m^2 per person.

102 Section 17(6) of Decree No 345/1999 publishing the Rules of Confinement, as amended

103 According to information from the Prison Service of the Czech Republic, as at 31 December 2005 the accommodation capacity in the remand sections was exceeded in four prisons out of a total of fifteen; the sections for convicted prisoners were overcrowded in 22 prisons out of the total 35 prisons.

104 For example, just the number of convicted prisoners who had not commenced their prison sentence at the end of 2005 was approximately 5,500 persons.

105 Section 15(2) of Decree No 109/1994 publishing the Rules of Remand, as amended

plans to build a new prison here in 2006 and 2007. The construction of another new prison in 2009 is being prepared as part of a PPP project[106] approved by the Government.[107]

Significant overcrowding in individual prisons and the failure to meet binding requirements for minimum living areas is a problem that must continue to be solved systematically. Measures to increase the living space of prisons in 2005 cannot be considered adequate, and a significant improvement in the situation can be expected at some time in the future. The Prison Service should take account of the uneven distribution of prisons in individual parts of the country and build new accommodation capacities in Moravia in particular. In addition, the Prison Service should concentrate on improving living conditions in existing prisons. Cooperation should be made more intensive between the Prison Service and the Probation and Mediation Service of the Czech Republic[108] and the courts in applying parole, alternative sentencing and deferrals in criminal proceedings.

3.1.2 Range of treatment programmes and employment of prisoners

Given the rise in the prison population, in 2005 it was not possible to set aside areas from the accommodation capacity in prisons and remand prisons to be used for free-time activities. In most prisons, these areas are mainly missing in the remand sections. This applies in particular to sports facilities, in which remand prisoners express most interest. Some prisons also suffer from an absence of professional staff to run treatment programmes.[109]

The number of convicted prisoners engaged in some form of employment in 2005 rose by 312 (5.5%) compared to 2004. Despite this, real employment fell as a result of the rise in the number of convicted prisoners by 0.9% to 45.1%. More than half of convicted prisoners capable of working therefore had no opportunity to work. Of remand prisoners, 46% were employed on average. Compared to the previous year, the largest rise in 2005 could be found in the number of convicted prisoners placed with business entities and in the establishments of a centre of economic activity.

In the future, the Prison Service should focus on finding a conceptual solution to the problem of consistently low employment among prisoners, on building communal areas for free-time activities, especially in remand sections, on improving the facilities, broadening the range and enhancing the effectiveness of treatment programmes, for example in cooperation with the Probation and Mediation Service of the Czech Republic.

3.1.3 Obligation to pay the costs of imprisonment and disposal of 'prison deposit savings'

Under an amendment to a decree of the Ministry of Justice[110] since 1 April 2005 there has been a change in the rules used to determine the cost of confinement which convicted

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106 Public-Private Partnership

107 Government Resolution No 1017 of 17 August 2005 on the submission of pilot Public-Private Partnership projects – Second Wave (http://racek.vlada.cz/usneseni/)

108 An important requirement for the effective work of the Probation and Mediation Service of the Czech Republic with the perpetrators of crimes is its adequate human and financial resources.

109 e.g. in the Litoměřice Remand Prison and Teplice Remand Prison

110 Decree No 135/2005 amending Decree No 10/2000 on deductions from the remuneration of persons employed during imprisonment, on the execution of decisions by deductions from the remuneration of such

prisoners are obliged to cover. The amendment to the decree followed up on an amendment to the Confinement Act from 2004[111] and responded to the inadequacies of current legislation, which had a negative effect on the resocialization of convicted prisoners.

Under the previous legislation, the cost of imprisonment was set at a fixed daily rate;[112] given the long-term low employment rate among sentenced prisoners, this resulted in a disproportionate increase in debt on release from prison which was then very difficult to recover. The amendment to the Confinement Act, which exempted convicted prisoners from the obligation to cover the cost of their imprisonment if, through no fault of their own, they were not assigned work and have no other income or cash in a calendar month, did not, in the setting of costs at a flat rate, motivate other convicted prisoners to work in cases where their earnings were not much higher than – or were below – the monthly cost of their confinement.

The new legislation introduced the setting of confinement costs as a percentage (40%) of the net remuneration of a convicted prisoner for work or other income;[113] the overall amount of costs is limited to CZK 1,500 per calendar month. With most convicted prisoners, this ruled out the possibility that debts related to the cost of their confinement would be outstanding after their release from prison. An exception to this rule is convicted prisoners who are pensions that have their pension sent to the prison and do not have any other income during their confinement. The method used to set the cost of confinement which remand prisoners are obliged to cover has not changed; the costs continue to be calculated from a flat daily rate.[114]

The new legislation, which introduces a level of confinement costs based on a percentage of the convicted prisoner's income rather than a flat daily rate, is undoubtedly a positive change from the aspect of the resocialization of convicted prisoners once they are released from prison, and in terms of the convicted prisoners' motivation to find lower-paid work. Positive effects on the national budget can also be expected as it will eliminate the cost of trying to recover what are usually irrecoverable debts. As the costs which convicted prisoners are obliged to pay are just a fraction of the actual confinement expense and yet still have an adverse impact on the resocialization of convicted prisoners, in the future it will be necessary to consider cancelling this obligation altogether.[115]

Further to an amendment to the decree in keeping with the Confinement Act, the possibilities regarding the disposal of 'prison deposit savings' – generally CZK 2,000 – have been extended. The group of people to whom convicted prisoners may send part of these savings has been broadened to include persons who regularly visit the convicted prisoner during his imprisonment. Under previous legislation, a convicted prisoner could send part of his savings solely to direct relatives or siblings.[116]

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persons and inmates of institutions with a special corrective regime, and on the reimbursement of other costs, as amended by Decree No 94/2001.

111 Act No 52/2004 amending Act No 169/1999 on imprisonment, as amended, and certain other acts; see chapters II/4.1.3 and II/4.1.6 of the 2004 Report

112 The daily rate came to CZK 45.

113 Other income might include money received by the convicted prisoner in prison or social benefits (e.g. a pension).

114 The daily rate for the calculation of confinement costs is CZK 45.

115 see Chapter II/4.1.4 of the 2004 Report

116 Section 7 of Decree No 10/2000 on deductions from prisoners' remuneration, on implementing a judgment through deductions from the remuneration of prisoners and inmates of special care facilities and on the compensation of other costs, as amended

At present, the ombudsman is conducting an investigation on his own initiative that should identify the weaknesses of the current system used for the reimbursement of incarceration costs by sentenced prisoners and whether the income and expenditure of these prisoners during their imprisonment can be managed more efficiently. This is a time-consuming investigation that should also cover comparisons with similar systems abroad; the results will be the starting point for negotiations with the Prison Service of the Czech Republic. If a consensus is reached, it is likely that legal regulations will have to be changed, especially the Confinement Act.

3.1.4 Visits to life-sentenced prisoners

The Report on the State of Human Rights in 2004 criticized the fact that although the Confinement Act[117] and the Rules of Confinement[118] permit the implementation of non-contact visits for all convicted prisoners only in exceptional cases, based on an individual evaluation of the security risks, an internal regulation of the Prison Service of the Czech Republic[119] provided that visits to particular groups of life-sentenced prisoners are always or generally non-contact visits. As these provisions of the methodological document were not in keeping with legal regulations in force, the methodological document was repealed in 2005.

3.1.5 Provision of health care in the prison system

The experiences of nongovernmental organizations, the ombudsman, the Government Commissioner for Human Rights and international institutions[120] indicate that the provision of health care to prisoners has certain problems. There are frequent complaints about the quality of the health care provided, the absence of specialized care, problems paying for drugs which are not fully covered by the insurance company, and inadequate conditions for protective medical treatment in certain types of prisons.[121]

The Prison Service realizes that, in the light of plans for the transformation of public health care, the current system of health care in prisons cannot be preserved in the future. According to the Prison Service, a solution could be the establishment of a 'public health organization', the core activity of which would be to operate medical services at the Ministry of Justice and cooperation with the Ministry of Health in the provision of health care in general, or in protective medical treatment sections and in detention facilities.[122] Another, more likely, option, which is backed by experience abroad and the recommendations of international institutions,[123] would be to transfer responsibility for the health care of prisoners

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117 Section 19(6) of Act No 169/1999 on confinement, as amended by Act No 52/2004

118 Decree No 345/1999 publishing the Rules of Confinement, as amended

119 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

120 e.g. the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – see its report from the visit to the Czech Republic in 2002

121 For example, protective sex therapy and psychiatric treatment is not available in any maximum security prison.

122 This solution is also preferred by the Ministry of Finance.

123 e.g. the Final Recommendations of the UN Committee Against Torture from May 2004 – see Chapter I/3.1.1 of the 2004 Report, the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from the visit to the Czech Republic in 2002

from the Ministry of Justice to the Ministry of Health, i.e. to replace departmental prison health care with general health care.[124]

The Ministry of Health is not keen on taking over responsibility for the provision of health care in prisons. It justifies its stance by claiming that any such transfer would result in fundamental problems as, under the law, the Ministry of Health is not authorized to order any healthcare facility to provide health care to prisoners. At the same time, the Ministry of Health has stated that it should be borne in mind that the cornerstone of medical care in prisons is care given by a general practitioner for adults, where such care is provided practically exclusively by private entities, and according to current findings, the prognosis is that there will be problems with a lack of general practitioners.

The Ministry of Justice, in cooperation with the Ministry of Health, should approach the transformation of prison health care together with the transformation of public health care so that the quality of health care is not affected during the transformation.

3.1.6 Prison Information System

In the future, the establishment and application of the Prison Information System should help find partial solutions to the problem of relocating prisoners.[125] The system should include an electronic register of prisoners which will make possible the regular monitoring and assessment of prison capacity possibilities and the effective adjudication of relocation applications. In 2005, preparatory work and software development continued; the Prison Information System has not been launched yet.

3.1.7 Cooperation of law enforcement authorities

An evaluation of public prosecutors' supervision of the observance of legal regulations concerning remand[126] revealed that law enforcement agencies (especially courts) often fail to comply with the obligation of notifying the relevant prison promptly of any change in the reasons for the detention of a remand prisoner and of decisions concerning further detention, as required of them under the Rules of Criminal Procedure.[127] This severe lack of discipline on the part of law enforcement agents complicates the fulfilment of the obligations imposed on the Prison Service and assigned public prosecutors responsible for oversight in prisons, and in particular leads to breaches of certain rights of remand prisoners. For example, following the removal of the collusive grounds for custody, the regimes of the right to visits and the right to correspondence have changed significantly among remand prisoners. The courts and public prosecutors often notify prisons of changes only after some time has passed, after repeated requests from the public prosecutors assigned to carry out supervision. In the meantime, as a result of this prisons have unlawfully infringed the rights of remand prisoners.

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[124] see the Concept for the Development of the Czech Prison System up to 2015, Prison Service of the Czech Republic 2005, pp. 21-22

[125] see Chapter 4.1.3 of the 2004 Report

[126] Section 4(1)(b) of Act No 283/1993 on the public prosecutor's office, as amended

[127] Section 70a(1)(b) and (c) of Act No 141/1961 on criminal proceedings (Rules of Criminal Procedure), as amended

It would be desirable for the Ministry of Justice to focus on inspecting the timely fulfilment of the statutory reporting duty of law enforcement agencies vis-à-vis prisons in remand cases and to take action to rectify the situation.

3.2 Constitutional Court judgments on detention decisions

3.2.1 Right to be heard in proceedings on further detention

Although the Constitutional Court has already commented on the right of a remand prisoner to be heard in adversarial procedure in cases of decisions concerning a remand prisoner's complaint about a resolution of the public prosecutor on further detention,[128] the approach of the courts was not uniform in this respect in 2005. In several of its findings in 2005, the Constitutional Court confirmed the tenet that, under Article 5(4) of the Convention on the Protection of Human Rights and Fundamental Freedoms, it is essential for a court to hear the accused before a decision is made on his complaint against a resolution of the public prosecutor ordering further detention.[129] The situation where the general courts proceed in accordance with an isolated interpretation of the Rules of Criminal Procedure and deliver rulings in private sessions where neither the accused or his defence counsel is present was in contravention of this provision of the international treaty.

The Constitutional Court made a categorical conclusion in this matter in a finding of 22 March 2005,[130] whereby it repealed Section 242(2) of the Rules of Criminal Procedure[131], under which persons other than members of the chamber and the court reporter are excluded from private sessions. In the opinion of the Constitutional Court, this provision prevented the accused from being heard prior to a court ruling on a complaint brought against a public prosecutor's decision to extend the accused's detention.

According to the Constitutional Court[132] it is necessary to insist on the requirement of hearing the accused as a party to the proceedings, even in cases where the court is deciding on an extension to collusive detention beyond a three-month term,[133] as the accused must be given the same guarantees as in the case of a decision to detain him.

Practical observations evidence that, influenced by the findings of the Constitutional Court, the practices of general courts are gradually being harmonized; they are inclining towards the conclusion that if the accused insists on being present in the decision-making process concerning his further detention or on the decision-making process concerning an appeal by the accused against such a decision, he must be permitted to have this personal hearing in the form of his attendance at an otherwise private session. In this part of

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128 e.g. Finding of the Constitutional Court I. ÚS 573/02 of 23 March 2004

129 e.g. Finding of the Constitutional Court No I. ÚS 14/05 of 2 June 2005, Finding of the Constitutional Court No IV. ÚS 247/05 of 10 August 2005, Finding of the Constitutional Court No I. ÚS 586/04 of 25 August 2005, Finding of the Constitutional Court No II. ÚS 405/05 of 5 October 2005, Finding of the Constitutional Court No IV. ÚS 414/05 of 11 October 2005, Finding of the Constitutional Court No I. ÚS 39/05 of 24 October 2005, Finding of the Constitutional Court No III. ÚS 404/05 of 13 December 2005

130 Finding of the Constitutional Court No Pl. ÚS 45/04 of 22 March 2005 (published under number 239/2005 on 17 June 2005)

131 Act No 141/1961 on criminal proceedings (Rules of Criminal Procedure), as amended

132 Finding of the Constitutional Court IV. ÚS 269/02 of 27 June 2005

133 Section 71(2) of Act No 141/1961 on criminal proceedings (Rules of Criminal Procedure), as amended

proceedings, it is in the interests of the equality of the parties to permit the personal attendance of the public prosecutor and the defence counsel too.

3.3 Protective institutional treatment and security detention

The Report on the State of Human Rights in the Czech Republic in 2004 described the anticipated establishment of a new legal institution – security detention. This is designed to be a new type of protective measure which is to be imposed in the future by a court in criminal proceedings in accordance with the new Criminal Code.[134] The Report criticized the fact that although persons in security detention will be deprived of their personal freedom and subjected to a significant limitation in their other rights and freedoms, neither the draft Criminal Code nor the draft of the new Rules of Criminal Procedure are counting on the legislative regulation of the conditions of security detention or protective treatment in an institutional form. In January 2005, the Government decided to set up the Institute for Security Detention and enjoined the Minister for Justice, in cooperation with the Minister for Health, to draw up and present to the Government by the end of May 2005 a bill on security detention.[135] The bill was be submitted to the Government at the end of 2005.

Security detention should be imposed in criminal proceedings, under the conditions laid down in the Criminal Code, on persons who are deemed to be highly dangerous and in respect of whom there protective treatment cannot be expected to be successful. Institutions for security detention[136] should be set up by the Ministry of Justice and guarded by the Prison Service of the Czech Republic in order to minimize the risk of escape by persons placed here. These institutions are not intended to be healthcare facilities, although a significant element of the care provided to persons in security detention will be medical.

The proposed law primarily regulates the rights and obligations of persons in security detention (inmates), the director, and other employees of the institution. In its preparations for the Security Detention Act, the Ministry of Justice drew on the content of the Confinement Act, with consideration for the features specific to security detention. The law will permit oversight of the observation of security detention legal regulations by the public prosecutor's office in the same way as this is carried out, for instance, in prisons. The outcome of the comment procedure, based on which the Ministry opted for a provision where the costs of security detention are borne by the State, should be welcomed. We can assume that it will be more or less impossible for inmates to be assigned work.

As there is still no legal regulation of the conditions for institutional protective treatment, in June 2005 the Government Council for Human Rights initiated the drafting of a law on institutional protective treatment. Based on the Council's initiative, the Government ordered the Minister for Justice, in association with the Minister for Health, to draw up and

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134 Parliamentary Press No 744 (http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=744&CT1=0)

135 Government Resolution No 78 of 19 January 2005 on a proposal to set up an Institute for Security Detention

136 The Ministry of Justice is preparing to set up a security detention institution in Brno (on the premises of the prison hospital) with a capacity of 48 places, and in Vidnava (in the Jeseník district) with a capacity of more than 300 persons.

present to the Government the draft general principle of the Institutional Protective Treatment Act by 15 December 2005.[137] No draft has been presented to the Government as yet.

As the Government had not anticipated the Institutional Protective Treatment Act or the Security Detention Act at the time the drafts of the new Criminal Code and related changes to the Rules of Criminal Procedure were being prepared,[138] the proposed amendment to the Rules of Criminal Procedure currently being debated in Parliament contains a provision that '*a person subject to security detention has the same status, rights and obligations as a person undergoing protective treatment'*.[139] *Assuming that the new criminal norms and the Security Detention Act enter into effect on the same date, it will be necessary to replace this passage of the Rules of Criminal Procedure with a provision on the fact that the conditions of security detention and institutional protective treatment are regulated by separate legal regulations.*

3.4 Rights of persons deprived of freedom by police authorities and conditions in police cells

In 2005, no changes were made to the regulation 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. The deficiencies described in the 2003 Report are still evident. The formal safeguarding of these rights is considered to be a basic guarantee against ill-treatment, the threat of which is greatest in the initial phase of the deprivation of personal freedom.

In September 2005, the Government approved the Health Care Bill, which should replace the Health Care Act. Unlike the current Health Care Act, which does not rule out the right to choose a doctor granted to all persons detained in police cells, the Health Care Bill[140] expressly provides that a person detained in a police cell does not have this right. The requirement that a person detained in a police cell have the right to be examined by a doctor of his choice, above the scope of health care provided by the police authorities, was discussed during the preparation of the bill based on comments raised by the Government Commissioner for Human Rights. In the opinion of the Ministry of Health, this requirement works against the patient's interests, because if a patient detained in a police cell demands health care at a place a considerable distance from the place of detention, his state of health could deteriorate by the time such care is secured. The Ministry of the Interior supported this view, adding that the police force would also incur further financial expenditure.[141]

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137 Government Resolution No 1215 of 21 September 2005 on the initiative of the Government Council for Human Rights in the matter of the legal regulation of institutional protective treatment and the legal regulation of security detention (http://racek.vlada.cz/usneseni/)

138 In its discussions on the draft Criminal Code and draft Rules of Criminal Procedure in 2003, the Governmental Legislative Council did not agree with the results of the comment procedure, based on which the Government was meant to order the production of a Protective Treatment Act and Security Detention Act.

139 Parliamentary Press No 746 (http://www.psp.cz/forms/tmp_sqw/0a140067.doc) – the proposed Section 354(6)

140 Parliamentary Press No 1151 (http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1151&CT1=0)

141 The right to be examined or treated by a physician of the detained person's choice does not exclude the police force's obligation to ensure that medical aid is provided to an injured person, but this is beyond its scope. Such an examination or treatment is supplementary, for inspection purposes. The comment by the Government Commissioner for Human Rights was aimed at not changing the current situation via legislation based on the Health Care Act. As the Police Act was not changed in this matter, there is no reason to believe that the financial expenditure should change in any way.

A certain improvement in conditions in police cells was made following the publication of a new binding guideline of the Police President on police cells,[142] especially as regards the provision of food, cell facilities and the possibility of basic hygiene. The material and technical facilities of cells differ depending on whether the cell is a 'short-term' cell or a 'multi-hour' cell.[143] In 2005, the Police Presidium drew up a form containing advice about the rights and obligations of persons detained in police cells; according to information from the Ministry of the Interior, police officers make systematic use of this form.[144] However, the binding guideline of the Police President on police cells does not regulate the use of the form. The form has been translated into the nine most common foreign languages.[145] *The basic shortcoming of the form is that it contains only advice for persons detained in a police cell, not for all persons deprived of their freedom who are required to remain at a police station without being placed in a police cell. Furthermore, in the form there is no advice about the right to legal aid, the right to notify a relative or other person, or the right to be examined by a physician of the detainee's choice.*

Based on the initiative of the Government Council for Human Rights[146] the Ministry of the Interior and the Police Presidium are preparing an amendment to the Police President's binding guideline on police cells.[147] In the future, the binding guideline of the Police President should thus incorporate an explicit specification of the obligation of police officers to advise persons deprived of their freedom of their rights, and a specification of the right of persons detained in police cells to draw up and send a written communication to a state authority of the Czech Republic or to an international organization which, under an international convention binding on the Czech Republic, is competent to handle complaints concerning the protection of human rights. The amendment to the guideline should also affect the specification of the technical and material facilities in cells. Access to drinking water and the removal of the personal belongings of persons detained in police cells should also be expressly covered in the guideline.

This forthcoming change to the Police President's binding regulation on police cells should be welcomed; nevertheless it should be noted that the rights and obligations of persons detained in police cells must be laid down in a generally binding legal regulation – an act of law, not an internal regulation of the Czech Police Force, which can only specify the rights and obligations of persons subordinate to the Police President in their professional relations. Changes affecting the rights and obligations of persons detained in police cells and other persons forced to remain at police stations should be regulated by the Police Act.[148]

In the first half of 2006, the Ministry of the Interior planned to conduct an extraordinary thematic inspection to verify the observance of legal and internal regulations regulating the use of police cells. The results of the inspection are due to be presented to the Police President by 30 June 2006.

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142 Binding Guideline of the Police President No 158/2004 of 29 December 2004 on police cells

143 A person may be detained in a 'short-term' police cell for the period strictly necessary, which must not total more than six hours; see Chapter II/4.3 of the 2004 Report.

144 The forms are also available to police officers on the police Intranet.

145 English, French, German, Italian, Polish, Vietnamese, Russian, Ukrainian, Hungarian

146 the initiative of the Government Council for Human Rights, of 20 June 2005, to regulate the rights of persons deprived of their freedom at police stations and to safeguard more dignified conditions for persons detained in police cells

147 Binding Guideline of the Police President No 158 of 29 December 2004 on police cells

148 Act No 283/1991 on the Czech Police Force, as amended

3.5 Detention facilities for foreigners

In 2005, the Act on the Residence of Foreigners[149] was amended – including the part regulating the conditions for stays in detention facilities for foreigners. The most important changes which occurred in the scope of this amendment have been described in previous reports.[150] Since the beginning of 2006, the Refugee Facilities Authority of the Ministry of the Interior has been operating detention facilities for foreigners instead of the Czech Police Force. In connection with this new competence, the Refugee Facilities Authority made some organizational changes, in the scope of which certain detention facilities for foreigners were closed.

Overall, the amendment helped to make a significant improvement in the conditions; a lingering drawback of the legislation is the method used to make decisions on the placement of foreigners in the section of a facility with a strict regime. According to the original plan of the Ministry of the Interior, a verdict on placement in the strict regime and the grounds for this action were meant to be part of a written decision on detention, or a reasoned decision was meant to be issued during a stay in a facility and delivered to the foreigner with advice on the possibility of a judicial review. However, the law only stipulates that the police are to draw up a report on the placement of a detained foreigner in the section of a facility with a strict regime without undue delay; in this report they state the details of the grounds for this placement.

In practice, it will be necessary, in cooperation with nongovernmental organizations, to try to increase foreigners' awareness of their rights and possibilities of legal aid, and to expand the range of free-time activities, including the provision of material equipment for individual facilities.

3.6 Disciplinary punishment of military personnel

When the armed forces became professional, the structure of regular soldiers and the de facto state of discipline changed. Disciplinary punishments involving the deprivation of personal liberty may be applied only to soldiers in basic training or to active reserves summoned for military training. In 2005, no disciplinary punishments of imprisonment or confinement to barracks were imposed. At present there is one prison for disciplinary imprisonment; this prison, in Vyškov, has a capacity of ten places.

3.7 External inspections of detention areas

In August 2005, an amendment to the Ombudsman Act was passed[151] which expands the ombudsman's competence to include systematic visits to places holding people restricted in their freedom, based on a decision by a public authority or as a result of their situation – dependence on the care provided here. The new competence of the ombudsman also relates, in particular, to facilities used for remand and sentenced prisoners, protective care, institutional care, or protective medical treatment, police cells, detention facilities for

149 Act No 428/2005 amending Act No 326/1999 on the residence of foreigners on the territory of the Czech Republic, as amended, and certain other laws

150 Chapter 4.3 of the 2003 Report and Chapter 4.4 of the 2004 Report

151 Act No 381/2005 amending Act No 349/1999 on the ombudsman, as amended, and certain other laws

foreigners, asylum facilities, social welfare institutions, healthcare facilities, including psychiatric hospitals, and facilities for the social and legal protection of children. During his visits, the ombudsman will ascertain how these persons are treated; he will try to ensure that their basic rights are respected and reinforce their protection from ill-treatment.

The ombudsman will make systematic visits in accordance with a particular system and preset plan for a specific period. In this sense, the visits will be regular, with a significant focus on prevention. The selection of specific facilities will be guided, for example, by the ombudsman's previous observations, references from the public or detained persons (positive or negative), or by the outcome of activities carried out in the scope of departmental control mechanisms.

During visits, the ombudsman is entitled under the law to enter all areas of these facilities, without prior notice, and to carry out investigations, peruse files, ask individual employees questions, and speak to persons placed in these facilities privately (without the presence of other persons). On completing a visit, the ombudsman prepares a report on his findings, with recommendations of remedial measures, and will gradually try to force facilities into action to improve the situation. This report on findings can, and in most cases will, contain recommendations or proposals of remedial measures. Where opinions clash, the ombudsman will inform the superior authority of his findings or publish his opinion. The result of the ombudsman's work under this agenda should be the production and subsequent application of certain standards for the treatment of persons that the individual types of facility should respect.

4. Economic and social rights

4.1 Labour-law relationships

4.1.1 Employment

In September 2005, the Government approved[152] the '2005-2008 National Lisbon Programme' (National Reform Programme of the Czech Republic). The aim of adopting this document is to coordinate steps that will stimulate economic growth and employment while maintaining the quality of life enjoyed by citizens and the standard of environmental protection. In the Employment section, the priority measures aimed at increasing employment and reducing unemployment are detailed, broken down into the following areas: labour market flexibility, labour market integration, and training.[153] The document brings attention to

[152] Government Resolution No 1200 of 14 September 2005 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm).
The Government enjoined the Deputy Prime Minister for Economics to coordinate the fulfilment of tasks stemming from the Programme and to present the Programme to the European Commission by 15 October 2005. The report on the implementation of the Programme must be presented to the Government by 30 September 2006.

[153] In the field of labour market flexibility the following measures have been approved: an expansion of contractual freedom in labour-law relations, a reduction in statutory non-wage labour costs, an improvement in the stimulating effects of direct taxes and benefits with the aim of curbing unemployment, increasing the incentive to work among low-income groups, and increasing territorial mobility, and the modernization of the employment policy. In the field of labour market integration the following measures have been approved: a reduction in unemployment among young people up to the age of 25, the promotion of equal opportunities among women and men on the labour market, an increase in the participation of older persons on the labour market, an increase in professional mobility and a simplification of foreigners' access to the labour market.

the fact that one of the key reasons for the rise in unemployment in the last few years[154] has been the characteristic significant change in the demands placed on qualifications, skills and performance of work activities, especially for new jobs. *Another reason for the rise in overall unemployment is the* increasing numbers of older job-seekers.[155] The programme also states inter alia that '*if the Czech Republic fails to adapt to labour market conditions, it could find itself with long-term problems accompanied by unemployment and high social costs.*[156] The modernization of the employment policy was singled out as a priority by the European Commission in its specific recommendations for the Czech Republic's employment policy in 2004. These recommendations were taken into account in the measures laid down in the 2004-2006 National Action Plan for Employment.[157]

4.1.2 Employment of disabled persons

A positive step in the employment of disabled persons in 2005 was the amendment to the Pension Insurance Act,[158] which repealed the previous legislative regulation of parallel partial disability benefit with income from gainful activity. As a result, income from gainful activity no longer affects the amount and payment of partial invalidity benefit. Under previous legislation, this benefit was reduced or halted if a set income limit was reached.

In March, the Government approved[159] the Programme to Promote the Replacement or Enhancement of Tangible Fixed Assets Used for the Work Placement of Disabled Persons.[160] The labour offices also implemented 12 targeted regional employment programmes focusing on threatened target groups on the labour market in their region.[161]

Despite the above-mentioned measures, the alarming rise in the unemployment of disabled persons continued in 2005.[162] Unemployment among disabled persons went up from 20,000 in 1993 to 74,500 at the end of 2005. *The numbers of vacancies reported to labour offices as suitable for disabled persons continues to fall.* [163]

(2005-2008 National Lisbon Programme, pp. 30-33).

154 In 2004, the unemployment rate in the Czech Republic according to Eurostat figures was 8.3%; the average in EU Member States was 9%.

155 'Job-seekers over the age of 50 currently account for more than 22% of all job-seekers and this indicator reports a growth trend.' (2005-2008 National Lisbon Programme, p. 32)

156 2005-2008 National Lisbon Programme, p. 27.

157 The number of new jobs created in the scope of the active employment policy in 2005 was 40,959, which is a 21.0% drop compared to the same period in 2004.

158 Act No 155/1995 on pension insurance, as amended

159 Government Resolution No 341 of 23 March 2005 (http://racek.vlada.cz/usneseni)

160 In 2005, 62 employers received aid totalling CZK 84,314,000. In this respect, 2,142 jobs were maintained and 203 new jobs were created that were suitable for disabled persons.

161 The total amount of aid in 2005 came to CZK 66,221,000. In 2005, programmes to support the creation of new jobs in regions worst affected by unemployment were also implemented, which granted aid totalling CZK 183,520,000.

162 According to figures maintained by the Ministry of Labour and Social Affairs, in 2005 there were 74,965 unemployed disabled persons, which was an increase of 2.4% on 2004. The total number of employed disabled persons in the third quarter of 2005 was 89,800, which is a drop by 5.3% compared to the same period in the previous year. During 2005, 1,137 protected jobs and sheltered workshops were created, which was 8.4% less than in 2004. There was a major year-on-year fall in the jobs created in the scope of community work and sheltered workshops, the number of which fell year on year by 11.7% and 9.2% respectively.

163 For more details, see the Third Report on the Implementation of the European Social Charter for the period from 1 January 2003 to 31 December 2004.

4.1.3 Draft of the new Labour Code

In September 2005, the Government approved the new draft of the Labour Code.[164] Along with the new Health Insurance Act, the Employee Accident Insurance Act and changes to social benefits (see Chapter II/4.2 of the Report) this will make the greatest change to the whole system since 1990.[165] The new legislation reflects the needs of the market economy and fosters conditions for a restriction in the established egalitarianism among employees. The prohibition of employee discrimination will remain. Under the law, all employees will have the right to a 'minimum social standard' (e.g. the right to basic leave or to severance pay in cases where employment is terminated by the employer). Current legislation is based on the principle of 'if it isn't allowed, it's prohibited', whereas the main principle of the new legislation will be 'if it isn't prohibited, it's allowed'. This new principle should significantly reinforce the principle of contractual freedom between parties in labour-law relations and should liberalize these relations.

The proposed Labour Code will introduce the new institution of working time accounts, enabling companies to react flexibly to changing labour requirements in line with sales of their output. Employers will be able to adjust the set weekly working hours of their employees while paying them a fixed wage. Companies will also have to keep precise records in the working time account and wage account. Any wage differences which occur after the end of the reference period or on termination of employment will be settled by the employer.

The new legislation will inter alia make it possible to negotiate more advantageous conditions for employees in collective agreements; the legislation and provisions of collective agreements will allow for these benefits to be extended further under an employment contract, innominate contract, or agreements on work performed outside employment. It will still be possible for trade unions to enter into collective agreements on behalf of all employees, including those who are not trade union members.

4.2 Social security

4.2.1 Bill on assistance in cases of tangible need

In July 2005 the Government approved[166] the bill on assistance in cases of tangible need. According to the Ministry of Labour and Social Affairs, the new legislation should help curb long-term dependence on social benefits and result in a higher extent of social inclusion.[167]

The adoption of the Act on Assistance in Cases of Tangible Need should simplify the current system of social welfare benefits paid by the State to socially needy citizens. As of 1 January 2007, three new benefits will be introduced – a subsistence allowance, special

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[164] Government Resolution No 1206 of 21 September 2005 (http://wtd.vlada.cz/vlada/cinnost.vlady_usneseni.htm); Parliamentary Press No 153 (http://psp.cz)

[165] The current Labour Code, Act No 65/1965, as amended, is one of the country's longest serving pieces of legislation. It was passed in 1965 and entered into effect on 1 January 1966, i.e. forty years ago. This legislation has been amended many times, especially in the past fifteen years (48 amendments). The new legislation should be effective as of 1 January 2007.

[166] Government Resolution No 930 of 20 July 2005 (http://racek.vlada.cz/usneseni)

[167] Those benefit recipients who actively seek to resolve their situation (e.g. in the search for employment) will be rewarded with financially better benefits.

immediate aid and a housing allowance, which will replace benefits based on social neediness, e.g. benefits granted in accordance with the Social Neediness Act, the common food allowance, pecuniary benefits and benefits in kind to citizens who temporarily find themselves in exceptionally difficult circumstances. The aim of the bill is not to cancel all social benefits, but only those which the State grants to the socially needy and which have arisen ad hoc in previous years to address the social impacts of individual, specific events. Housing benefits will be a new area of coverage.[168]

4.2.2 Bill on the subsistence minimum

The Subsistence Minimum Act, discussed together with the Act on Assistance in Cases of Tangible Need by the Parliament of the Czech Republic[169] substantially changes the form of the current subsistence level. So far, the subsistence level has had two tiers.[170] Under the new legislation, it should have a single component and should not include expenditure connected with housing. The amounts of the subsistence level required to safeguard nutrition and other basic personal needs should be graded based on the order of persons in the household and, in the case of dependent children, also based on their age. The newly set subsistence level amounts are based on an analysis of the living expenses of citizens and individual size-based groups of families. The proposal also anticipates the establishment of a new lower income limit, known as the 'existential minimum'.[171]

4.2.3 Amendment to the Social Security Act

In the lives of families taking care of a disabled person, the amendment to the Social Security Act[172] has had a positive impact; with effect as of 1 October 2005, this amendment increased the allowance for the care of a relative or other person, rising in the case of care for one person from the original 1.6 times the subsistence level for personal needs to 2.25 times, and in the case of care for two or more persons from the original 2.75 times to 3.85 times. At the same time, the limit applicable to income from gainful activity while receiving the allowance was put up from 1.5 times the subsistence level for personal needs to 2.5 times. It is now possible to collect the allowance for caring for a relative or other person together with a widow's or widower's benefit and a parental allowance to cover care for another child.

The Czech Statistical Office organized a sample survey called Living Conditions 2005 (SILC).[173] The aim of this entirely new investigation is to obtain figures on the social and economic position of Czech households, on their various types of income, on housing costs and living conditions, i.e. information required to assess the current economic situation of households and how this situation is evolving. The results of the survey will be used for an

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168 In the future, all citizens should spend a maximum of 30% (in Prague 35%) of their income on housing, provided that their housing expenses do not exceed the limit of 'normative costs'. After paying their housing expenses, all citizens should have enough resources left at least for their subsistence.

169 Parliamentary Press No 1062 (http://psp.cz)

170 It includes the basic costs of personal needs (nutrition, clothing, etc.) and essential household expenses (i.e. housing costs).

171 Protection in the field of housing will be provided within the system of state social support by a newly designed housing subsidy and, within the system of assistance in cases of tangible need, by a new benefit known as a housing allowance.

172 Act No 218/2005, amending Act No 100/1988 on social security, as amended

173 based on the English title 'Statistics on Income and Living Conditions'

international comparison of the standard of living and as the basis for the production of the State's social policy, e.g. in matters of unemployment, tax, the granting of social benefits and for assessments of the impact of adopted governmental measures on the standard of living.

4.3 Social services

4.3.1 Bill on social services

In August 2005, the Government approved the Social Services Bill.[174] *The bill is based on the principle of an individual approach to potential social service users.*[175] The scope and form of help and assistance provided via social services must preserve people's human dignity. The assistance must be based on the individually identified needs of persons; it must have an active effect on persons, support the development of the autonomy, motivate them to engage in activities that do not lead to the long-term existence or worsening of the adverse social situation, and prevent their social exclusion.

The bill regulates conditions for the provision of help and assistance to individuals in an unfavourable social situation via social services and the care allowance, conditions for the issue of authorization to provide social services, the performance of public administration in the field of social services, inspections of the provision of social services and the requirements for the performance of activities in the field of social services. The law should introduce an allowance of between CZK 2,000 and CZK 11,000, the recipient of which will be a person requirement a social care service. The amount of a contribution will be derived from the level of dependence, which will depend on an objective evaluation of the level of self-sufficiency and need for care. The care allowance should replace the current increase in the infirmity benefit and the allowance for care of a relative or other person, which will simplify the system.

The requirements for the occupation of social worker will also be adjusted in cases where these activities are carried out in social services, or in accordance with separate legal regulations concerning assistance in cases of tangible need, in the social-law protection of children, in schools and educational establishments, in healthcare facilities, in prisons, in detention facilities for foreigners and in asylum facilities set up in accordance with the Asylum Act.[176]

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174 Government Resolution No 1052 of 24 August 2005 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm); Parliamentary Press No 1102 (http://psp.cz). The bill anticipates that the law will enter into effect as of 1 January 2007.

175 According to the definition contained on the Social Service Standards published by the Ministry of Labour and Social Affairs in 2004, a '*user [is] a person who uses social services because he/she is in an unfavourable social situation.*

176 Further to the Concept of the Lifelong Learning of Social Workers approved b the Government under Resolution No 434 of 7 May 2003 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm), the tenets of the legislative enshrinement of social work and the training of social workers under Government Resolution No 107 of 26 January 2005 were incorporated into the Social Services Act. http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm

4.3.2 Availability and quality of social services

Social service planning is gaining ever broader interest and its practical implementation is expanding and becoming more intensive. At present, the processes of social service planning benefit from political support in the form of resolutions adopted by councils and assemblies in all regions of the Czech Republic. In the individual regions, there are differing numbers of municipalities that draw on social service planning; their approach to the planning process also differs. Programmes supported from the European Structural Fund[177] are a significant instrument in the encouragement of activities related to social service planning.

Under the Social Services Bill, the safeguarding of the availability of social services is in the competence of municipalities and regions; according to the bill, they will be obliged to ensure the provision of social services to persons or groups of persons in their territory and to ensure the availability of information about the possibilities and methods of providing social services in their territory. The obligation of municipalities to draw up a medium-term plan of social service development was adjusted during the debate on the bill in the Senate to the 'possibility' of municipalities to draw up a medium-term plan. This change is viewed by social service providers as an undesirable step backwards because the preparation of such plans will depend solely on a decision of the municipality.

The bill should help increase the local, time-based and economic availability of social services and create new forms of social services which help to maintain the current method of life enjoyed by the user in a domestic environment, and make it possible to maintain most social ties. A system for the registration of social service providers should be set up and inspections of social services will be adjusted,[178] an integral part of which is a check of the quality of social service provision with the use of set quality standards.[179] Social service quality standards will be set by an implementing decree further to the Social Services Act.

4.3.3 Use of means of restraint in the provision of social care

In an attempt to prevent the use of means of restraint at social welfare facilities without clear control, even in situations where life and health have not been endangered, the Ministry of Labour and Social Affairs followed up on the issue of a methodological measure concerning the procedure for the extraordinary use of netted beds at social welfare facilities in 2004 by initiating an amendment to the Social Security Act,[180] which with effect as of 1

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[177] Judging by the response to date, the Ministry of Labour and Social Affairs assumes that, for example, in Measure 3.2 of the Joint Regional Operational Programme (JROP) there will be a rise in the number of municipalities that apply social service planning. Throughout the Czech Republic, a comprehensive project called 'Safeguarding the local and model availability of social services' is being implemented, which was announced by the Ministry of Labour and Social Affairs in the form of a public contract under Measure 2.1 of the Human Resources Development Operational Programme (HRD OP).

[178] Under the bill, regional authorities will be responsible for conducting the registration and inspections of social service providers. The administrator of the electronic version of the register should be the Ministry of Labour and Social Affairs. Grants from the national budget to ensure the provision of social services will be assigned only to those social service providers enrolled in the register.

[179] According to the definition in the Social Services Bill, social service quality standards are 'a set of criteria used to define the quality of social service provision from the aspects of staffing and operations, and from the aspect of relations between the social service provider and users.'.

[180] Act No 218/2005 amending Act No 100/1988 on social security, as amended, Act No 463/1991 on the subsistence level, as amended, and Act No 117/1995 on State social support, as amended.

October 2005 will lay down binding rules for the application of restraining measures[181] in the provision of institutional social welfare and record-keeping rules. In the provision of institutional social care, it is not possible to use measures restricting the movement of persons to whom institutional social care is provided, *'except in the event of direct danger to their health and life or to the health and life of other persons, and in such a case only for the strictly necessary period.'*[182] A social welfare institution is obliged to notify the legal representative of the person to whom social care is provided and the founder of the facility without undue delay of the application of restraining measures. A social welfare institution is obliged to keep records of cases where restraining measures are used, containing mandatory information about the first name, surname and date of birth of the person to whom social care is provided, the date and time when the restraining measure started being used, the reason for the application of the restraining measure, the given name and surname of the person who applied the restraining measure, information as to whether the restraining measure was used on the basis of a preceding medical indication, a statement from a physician in cases where a measure is applied without previous medical indication, the date and time when the application stopped being used. Nongovernmental organizations refer to the lingering problem that neither the current legislation nor the provisions in the proposed Social Services Act safeguard the right to a judicial review of the admissibility of applying means of restraint.

The Ministry of Labour and Social Affairs selected the issue of applying means of restraint as its key theme of 2005 for the sphere of social services. It organized training events and conferences on this theme, published methodological handbooks and had an instructional videotape produced with the participation of lectors from the United Kingdom. The training focused primarily on preventing situations requiring intervention, on individualized work with the client, and on the method of respectful intervention.[183] In accordance with the standpoint adopted by the Ministry, last year cage-beds were gradually removed from institutional social care facilities; however, the Ministry does not have precise information about the number of netted beds and cage-beds in social service facilities for 2005. The numbers of netted beds and cage-beds were last ascertained by the Ministry in 2004, when the total number of netted beds and cage-beds in social service facilities was 694. The Ministry of Labour and Social Affairs will conduct another survey at the end of 2006.

Nongovernmental organizations are concerned that cage-beds and netted beds are still used in social care institutions and that there are still high numbers of them. They also point out the approach adopted by some institutions where, in the process of 'retiring' cage-beds, they simply remove the upper grilles of the beds and then no longer consider them cage-beds.

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181 All measures (physical, mechanical or chemical) that prevent a person from moving freely and without restriction in a facility are considered restraining measures.

182 Under the Social Services Bill, the social service provider will be obliged to provide social services so that *'the methods for the provision of these services prevent situations where it is necessary to use restraining measures.'* In the use of restraining measures, the provider will be obliged to apply the softest measure. This means that first the possibility of verbally calming the situation and other methods to resolve the situation must be attempted, e.g. diverting attention, distraction, active listening, and only after that will it be possible to use physical measures and/or administer drugs in accordance with a doctor's orders.

183 On its website (www.mpsv.cz) the Ministry of Labour and Social Affairs published information about the problem of restrictive measures at social care facilities, which includes a list of best practice guides to the prevention and restriction of user movement.

4.4 Housing

4.4.1 Housing of socially weaker and disadvantaged groups of the population

In 2004, the Government approved[184] the National Action Plan for Social Inclusion for 2004-2006. In the field of housing, the plan sets targets such as the elimination of economic and legislative obstacles preventing the emergence of a functioning property market, the motivation of municipalities to assume full responsibility for the creation of conditions to satisfy the housing requirements of the population in accordance with the Municipalities Act, and the continued provision of State aid for the construction of flats with a social function.[185] In 2006, the first implementation report on the 2004-2006 National Action Plan for Social Inclusion will be produced.

4.4.2 The homeless

The cheerless situation of the homeless, including the absence of a fundamental conceptual solution to the problem of homelessness, which has been repeatedly pointed out in the past with little response,[186] continued in 2005. Coherent statistics in the scope of individual regions[187] and at national level on the numbers of homeless are not kept by authorities of social service facilities[188] and therefore the number of these persons in the Czech Republic in 2005 is only an estimate. Nor are there any coherent lists of all providers of services to the homeless, information about capacities and the extent to which their services are used within the individual regions. In this situation, it is very difficult to plan, develop and finance any services (social, health, and housing) for this endangered group.[189]

A certain improvement in this situation could be made by the project 'Strategy the Social Inclusion of the Homeless in the Czech Republic'[190] launched last October by the Association of Asylum Houses in the Czech Republic (S.A.D.). The aim of this project is to propose a comprehensive strategy of integration for socially excluded persons and to plot the current situation of homelessness and the services provided to these persons.

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184 Government Resolution No 730 of 21 July 2004 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm)

185 see Chapter II/5.6.2. of the 2002 Report, see Chapter II/10.7.1. of the 2000 Report

186 see Chapter II/5.5.1 of the 2003 Report

187 Individual regions do not have precise figures for 2005 as this information is not required in the statistics of the Ministry of Labour and Social Affairs. The problem collecting such data, in the view of the regions, lies in part in the absence of uniform methodology. Only in the City of Prague has a census of the homeless been taken – the first was in 2004. It was found that there are 3,096 homeless persons in Prague. After adjusting for deviations, the final figure is cited as between four and four and a half thousand people. Approximately 25% of Czech homeless persons are on invalidity benefit, 25% have experience of a children's homes and mental hospital, and 35% have been in prison.

188 According to the Population and Housing Census, in 2001 45,000 people were living in emergency housing. In 1990, there were 6,000 such people.

189 Although CZK 100 million was earmarked in 2005 to improve the situation of the homeless in cities (Prague, Brno, Ostrava, Ústí nad Labem), the 'Analytical report on the current situation regarding the homeless in the City of Prague in 2005' points out that 'despite all emergency measures the total capacity of available facilities does not meet demand. Every day, organizations are forced to turn away 50 to 60 people wishing to spend the night in their facilities.' The report also points out that according to information available from NGOs a 10% rise (equal to 400 persons) in the number of homeless persons in the City of Prague is expected.

190 http://www.bezdomovci.cz

In 2005, there were several shocking and harrowing attacks on homeless persons. For example, according to information in the media, in May 2005 a sleeping homeless man was attacked by someone who set light to him at about six o'clock in the morning near the tram stop in Barrandov.

Given the expected rise in the number of homeless persons in the next few years[191] *inter alia in connection with the ongoing trend of evicting people for not paying rent,*[192] *and with the necessary transformation of social care and psychiatric institutions,*[193] *in the forthcoming years it will be necessary to adopt measures that anticipate this development.*[194]

4.4.3 Programme of construction of subsidized flats

During 2005, the implementation of the programme 'Support for the Construction of Subsidized Flats',[195] run by the Ministry of Regional Development, continued. In 2005, the Ministry released CZK 397,895,000 for the construction of 577 subsidized flats.[196] Available statistics reveal that, since the start of this programme in 2003, the construction of sheltered flats has predominated over the construction of halfway flats and starter flats. In 2005, there was a significant decrease in the construction of halfway flats and starter flats.[197] The Ministry of Regional Development does not have the possibility of influencing the decisions of municipalities regarding the way they select grant titles; therefore, to highlight the significance of halfway flats and starter flats it at least opts for their absolute prioritization in evaluations of applications submitted.[198] Information about the number of persons who live in subsidized flats, e.g. how many disabled persons are supported by this programme, is not available at the Ministry because the Ministry only keeps statistics on the number of flats for which grants have been made. The Ministry conducts evaluations of individual projects primarily as formal inspections of the implementation of programme conditions.[199] [200]

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191 According to information available from non-profit organizations a 10% rise (equal to 400 persons) in the number of homeless persons in the City of Prague is expected.

192 Figures supplied by the individual regions indicate that the number of evicted persons rose in 2005. However, these statistics are not collected centrally.

193 According to information from the Institute of Health Information and Statistics, 184 patients were hospitalized for social reasons in 2004. Information for 2005 is not yet available. Unofficial information from the directors of psychiatric hospitals regarding the numbers of patients hospitalized for social reasons cites much higher figures. In the psychiatric hospital at Bohnice, housing needs to be found (in the form of a social care institution or rest homes) for approximately 420 patients from the total 1,500 hospitalized patients. If these patients were to be released without arrangements being made for their housing, they would most likely end up as homeless people.

194 see Chapter II/5.5 of the 2003 Report

195 The following grant titles were announced in a sub-programme of Support for the Construction of Subsidized Flats in 2005: sheltered flats – for persons with health problems and persons of advanced age. The provision of social care services must be arranged in these flats; halfway flats – for persons and households with social handicaps who live a conflict-based life or in a risky environment. The provision of social intervention services must be provided in these flats; starter flats – for persons who, as a result of adverse circumstances in their life, do not have access to housing, even with the application of all current instruments of social and housing policy, but are able to lead an autonomous life, especially from the aspect of the fulfilment of obligations stemming from letting arrangements.

196 In 2003, according to figures from the Ministry of Regional Development 456 subsidized flats were funded.

197 In 2003, 38 halfway flats and starter flats were built; in 2005, only eight halfway flats and eight starter flats were built.

198 see Chapter II/5.5.2. of the 2003 Report, see Chapter II/5.6.2. of the 2002 Report

199 In cases where the programme conditions are breached the municipality is obliged to return the grant that has been made to it. This phase of the inspection takes place via a final evaluation of individual projects,

4.4.4 Support of young couples and families in the field of housing

In its Policy Statement of 12 May 2005, the Government pledged that it would '*continue to help young couples and young people up to the age of 36 so that it becomes feasible for them to acquire their first housing. This goal will be supported in the form of direct assistance in the acquisition of an owner-occupied flat or housing cooperative flat, or in the form of assistance for the reconstruction of dwellings.*' The implementation of this government pledge is made possible by a governmental order from 2004[201] and a governmental order from 2005.[202] Both governmental orders focusing on a target group of young couples up to the age of 36 or young parents form a mutually complementing set of legal regulations supporting the construction and purchase of flats in the first case and the modernization of flats in the second. Until then, there had been no legal regulation in Czech law facilitating the provision of such targeted aid.

A deficiency in both pieces of legislation is the fact that applications may only be submitted by married couples or couples caring for at least one dependent child. The prerequisite for the drawdown of aid cannot be met by homosexual couples as, under current legislation, they are not able to enter into matrimony.

4.4.5 Rent issues

In 2005, the rental sector was still split – for socially unjustified reasons – into two parts differing primarily in terms of the level of rent; the dual pricing resulted in black market practices that prevented access to housing mainly for young people seeking to gain a first rung on the housing ladder. The negative consequences of price deformation are also affecting lessors, who are forced – as stated in the findings of the Constitutional Court – to draw on their own resources in order to finance areas that the State is meant to cover in the interests of implementing Article 11 of the International Covenant on Economic, Social and Cultural Rights.[203]

In July 2005, the Government adopted a resolution approving[204] the Bill on Housing Rent[205] and enjoined the Minister for Regional Development to draw up a bill on unilateral increases in housing rent.[206] The new bill has been designed to make it possible, during a four-year transitional period,[207] to eliminate the existing price deformation and create

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which according to the Budgetary Rules municipalities are required to present to the Ministry within six months of the building approbation.

200 see also Chapter II/4.4.2 of the Report

201 Governmental Order No 616/2002 on the use of resources from the State Housing Development Fund in the form of credit to cover part of the costs connected with the construction or purchase of a flat by persons under the age of 36 years old.

202 Governmental Order No 28/2006 on the use of financial resources from the State Housing Development Fund in the form of credit to cover part of the costs connected with the modernization of a flat by persons under the age of 36 years old.

203 see Chapter II/5.5.2 of the 2003 Report

204 Government Resolution No 876 of 13 July 2005 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm)

205 Bill on Housing Rent and an amendment to Act No. 40/1964, the Civil Code, as amended

206 Parliamentary Press No 1059 (http://psp.cz) The bill on unilateral increases in housing rent was approved by the Chamber of Deputies on 14 March 2006.

207 In a transitional period of six years, it is expected that regulation in the form of unilateral increases will be introduced for those cases where no contractual agreement is reached between the lessee and the lessor. A target value of 5% of the price of the flat will be defined for the transitional period. Every year, in the context of

conditions for the efficient use of a contractual approach top rent. The rate of unilateral increases in rent which will be made possible during the transitional period is a compromise between the social viability of the increase for the lessee and the need to create conditions for a transfer to a contractual system where the rent will depend on local supply and demand for housing.

4.5 Family care[208]

In October 2005, the Government approved the National Concept of Family Policy,[209] which built on the National Report on the Family.[210] The aim of the report was to plot the current situation of family life in the Czech Republic, including the state of legislative and institutional tools for their support in the public sphere and, based on the results of the report, to prepare a draft concept of national family policy. The report inter alia brought attention to the *'low or non-existent stress placed on family support issues at most central institutions, including government ministries, and on the still palpable deficit at the level of regional and local government.'*

The purpose of the National Concept of Family Policy is to define priorities, set the principles of the Czech Republic's family policy and create a comprehensive system of State measures in the field of family support. According to the report, *'the Czech Republic has no comprehensive tool kit of measures in the field of family support. Individual measures have so far been implemented within the competence of various ministries; they often lack mutual continuity or are contradictory. The set of relevant figures and data related to family policy is restricted, if it exists at all.'* This document is divided into a general and special part. The content of the general part is a justification of the need to support the family, with consideration for the current situation in society, and a brief description of the current situation of the Czech family, with a focus on the most problematic areas. The special part contains eight chapters divided into four parts describing the situation of today's families, the path to be pursued in handling the outlined problems, the themes on which family policy should generally focus, and specific proposals for family support, including measures already implemented. The final chapter contains measures for the implementation of the whole concept. The concept will be updated every year to reflect developments in this field.[211]

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the target rent value, a level of rent growth will be defined that will form the ceiling for the maximum possible increase in rent by the lessor. The purpose of the transitional period is to achieve the approximation of the two artificially separate rent amounts so that deregulation becomes possible. The average impact on the amount of regulated rent in the first year of the transitional period is estimated at 9.3%.' (2005-2008 National Lisbon Programme, p. 29)

[208] see also Chapter II/6 of the Report

[209] Government Resolution No 1305 of 12 October 2005 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm)

[210] Government Resolution No 876 of 15 September 2004 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm)

[211] Under a Government decision, the first consolidated report on the implementation of the concept in 2005-2006 is scheduled to be presented by the Deputy Prime Minister and Minister for Labour and Social Affairs by 31 October 2006 along with an updated version of the concept. During 2006, based on a Government resolution, an international conference should be held on family policy issues; by 30 June 2006 an action plan drawing on the concept should be presented.

4.6 Health care

4.6.1 Bill on health care[212]

The Government presented the Health Care Bill to Parliament in September 2005.[213] The bill is based on the needs of the new system for the provision of health care; its aim is to achieve a level of health care provision comparable to the standard in EU Member States and also responds to the Czech Republic's commitments stemming from the adoption of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.

The bill defines the term 'health care', defines the scope of urgent care, and defines acute out-patient care and primary care. Unconventional methods of medicine are also defined as part of health care.[214] The bill introduces the term of 'home care' as a form of special out-patient care and follow-up out-patient care. The term 'after-care' is also introduced. The aim of these changes is to create conditions to transform some acute beds into follow-up in-patient health care centres. Further to the requirements of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine focusing on the prohibition of human cloning, guiding principles in the field of genetics are provided in the bill. The bill should also introduce the regulation of assisted reproduction methods[215] and permit sterilization[216] for purposes other than health reasons. Sterilization will only be allowed for persons over the age of 18, based on their written informed consent.[217]

Compared to current legislation, the bill significantly reinforces the rights and obligations of patients. Strict provisions are made for cases where a patient must be admitted for in-patient care by a healthcare facility, and a specification is made of the conditions under which a patient is released from in-patient care. The bill also enshrines the right of patients to the provision of health care at a due professional level (*de lege artis*) in accordance with the possibilities of public health insurance, and the right to make a free choice of healthcare facility, with exceptions specifically listed under the law. The issue of providing information and gaining the consent of patients is drawn up in detail in the bill; this includes a definition

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212 The explanatory momentum for the bill was used in the preparation of this section.

213 Parliamentary Press No 1151 (http://psp.cz) (the Committee on Social Policy and Health Care of the Chamber of Deputies of the Parliament of the Czech Republic discussed the Health Care Bill and on 20 January 2006 issued a resolution delivered to members of Parliament as Press No 1151/1 which suspends the debate on this bill)

214 see Chapter II/1.6.4. of the Report

215 In the Czech Republic, assisted reproduction as a method was introduced in 1986 and has been in routine use since 1990. Only the basic aspects have been regulated so far – by Binding Measure No 18/1982 and by the Recommended Procedural Standards in the Provision and Reporting of Assisted Reproduction Operations, published in the Journal of the Ministry of Health, Volume 1/2002.

216 Sterilization is a medical operation preventing fertility without removing or damaging the sex glands.

217 Prior to sterilization on health grounds or non-health grounds, the doctor will be obliged to provide the patient with information about the nature of the operation, its permanent consequences and possible risks. The physician's task will be to assess whether, in connection with the operation, the applicant's health will be endangered. As this is a serious operation influencing not only the state of health and having an impact on the future life of the person who is to be sterilized, information must be presented in the presence of another witness (another doctor). The patient may request that another witness of the patient's choice be present during the provision of information. Under the bill, increased protection is provided to a patient deprived of legal capacity and to a patient with limited legal capacity, where the permission of a court – alongside other conditions – is required for sterilization, as well as for castration and psychosurgical operations. (see also Chapter II/4.6.5 of the Report)

of rights and obligations, the right to refuse information, a definition of the scope and method used for the provision of comprehensive information. The bill defines situations in which the patients' state of health renders them unable to express themselves and, in this case, to whom information on their state of health can be disclosed. The perusal of healthcare documentation is also regulated for cases where the patient dies.[218] The bill regulates consent in cases where patients, given their current condition, are unable to grant consent, including consideration of the possibility of consent granted in advance, and the provision of health care to children and persons without the capacity to grant consent – not only in cases where their life is in immediate danger. The bill also specifically defines cases where health care can be given without the patient's consent.

The procedure for the handling of complaints in cases where patients are unhappy with the provision of health care should also be regulated. The purpose is to ensure a uniform approach in the settlement of complaints, reinforce the patient's position in the healthcare system, and define the obligation of healthcare facilities and the competent administrative authorities to address complaints, in a demonstrable manner, which have been filed by persons and other persons. The bill will also make it possible to monitor the quality of health care provided by healthcare facilities and creates a transparent legal framework for monitoring and enhancing the quality and efficiency of health care, safeguarding a uniform methodological approach to quality standards.

Nongovernmental organizations representing patient interest remain critical of the activities carried out by the Ministry of Health. *They point to the fact that the Ministry of Health has insufficiently considered their comments and suggestions concerning the Health Care Bill, in particular as regards patient rights.* As a result, the new Health Care Act could worsen current patient rights in some respects.[219] The postponement of the adoption of the new Health Care Act is a serious problem because current legislation on the provision of health care does not sufficiently reflect the obligations stemming from the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.

4.6.2 Amendments to the Health Insurance Act

Although the state of health of the Czech population continues to improve, work incapacity remains inordinately high. The aim of changes to the Governmental Act on Health Insurance[220] is to limit the abuse of benefits and to motivate doctors and employers to reduce work incapacity**.** The new legislation on health insurance is part of comprehensive changes in the field of social protection and the labour market, the primary purpose of which is to motivate people to work. The bill anticipates a uniform system for all policyholders, an increase in fairness where income is reflected more in the amount of health insurance, and more effective resources against abuse of the system through the introduction of high fines if obligations are not met.

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218 see Chapter II/1.2.1. of the Report

219 The new Health Care Act refers to the provision of care *lege artis* depending on current financial resources in the public insurance system; in contrast, under current legislation patients have the right to quality care based on current scientific knowledge, irrespective of the state of public health insurance.

220 Parliamentary Press No 1005 (http://psp.cz)

In 2005, a governmental order[221] regulated amounts for the setting of the calculation base for the purposes of health insurance (care). There was an increase in the 'reduction limit' for the calculation of health insurance benefits; as a result there was an increase in the benefits of employees with slightly below-average, average and higher incomes as of 1 January 2006.

4.6.3 Act on research into human embryonic stem cells and related activities[222]

In July 2005, the Government approved[223] a bill on research into human embryonic stem cells[224] and related activities. The aim of the bill is to provide a legal basis for matters related to research into human embryonic stem cells. In the Czech legal system, there has been no direct legislation in such the ethically very sensitive area of research into human embryonic stem cells.[225] The National Research and Development Policy of the Czech Republic for 2004-2008[226] also requires the handling of sensitive areas of research, which indisputably includes human embryonic stem cell research, from the legal, ethical and preventive-control aspects.

Under the bill, the creation of embryos for research purposes, embryo research and research into human embryonic stem cells where there is no clear proof that the embryonic stem cells have been acquired from 'superfluous embryos' should be prohibited. The bill regulates the conditions for this type of research, the conditions for the export of already existing human embryonic stem cells, and the acquisition of human embryonic stem cells from superfluous embryos for research purposes. The bill lays down not only the rights and obligations of persons, but also the competence of administrative bodies in the handling of human embryonic stem cells and their lines (including the provision of an expert assessment of an application for authorization to engage in research and control activity) so that the corresponding protection of the embryo is ensured and the possibility of misusing the course and results of embryo research is prevented. The bill also regulates misdemeanours and administrative delicts, and anticipates the possibility of prosecuting prohibited conducted by means of penal law.

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221 Governmental Order No 417/2005 regulating amounts for the determination of the calculation base for the purposes of health insurance (care)

222 The explanatory momentum for the bill was used in the preparation of this section.

223 Government Resolution No 938 of 20 July 2005 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm); the Chamber of Deputies debated and approved the bill in February 2006.

224 According to the definition in the bill, research into human embryonic stem cells is a 'systematic creative activity performed with a view to gaining new knowledge or to the use thereof, applied in human embryonic stem cell lines.'

225 Current practices are governed by the Convention on Human Rights and Biomedicine and its Additional Protocol on the Prohibition of Cloning Human Beings. The practices of researchers, as regards Article 18 of the Convention on Human Rights and Biomedicine, are carried out praeter legem. To date, an extensive interpretation of Section 26(4) of Act No 20/1966 on human health care has been applied to research into human embryonic stem cells from 'superfluous embryos'; under this interpretation, embryonic cells removed in the scope of assisted reproduction and embryos created but not used for the purposes of assisted reproduction are viewed as parts of the body removed in connection with the treatment of infertility. This interpretation is not clear-cut and is definitely unsatisfactory in this field. The purpose of the legislation is therefore not to relax the conditions of this already existing type of research, but, by creating a legislative framework, to prevent the possible misuse of its results.

226 Government Resolution No 5 of 7 January 2004 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm)

4.6.4 Use of unconventional medical methods

The existence of unconventional medicine[227] is a fact which cannot be overlooked in the long term. Demand for unconventional procedures is high and public interest cannot be expected to disappear if this area is ignored long enough.[228] This stance is not in evidence in other Member States of the Council of Europe or the EU either.[229] On the contrary, the provision of greater room for an informed choice of methods, include alternative methods, is in keeping with the general European trend of reinforcing the individual rights of patients as active entities, as expressed in the Convention on Human Rights and Biomedicine, although the Convention does not explicitly mention unconventional medicine or the right to such medicine. The World Health Organization[230] recommends that the governments of Member States draw up a concept and legal regulations on alternative methods and their integration into the national health system, and that they create regulatory mechanisms to control the safety and quality of natural products and alternative methods in use.

Current legislation in the Czech Republic, which is based on the strict definition of health care as the application of conventional (scientific, official) medicine, keeps the operation of alternative methods outside the regulation of the law.[231] However, this does not make these methods cease to exist; instead, they are practised in an entirely deregulated environment. This full deregulation is not beneficial either for the advocates of these methods, who are interested in its development and social prestige, or for its opponents, who are interested in its effective control. In particular, such full deregulation is not in the interests of the general public from the aspect of citizens' attitude to these methods or from the aspect of their protection.

As the issue of the use and regulation of alternative medicine has been largely overlooked in the Czech Republic so far, and with regard to the recommendations above, the Government Council for Human Rights has approved a suggestion in which it proposes that the Ministry of Health present the Government, by 31 May 2006, with an expert background document and opinion on the possibility of implementing the provision of unconventional medicine in Czech law, including a definition of this area, the coordination of individual departments, and a proposal on how to proceed in this matter.

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227 An 'unconventional medical method' is a method in the application of which medical personnel do not receive basic training in undergraduate medical studies as it does not have a traditional basis in European countries. In the past few decades, however, in particular two of the methods most widespread in the world – acupuncture and homeopathy – have spread in the Czech Republic.

228 According to data from natural-medicine sellers (WHO, 2005, p. 100), in 1999 6.17 million packages of natural drugs worth CZK 246.6 million were sold in the Czech Republic; in 2000, 6.62 million packages worth CZK 256.55 million were sold; in 2001, 8.14 million packages worth CZK 315.76 million were sold. These figures evidence increasing interest among citizens in natural and alternative medicine and the need to pay due attention to this field of medicine.

229 According to the results of the latest study 'National policy on traditional medicine and regulation of herbal medicines from 2005' (WHO, 2005, p. VI, Executive Summary), 36 of the 38 countries in the Euro-region have drawn up a concept in this field; 35 countries have legislation, a national programme, a national authority and expert commission.

230 WHO traditional medicine strategy, 2002-2005. Geneva, World Health organization, 2002.

231 Section 2(j) of the Health Care Bill provides that a 'type of health care is methods of alternative medicine provided by qualified health personnel; methods of alternative medicine include homeopathy and acupuncture.'

4.6.5 Unauthorized sterilization of women[232]

During 2005, the ombudsman received more than 80 complaints about unauthorized sterilization. As the ombudsman is not competent to handle complaints that private individuals make about healthcare facilities, he passed on the complaints to the Ministry of Health. The Ministry set up an advisory body to investigate these cases; the advisory body's mandate was to examine not only whether the operations were carried out in accordance with the rules of medical science, i.e. lege artis, but also whether the legal conditions for the performance of the operations had been met. The advisory body issued an opinion on the first ten cases as a general overview and for each case separately. The opinion included the recommendation to the Minister for Health to promote all forms of planned parenthood, to draw up uniform informed consent to sterilization, including an interview with a psychologist, to review the current indications for sterilization, and to update the guideline on sterilization, especially in connection with Caesarean sections.

Given the time-consuming nature of the advisory body's investigation, the ombudsman decided, in accordance with the Ombudsman Act, to close his investigation after 50 cases had been studied. With regard to these cases, he drew up a report[233] in which he criticized the Ministry, or more specifically the advisory body, whose results the Ministry had approved for the ombudsman, for its inadequate investigation and for the incorrectness or complete absence of any conclusions from the facts that had come to light.

The Minister for Health responded to this report by convening another meeting of the advisory body in November 2005 to cover a new set of complaints; the advisory body was meant to propose remedial measures in cases where errors were discovered, such being in the scope permitted by the Health Care Act.[234] The advisory body was also set the task of discussing the draft wording of the informed consent for patients prior to sterilization, and draft amendments to legal regulations concerning sterilization. The Minister for Health also referred to the preparations for the Health Care Act, which is intended to include new provisions on the sterilization procedure. After receiving this opinion of the Minister, the ombudsman[235] formulated his report with a proposal of remedial action.

The ombudsman's report[236] was officially published in January 2006. The report stated that '*the ombudsman is convinced that the problem of sexual sterilization carried out either with unacceptable incentives or unlawfully exists in the Czech Republic and Czech society is faced with the task of resolving this situation. The ombudsman is convinced that only the acceptance of this unpleasant knowledge can result in a catharsis in the form of the adoption of such measures that make the practices discussed in this report impossible. The adoption of the proposed measures without inner recognition that something unacceptable is happening which requires a response in the form of the measures adopted would not fulfil the fundamental task set by the ombudsman. This is to create space for reflection and, if appropriate, a change in the inner attitudes of those who believe that the everything was and is in order as regards the area of conduct described.'*

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232 The document 'Final opinion of the ombudsman in the matter of sterilization performed in contravention of the law and proposals of remedial measures' of 23 Document 2005 (http://www.ochrance.cz/) was used in the preparation of this section.

233 Section 18(1) of Act No 349/1999 on the ombudsman, as amended

234 Act No 20/1966 on care for human health, as amended

235 Section 19 of Act No 349/1999 on the ombudsman, as amended

236 The official title of this document is 'Final opinion of the ombudsman in the matter of sterilization performed in contravention of the law and proposals of remedial measures'.

In the evaluation part of the report, the ombudsman states that '*in essentially all cases assessed by the ombudsman, it cannot be said that the women consented to sterilization or that they had been informed of the essence and scope of the operation to the extent that their consent can be considered legally relevant. In none of the mentioned cases was there objectively adequate room between hospitalization and the operation for the proper imparting of information to the patient and for her to make a mature decision based on the information provided. Where, in the cases assessed by the ombudsman, any information had been given, it was information that was very incomplete and misleading.*'[237] [238]

'*The basic task of the advisory body of the Minister for Health, or the Ministry of Health as such, was to examine not only whether sterilization had taken place lege artis, i.e. in accordance with the rules of medical science, but also whether the sterilization operations investigated were legally admissible. In particular, the advisory body should have studied the material content of the actions evidenced in the healthcare documentation. The Ministry failed to comply fully with this requirement – a fundamental defect in the approach of the Ministry of Health was its emphasis and reliance on the formal aspect, which did not to encompass the broader context of the cases; this has consequences for the legal assessment of the quality of the acts in law of the sterilized persons. Previous attempts by state authorities to investigate this matter suffered from a similar deficiency.*'

In conclusion, the ombudsman's report contains a proposal of legislative, methodological and reparatory measures that should be adopted.[239]

In its final resolution of 25 January 2006, the Minister's advisory body stated that 'there were errors in the performance of sterilization, but this was not a nationwide phenomenon, only an error by specific healthcare facilities. In certain cases, not all the conditions laid down in the guideline were respected; in other cases administrative errors were found, and in certain cases errors were found in the medical indication.' [240]

The advisory body proposed to a Ministry of Health management meeting that the following remedial action be taken: draft the wording of the informed consent to sterilization and publish it in the Journal of the Ministry of Health; issue a methodological interpretation of the Ministry of Health, to be published in the Journal as a conclusion to the results of the

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237 'If you do not undergo this operation, you will die the next time you give birth' etc.

238 'These procedures indicate that there is not sufficient awareness among doctors that a doctor's subjective conviction of the benefits of sterilization does not in itself legitimize the operation, that an indication within the meaning of the sterilization guideline does not mean that sterilization must be carried out, only that it may be carried out. These cases evidence that there was no procedure between the doctors and the sterilized women where the doctor fully conveyed his opinion to the woman together with all the pros and cons and then left the final decision up to her.'

239 In the first half of 2006, the Committee for Human Rights and Biomedicine, commissioned by the Government Council for Human Rights, will hold detailed discussions on the ombudsman's report, including the recommendations it contains.

240 'Operations were carried out between 1961 and 2004. In nine cases, the healthcare documentation was not available as it had been destroyed in flooding (two hospitals in North Moravia). In three cases, the healthcare documentation had been shredded (Ostrava Fifejdy). In one case, the healthcare documentation was not retrieved or delivered. Of the 76 cases assessed, sterilization was not carried out in 12 cases; the conditions of the Ministry of Health Guideline from 1971 were met in 14 cases and were breached in 41 cases; doubts regarding the authenticity of signatures (three cross etc.) were discovered in eight cases. Five cases have been investigated since the Convention on Human Rights and Biomedicine entered into force. In three cases the Guideline's conditions were satisfied; in two cases the conditions were not met. The advisory body recommended that the Minister set up a central expert committee for these five cases in order to assess whether or not the operation had been carried out in accordance with recommended procedures.

advisory body's investigation; inform the lay public via the Ministry's website, leaflets and brochures about the conditions for sterilization, including the risks and consequences of this operation, and about the rights of patients in general; in the scope of postgraduate studies, ensure that physicians are taught about patient rights and about the patient's informed consent to the provision of health care; in cases of incorrect procedure or a causal nexus, i.e. where there is a serious error, set up a central expert committee and, based on the outcome, decide on further procedure or submit a complaint to law enforcement agencies; provide information to the relevant healthcare facilities about the consistent observation of current legislation regarding sterilization.

4.7 Rights of persons with mental disorders

4.7.1 Declaration on mental health

The undignified treatment conditions, lack of qualified professional staff in Czech psychiatric hospitals, inadequate development of community services, and problems described below relating to the rights of persons with mental disorders have been pointed out repeatedly in the past by nongovernmental organizations and the Report.[241] A conference of health ministers, held by the World Health Organization in Helsinki in January 2005, discussed mental health issues.

This conference gave rise to two fundamental documents,[242] to which the Czech Republic acceded. Under these documents, WHO member states undertook to prepare a strategy and activities in the 2005-2010 period to tackle the stigma and discrimination suffered by persons with mental disorders, to examine in detail the impact of public policies on mental health, to include measures on the prevention of mental problems and suicide in national strategies or action plans, to ensure the fair and reasonable financing of mental health care, to end the inhuman and degrading treatment and care of the mentally ill, to adopt legislation on mental health, to increase the extent of the social integration of individuals with mental problems and to ensure the representation of users and family members in the bodies responsible for the planning, provision, control and inspection of activities connected with mental health.

In the Czech Republic, there is no specific law on psychiatric care to regulate the rights of persons with mental disorders or to create a legislative framework for the reform of care for persons with mental disorders.

4.7.2 Use of means of restraint in the provision of health care

The 2004 Report discussed the question of regulating and monitoring the use of means of restraint in the provision of health care in detail.[243] According to information from the Ministry of Health, no cage-beds were used at healthcare facilities in the Czech Republic in 2005. The numbers of netted beds are falling every year.[244] The increase in the number of

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241 see Chapter II/4.7.3 of the 2002 Report

242 Mental Health Declaration for Europe and the accompanying Action Plan

243 see Chapter II/4.8 of the 2004 Report

244 According to data from the Ministry of Health, in 2005 only 69 such beds were used at treatment facilities in 2005.

rooms especially fitted out for agitated patients remains minimal. The Ministry of Health prefers to reinforce staffing capacities and medication.[245]

According to nongovernmental organizations, despite the above-mentioned changes means of restraint – especially netted beds and isolation rooms – are still used excessively and in some cases are abused. The use of medication as a means of restraint remains an unresolved problem.

4.7.3 Changes in proceedings on legal capacity and in proceedings to determine the admissibility of placing or detaining a person in a medical institution

In May 2005, at the proposal of a group of MPs a law was passed which amended certain provisions of the Code of Civil Procedure as regards proceedings related to legal capacity and proceedings related to the decisions on the admissibility of receiving or detaining a person in a healthcare institution.[246] This law reinforced the protection of the affected persons in both types of procedure, in particular by allowing the persons in respect of whom the proceedings are held to have an active influence on the course of proceedings through their own activity or via their representative in the proceedings.[247]

The following main changes were made in proceedings on legal capacity: The maximum duration that may be designated by a court as the time over which a person deprived of legal capacity cannot submit a repeat petition for the return of legal capacity, if the court has rejected a previous petition and stated that no improvement can be expected in the person's condition, was reduced from three years to one year. Under previous legislation in force, the person whose legal capacity was being discussed had to be represented in proceedings by a guardian appointed by the court. Now the person concerned is entitled to select his own representative for the proceedings; only if he fails to select a representative does the court appoint a guardian for him in the proceedings. Under the new law, the court-appointed guardian for the proceedings must be a lawyer. *The representation by guardians in proceedings to date was only formal in certain cases and did not fulfil the anticipated purpose.* The court is now expressly required to advise the person whose legal capacity is being discussed about his right to select a representative for the proceedings and about other procedural rights and obligations. Under the new law, the court is obliged to hear the person whose legal capacity is at issue in all cases requested by this person. The maximum period over which the person concerned may be placed in a healthcare facility for examination under a court ruling was reduced from three months to six weeks. The court's opportunity not to order a hearing in the proceedings was cancelled. Under previous legislation in force, the court was able to decide that the person concerned would not be delivered the decision on the removal of his legal capacity if such delivery could have an unfavourable effect on the addressee because of his mental disorder, or if the addressee was not able to grasp the

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245 The Ministry of Health, in collaboration with the Psychiatric Society of the Jan Evangelista Purkynì Czech Medical Association drew up a methodological guideline, 'Use of means of restraint for patients in psychiatric hospitals in the Czech Republic', which was published in the Journal of the Ministry of Health No 1/2005. In accordance with this methodological guideline, the use of means of restraint is justifiable only in cases where all other possibilities have been exhausted and where it is not possible to find a removable cause of the patient's conduct. The methodological guideline also recommended that individual psychiatric facilities draw up their own internal regulations for the use of means of restraint. (see Chapter II/4.8 of the 2004 Report)

246 Act No 205/2005 amending Act No 99/1963, the Code of Civil Procedure, as amended, and Act No 85/1996 on legal practices, as amended; the Act entered into effect as of 1 August 2005.

247 see Chapter II/4.7.2 of the 2002 Report

significance of the decision. The new law ties the possibility of not delivering a decision expressly to the conclusions of an expert opinion and limits this possibility to cases where the addressee is not capable of understanding the decision.

In proceedings to determine the admissibility of accepting or detaining a person in a healthcare institution, the following main changes were made: The guardian in the proceedings appointed by the court in cases where the person in respect of whom the proceedings are held does not select a representative must be a lawyer according to the new law. The court is expressly required to advise the person whom the proceedings concern about his right to select a representative for the proceedings and about other procedural rights and obligations. The new law expands the procedural rights of the person concerned in that, besides the person in respect of whom the proceedings are held and this person's doctor, the court is also required to hear other persons that the person the proceedings concern requests be heard. This right of a person placed in an institution makes it possible for a court to hear another expert independent of the doctor treating the person in question. The court may refuse to hear these persons if it is not clear what can be ascertained by hearing them. The new law also repeals the provision that a person placed in a healthcare institution against his will can be restricted not only in his contact with the outside world, but may be directly excluded from such contact. Under the new law, persons placed in an institution may request a new examination and decision regarding their release from the institution even if they have been deprived of legal capacity. The law also refused the supervision of both proceedings by requiring the court to inform the public prosecutor's office of proceedings commenced on legal capacity and on verdicts on the admissibility of acceptance at, or detention in, a healthcare institution

Depriving or restricting a person's legal capacity is a serious intervention in the life and fundamental human rights of any person. It is not known how many Czech citizens currently have no or limited legal capacity, whether there has been an increase in the number of proceedings commenced, or whether or not there is a tendency to reinstate legal capacity because this information is not maintained by the Ministry of Justice. Nor does the Ministry of Justice keep statistics on the number of persons who are placed in a healthcare institution against their will every year and who are de facto and de jure deprived of their personal freedom.[248] *Given the specific nature of these proceedings and their consequences for mentally ill persons,*[249] *it is highly desirable for these proceedings to be monitored statistically and for their course to be tracked, especially to make sure that the right of these persons to a fair trial and other rights under the European Convention on Human Rights are respected. Not least, it will be necessary to expand the training of judges and lawyers to cover the rights of mentally disturbed persons generally and specifically in these proceedings, and to make suitable arrangements for patients of psychiatric hospitals and other facilities where they may be placed to be kept informed.*[250] [251]

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248 According to data from the Ministry of Health, which are complete for 2005 only, in 2005 4,929 patients were hospitalized involuntarily.

249 As was mentioned in Chapters II/4.7.2 and 4.73 of the 2002 Report, the consequences of past practices remain, where clients were deprived of legal capacity prior to their placement in a social care institution and the director of the facility where they were hospitalized was appointed their guardian.

250 see Chapter II/4.7.1 of the Report

251 According to the recommendations of the Council of Europe, statistics and other relevant information should be collected and made available with a view to monitoring and identifying best practice and for the purposes of international comparisons. This information should include the numbers of involuntarily hospitalized and treated individuals, the facilities where they are admitted, and the duration of involuntary hospitalization.

4.8 Status and rights of seniors

Population ageing is the most typical feature of demographic developments in the Czech Republic and other European countries. It is essential for seniors to be able to live in a society which is constructive to their needs and preferences and for them to have a wide range of opportunities for an active and full-value life.

In November 2005, the Government acknowledged[252] the first Information on the Implementation of the National Programme of Preparation for Ageing for the 2003-2007 period.[253] The implementation report contained information on the activities of the competent ministries and eight regions carried out to implement the programme in the period as of May 2002. In the explanatory report on this Information, it is stated inter alia that '*in spite of a number of activities by the ministries and regions, the situation remains unsatisfactory in several important areas. These include the status of older people on the labour market and the range of opportunities for active ageing and the economic activities of these persons, the development and availability of differentiated geriatric work, the introduction of modern gerontological principles in the field of services for seniors (especially health and social services), the protection of older people from all forms of abuse and violence, approach and constructiveness of public and private services and products to the needs, preferences and state of health of seniors, and opportunities for their social inclusion.*'

In response to this report, the Government enjoined the Deputy Prime Minister and Minister for Labour and Social Affairs to draw up and present to the Government, by 28 February 2006, a proposal for the establishment of a new Government initiative and advisory body – the Government Council for Seniors and Population Ageing. This body should make a significant contribution to cooperation between ministries, social partners and other parties involved in this field, propose measures to tackle the problems above, monitor and evaluate documents of the EU and other international organizations significant from the aspect of older citizens and population ageing, and present the Government with proposals for their application in sub-policies.[254] The Council should also systematically address problems related to the human rights of seniors and propose measures to the Government aimed at their protection.

In relation to the protection of seniors' rights, representatives of nongovernmental organizations point out that the lives of seniors in a number of residential-type facilities are undignified, and even inhuman, because of the insufficient furnishings and inappropriate regime. At some residential facilities, seniors are also forced to pay 'sponsorship gifts' to the facility accommodating them. *Non-payment of these gifts exposes them to the risk that services will no longer be provided to them by the facility. In certain cases, these practices*

The participation of organizations for uses of psychiatric care, former users of these services and their family members is particularly welcome.

252 Government Resolution No 1482 of 16 November 2005 (http://wtd.vlada.cz/vlada/cinnostvlady_usneseni.htm)

253 The aim of the programme is to promote active ageing. The National Programme of Preparation for Ageing also responds to the growing unemployment among persons over the age of 50. (see Chapter II/4.1.1 of the Report). One of the proposed steps is the preparation of a 'Programme for Ageing Employees', which will include legislative changes and a publicity campaign aimed at influencing the public and employers, encouraging them to keep employing older citizens and placing an emphasis on the benefits of employing older people.

254 The National Concept of Family Policy, which places an emphasis on promoting intergenerational solidarity and family cohesion in general, also addresses measures to support families with a family member who is not self-sufficient – a senior – and the families of seniors. (see also Chapter II/4.5 of the Report)

not only stress seniors, but also place them at an existential risk. Therefore, in forthcoming years it will be necessary to start monitoring these facilities and propose measures to enhance the protection of seniors' rights, especially those at residential facilities.[255]

5. Discrimination

5.1 Antidiscrimination Act

In January 2005, the Government presented the Antidiscrimination Bill to the Chamber of Deputies.[256] The Chamber of Deputies passed this bill in December 2005. The Senate rejected the bill, and therefore it will be debated by the Chamber of Deputies again in 2006. The adoption of legislation defining what is understood by the term 'discrimination', the legal means that can be used to fight discrimination, and in what areas this protection is provided is a key step that needs to be taken in the interests of human rights. The bill appoints an institution which should systematically specialize in protection against discrimination – the Public Defender of Rights (ombudsman). Besides the provision of legal aid in individual cases, the ombudsman should also conduct independent research and issue recommendations and opinions.

The Antidiscrimination Bill implements the European Community directives on non-discrimination in a uniform manner.[257] In connection with the still incomplete transposition of these directives in Czech law[258] in July 2005 the European Commission issued a reasoned opinion,[259] in which it inter alia called on the Czech Republic to adopt the legislation required to achieve full harmonization with the racial equality directive.[260] *If a situation where the legal regulation of protection against discrimination is not resolved, the Czech Republic will expose itself to the risk of an action brought by the European Commission for breach of obligations stemming from membership of the European Union. Judicial proceedings before the European Court of Justice could end in a high fine.*

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255 see also Chapters II/3.7 and II/4.3.3 of the Report

256 Bill on Equal Treatment and on Legal Means for Protection against Discrimination (Parliamentary Press No 866 – see http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=866&CT1=0) and a Bill amending certain laws in connection with the adoption of the Antidiscrimination Act (Parliamentary Press No 867 – see http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=867&CT1=0)

257 Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

258 The Czech Republic was meant to have to harmonized its national law with the directives on non-discrimination on accession to the European Union (i.e. as of 1 May 2004).

259 The reasoned opinion was issued in accordance with Article 226 of the Treaty establishing the European Communities. In this opinion, the European Commission stated that the Czech Republic had not taken the action necessary to harmonize its legislation with this directive and set a time limit for the fulfilment of this obligation.

260 Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. This directive places the obligation on EU Member States to appoint or set up a body competent to provide protection from discrimination.

5.2 New Education Act

The new Education Act,[261] which was adopted in 2004, entered into effect on 1 January 2005. In its general introductory provisions, it declares the principle of the equal access of each Czech citizen to education without any discrimination on grounds of race, colour, sex, language, faith or religion, nationality, ethnic or social origin, property, birth, state of health or other status of a Czech citizen, and the principle of taking account of the educational requirements of the individual. This equal access, as the definition infers, is contingent on the Czech citizenship of the individual. Persons who are not Czech citizens have access to education under the same conditions as Czech citizens if they are nationals of another EU Member State or can prove the legitimacy of their stay in the Czech Republic. The Education Act also contains special provisions on the education of members of national minorities, the teaching of religion, the education of pupils with special educational needs, and exceptionally gifted pupils. The new Education Act no longer separates primary and special needs schools (the original special needs schools were renamed as primary schools),[262] but in the scope of primary education creates conditions so that all pupils are provided with education and support corresponding to their specific educational needs.[263]

5.3 The prohibition of discrimination in labour-law relations and employment

5.3.1 Monitoring of compliance with labour-law regulations

The new Labour Inspection Act,[264] effective as of 1 July 2005, introduced a significant change in protection against discrimination with regard to employment relations. Before this law was adopted, the labour offices acted as inspection bodies to ensure the observance of labour-law regulations. They were responsible for monitoring breaches of the prohibition of discrimination laid down in the Labour Code[265] and the Employment Act.[266] The new labour inspectorates took over control of the observance of the prohibition of discrimination stemming from labour-law relations, including remuneration and compensation of wages and salaries; the field of employment has remained in the competence of the labour offices.

The Labour Inspection Act also introduced a change in the regulation of violations and administrative torts in the field of equal treatment. These violations are defined in two legal regulations: the Labour inspection Act and the Employment Act. Under the Employment Act, until the end of June 2005, breaches of the prohibition of discrimination laid down in this Act and in other labour-law regulations were considered. Since the adoption of the Labour Inspection Act, the Employment Act has only covered violations and administrative torts in the field of employment that can be perpetrated by a natural or legal person who breaches the prohibition of discrimination or fails to ensure equal treatment. The Labour Inspection Act defines the misdemeanours of natural persons and the administrative torts of legal persons in

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261 Act No 561/2004 on preschool, primary, secondary, further vocational, and other education (the Education Act)

262 The transitional provisions in Section 185(3) provide inter alia that ‘a special needs school under previous legal regulations is a primary school under this Act.’

263 More detailed information about the putting of the new Education Act into practice in connection with Roma pupils will be provided in the Report on the State of Roma Communities in 2005.

264 Act No 251/2005 on labour inspection

265 Act No 65/1965, the Labour Code, as amended

266 Act No 435/2004 on employment, as amended

the field of equal treatment more broadly.[267] However, fines imposed by labour inspectorates for breaches of the principle of equal treatment are lower than fines imposed by labour offices for similar wrongdoings.

5.4 Ascertaining discriminatory conduct

5.4.1 Violations of labour-law regulations in the field of discrimination and cases where the principle of equal treatment is ignored, as ascertained by labour offices and labour inspectorates

The tables below contain information on identified breaches of labour-law regulations in the field of discrimination in 2005. Breaches of the prohibition of discrimination are differentiated from breaches of the principle of equal treatment. The figures were obtained from the Ministry of Labour and Social Affairs.

Cases of failure to respect the principle of equal treatment ascertained by labour offices

area	aspect	total number of cases	of which			
			direct	indirect	men	women
labour-law relations (Section 1(3) of Act No 65/1965)	remuneration for work and other pecuniary considerations	192	131	61	6	6
	vocational training	0	0	0	0	0
	promotion	1	0	1	0	1
harassment (sexual harassment) in labour-law relations (Section 1(8) and (9) of Act No 65/1965)	0	0	0	0	0	0
exercise of the right to employment (Section 4(1) of Act No 435/2004)	0	18	12	6	1	0
harassment (sexual harassment) in the exercise of the right to employment (Section 4(7) and (8) of Act No 435/2004)	0	1	1	0	0	0

Source: Ministry of Labour and Social Affairs

[267] Besides breaches of the general prohibition of discrimination laid down in the Labour Code, also included here is the unequal treatment of employees from the aspect of remuneration for work and the provision of other pecuniary considerations and considerations in kind, vocational training, the possibility of promotion, the victimization of employees who seek their rights in a legal manner, and the fact that an employee's complaint about rights and obligations under a labour-law relationship is not discussed with that employee.

Cases of breach of the prohibition of discrimination ascertained by labour offices

area	grounds of discrimination	total number of cases	of which			
			direct	indirect	men	women
labour-law relations (Section 1(4) of Act No 65/1965)	sex	10	0	10	0	10
	sexual orientation	0	0	0	0	0
	racial or ethnic origin	0	0	0	0	0
	nationality	0	0	0	0	0
	citizenship	0	0	0	0	0
	social origin, birth	0	0	0	0	0
	language	0	0	0	0	0
	state of health	12	0	12	0	12
	age	3	0	3	0	3
	religion	0	0	0	0	0
	beliefs	0	0	0	0	0
	property	0	0	0	0	0
	marital and family status	1	1	0	0	1
	political or other affiliation	0	0	0	0	0
	membership and activity in political parties and political movements, in trade union organizations or employer associations	0	0	0	0	0
Exercise of the right to employment (Section 4(2) of Act No 435/2004)[268]	sex	22	8	4	0	3
	sexual orientation	0	0	0	0	0
	racial or ethnic origin	0	0	0	0	0
	nationality	0	0	0	0	0
	citizenship	0	0	0	0	0
	social origin, birth	0	0	0	0	0
	language	0	0	0	0	0
	state of health	0	0	0	0	0
	age	8	8	0	5	3
	religion	0	0	0	0	0
	beliefs	0	0	0	0	0
	property	0	0	0	0	0
	marital and family status	3	3	0	1	2
	political or other affiliation	0	0	0	0	0
	membership and activity in political parties and political movements, in trade union organizations or employer associations	0	0	0	0	0

Source: Ministry of Labour and Social Affairs

[268] Figures concerning the Employment Act are for Q1-Q3 2005. Summary information for 2005 was not available at the time the report was prepared.

Cases of failure to respect the principle of equal treatment ascertained by labour inspectorates

area	aspect	total number of cases	of which			
			direct	indirect	men	women
labour-law (Section 1(3) of Act No 65/1965)	working conditions	7	1	6	6	1
	remuneration for work	26	21	5	14	12
	vocational training	3	1	2	1	2
	promotion	1	0	1	1	0
harassment (sexual harassment) in labour-law relations (Section 1(8) and (9) of Act No 65/1965)		4	1	3	1	3

Source: Ministry of Labour and Social Affairs

From their establishment (July 2005) until the end of 2005, according to the statistics kept by the Ministry of Labour and Social Affairs the labour inspectorates did not ascertain any breaches of the prohibition of discrimination in labour-law relations.[269]

5.5 Racial discrimination

5.5.1 Crime motivated by racial intolerance

The following tables contain information on the number of persons who were prosecuted, indicted or convicted for crimes with a racial subtext in 2005.

Information on the number of persons prosecuted, indicted or convicted for crimes with a racial subtext in 2005

crime	number of persons prosecuted	of which women	number of persons indicted	of which women	number of persons convicted	of which women
promotion and propagation of movements intent on suppressing persons' rights and freedoms[270]	23	0	18	0	21	1
public expressions of sympathy for movements intent on suppressing persons' rights and freedoms[271]	72	0	65	0	79	2
denial of crimes perpetrated by Nazis or Communists[272]	1	0	1	0	0	0
defamation of a nation, ethnic group,	85	7	78	6	45	3

269 Section 1(4) of Act No 65/1965, the Labour Code, as amended
270 Section 260 of the Criminal Code
271 Section 261 of the Criminal Code
272 Section 261a of the Criminal Code

race or conviction[273]						
incitement to hatred against a group of persons or to the restriction of their rights and freedoms[274]	3	0	2	0	3	0
violence against a group of the population and against an individual[275]	119	2	106	1	47	2

Source: Ministry of Justice

5.5.2. Crimes with a racial undertone in the draft of the new Criminal Code

In November 2005, the Chamber of Deputies approved a new Criminal Code.[276] In the future, this new legislation should introduce in criminal law partial changes in combating racial discrimination. The grounds of some crimes will be expanded to include new circumstances conditioning the application of a longer sentence.[277] These qualified grounds of the crime occur if anyone perpetrates a crime on the grounds of actual or assumed race, membership of an ethnic group, nationality, political affiliation, religion, or on the grounds that someone is actually or assumed to be of no religion. For the crimes of murder, severe bodily harm, intentional bodily harm, blackmail and damage to the property of another person, the proposed legislation, like the current wording of the Criminal Code, contains circumstances conditioning the application of a longer sentence for a racially motivated attack.

The draft Criminal Code contains new grounds of the crime for racist crimes. The new grounds of the crime of S*uppressing rights on grounds of race, ethnic group or other similar membership*[278] should facilitate prosecution for refusing to sell a product or provide a service on grounds of race or ethnic group (or on grounds of sexual orientation, political affiliation, religion or actual or assumed lack of religion). This amendment responds to cases known from the experience of nongovernmental organizations[279] where discrimination has genuinely occurred in the provision of services or sale of products. The new grounds of the crime of an A*ttack against humanity*[280] should facilitate the prosecution of a sub-population on political, racial nationality, ethic, or religious grounds or for other similar reasons. Another new crime is *Apartheid and discrimination of a group of people*.[281] It would be a crime to apply

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273 Section 198 of the Criminal Code

274 Section 198a of the Criminal Code

275 Section 196 of the Criminal Code

276 Parliamentary Press No 744 (http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=744&CT1=0)

277 The following criminal offences at issue: torture and other inhuman and cruel treatment, deprivation of liberty, illegal restraint, kidnapping, blackmail, breach of the secrecy of instruments and other documents filed privately, breach of the confidentiality of an oral statement or other statement of a personal nature, abuse of the power of an official, insults among soldiers, insults among soldiers with violence or the threat of violence, insult of a soldier of the same rank with violence or the threat of violence, breach of the rights and protected interests of soldiers of the same rank, breach of the rights and protected interests of subordinate or lower soldiers.

278 Section 333 of the bill

279 E.g. the Advice Centre for Citizenship, Civil and Human Rights. Cases where admission has been refused to places of entertainment and restaurants are described in the Sixth and Seventh Periodic Report on the Implementation of Obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(F)) – see www.vlada.cz.

280 Section 378 of the bill

281 Section 379 of the bill

apartheid or racial, ethnic, national, religious or class segregation or other similar discrimination of a group of people.

Under the proposed Criminal Code, sentences should be made longer for racially motivated crimes such as *Genocide*[282] (with the crime of D*enying, doubting, endorsing and justifying genocide*, genocide other than Nazi or Communist genocide should be punishable) and *Promoting and propagating a movement intent on suppressing persons' rights and freedoms*.[283] The crimes of *Violence against a sub-population and against an individual*[284] and D*efamation of a nation, race, ethnic or other group of people*[285] will be punishable whether perpetrated in relation to actual or assumed race once the Criminal Code is approved.

5.5.3 Cases of racial discrimination investigated by the Czech Trade Inspection

The Czech Trade Inspection oversees the observance of the prohibition of discrimination in the sale of products and goods and in the provision of services.[286] During this activity, it draws on notifications and complaints from individuals; in 2005 it received seven complaints about racial discrimination. Based on these notifications, it conducts inspections of the relevant enterprises; if it discovers deficiencies during an inspection, it is entitled to impose a fine. Of the seven complaints investigated in 2005, one of them was found to be legitimate. This was a case where Roma were refused admission to a restaurant. In administrative proceedings, the Czech Trade Inspectorate imposed a fine of CZK 10,000.

5.5.4 Neo-Nazi concerts

Supporters of far rightwing ideology continued to hold concerts by skinhead bands in 2005; these events are of a strictly private nature. In all cases, they involve a maximum of 250-300 people, who hire a hall with a view to holding a celebration (e.g. a birthday or wedding). Admission to these events is not open to the general public; participants receive personal invitations. Nor are the concerts publicized (with the odd exception) – not even over the Internet. Otherwise personal invitations are made by telephone or by sending a specific text message. As these are private events which are not, by nature, assemblies, the police can only intervene if there is a suspicion that a crime has been perpetrated. In other cases, the police presence is limited to monitoring of the whole event.

The Ministry of the Interior made a welcome move in July 2005 when it organized a roundtable to discuss the problem of Neo-Nazi concerts and subsequently set up a working party to address these concerts with the aim of preparing a proposal of specific steps that the police can take in clamping down on the organization of, and participation at, extremist rightwing music events as a manifestation of support or propagation of movements intent on suppressing persons' rights and freedoms.

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282 Section 377 of the bill

283 Section 380 of the bill

284 Section 329 of the bill

285 Section 331 of the bill

286 The competence of the Czech Trade Inspectorate is regulated by Act No 64/1986 on the Czech Trade Inspectorate. This is a state administration authority subordinate to the Ministry of Industry and Trade.

Concerts by Neo-Nazi bands are a phenomenon which the general public is aware of. However, the prosecution of manifestations of racism which occur at these events seems to be inadequate. The preparation of a specific system to prosecute neo-Nazi music events and participation at them is a positive step, the implementation of which in the near future will be welcomed.

5.6 Registered partnership

In 2005, the Chamber of Deputies approved the parliamentary bill on registered partnership.[287] Bills regulating same-sex cohabitation have been discussed by the Chamber of Deputies in various versions since 1997. This bill grants persons of the same sex who enter into a registered partnership rights and obligations such as the status of next of kin,[288] inheritance in the first inheritance group,[289] representation in routine matters and mutual maintenance obligations,[290] the right to withhold testimony in criminal proceedings,[291] and the possibility of choosing the defence counsel for a partner.[292] It does not permit the emergence of the common property of the partners, the use of the same surname, the automatic establishment of joint renting of a property on conclusion of a lease by one of the partners,[293] or the adoption of children by the partners.

This list of rights and obligations under the bill on registered partnership is not exhaustive, but it indicates that this law, if it duly passes through the whole legislative process, will be a 'minimalist law'. Its significance lies primarily in the fact that it should be used as a symbol of tolerance of majority society to the gay and lesbian minority and as one of the first steps on the way to equality.

6. Equal opportunities for women and men[294]

6.1 Parental leave and the parental allowance

A definite improvement for families caring for children aged from three to four years has been made by the amendment to the State Social Support Act,[295] which, since 1 January 2006, has facilitated the provision of a parental allowance to parents whose children that have reached the age of three years regularly attend a nursery school or other similar facility for a maximum of four hours a day.

Prior to the adoption of this amendment, the State Social Support Act enabled parents to place their children in a nursery school for a maximum of five days per calendar month

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287 Parliamentary Press No 969 (the bill on registered partnership and amending certain laws) – see http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=969&CT1=0) – was approved by the Chamber of Deputies of the Parliament of the Czech Republic in its third reading on 16 December 2005.

288 Section 116 of Act No 40/1964, the Civil Code

289 Section 473 of Act No 40/1964, the Civil Code

290 Sections 9 and 10 of the bill

291 Section 100 of Act No 41/1961, the Rules of Criminal Procedure

292 Section 37 of Act No 41/1961, the Rules of Criminal Procedure

293 for analogy, see Section 703 of the Civil Code

294 Chapters II/6.1., II/6.2., II/6.3., II/6.4.1., II/6.4.2., II/6.4.3. and II/6.5. should also be viewed in the context of Chapter II/4.5., which generally discusses family care.

295 Act No 204/2005 amending Act No 117/1995 on State social support, as amended..

without losing their entitlement to the parental allowance. This legislation proved to be rather ineffective for two reasons. The first was the low efficiency of this type of schooling for children, who had to keep getting used to their peers and teachers. Another reason, among parents in gainful activity, was the need to secure care for their child by another adult for the period that they carried out this activity in order to maintain their entitlement to the parental allowance. Enabling a child to attend nursery school for four hours a day without depriving the parents of the parental allowance is a boon to parents who are (for example) employed on a part-time basis or who carry out other gainful activity while taking care of a child. The amendment did not affect children up to the age of three years; the State prefers these children to be brought up in a family environment.

The granting of the parental leave while entrusting a child to another's care was restricted to children up to the age of three until the end of April 2005. The amendment to the Labour Code[296] increased the age of a child up to which parental leave can be granted to seven years. Employees also have a claim to maternity benefit.[297]

6.2 Maternity benefit

The group of persons with a claim to maternity benefit was expanded by an amendment to the Act on the Extension of Maternity Leave, on Benefits in Maternity and on Allowances for Children under Health Insurance[298] so that employees (male or female) could receive maternity benefit if they looked after a child full time pursuant to a decision of the competent body or a child whose mother had died. The entitlement to this benefit arises only in cases where a person assumes the care of a child up to the age of seven; benefits are provided for 22 weeks as of the date the claimant takes over the care of the child.

The previous Report on the State of Human Rights criticized the fact that maternity benefit is a benefit intended first and foremost for women. Men who decide to care for a child from the date of its birth and take parental leave may, in most cases, receive only a parental allowance, the amount of which is lower than maternity benefit.[299] This discrimination of men is addressed by the governmental bill on health insurance and a bill amending certain laws in connection with the adoption of the Health Insurance Act.[300] Under this draft legislation, maternity benefit should apply to men and women alike. The husband of the child's mother or the father of the child (but not the common-law husband or wife of the child's mother) will have the possibility of entering into a written agreement with the mother to take care of the child (and thus to receive maternity benefit). The bill does not take into account 'de facto' families, which often differ from biological families and often exist in a situation where there has been no marriage. A positive shift with the Health Insurance Bill is the fact that, for men who care for a child whose mother has died or for a child which has been entrusted to them

296 Act No 169/2005, amending Act No 65/1965, the Labour Code, as amended, Act No 88/1968 on the extension of maternity leave, on benefits in maternity and on allowances for children under health insurance, as amended, and Act No 361/2003 on the employment of members of security corps, as amended

297 see also Chapter II/6.2

298 Act No 169/2005, amending Act No 65/1965, the Labour Code, as amended, Act No 88/1968 on the extension of maternity leave, on benefits in maternity and on allowances for children under health insurance, as amended, and Act No 361/2003 on the employment of members of security corps, as amended

299 see Chapter II/6.2.7.2 of the Report on the State of Human Rights in the Czech Republic in 2004, p. 51.

300 Parliamentary Press No 1005 (http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1005&CT1=0) and 1006 (http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1006&CT1=0)

under a decision of the competent authority, the condition of whether or not they live with a common-law wife is no longer examined.

The Health Insurance Bill also anticipates the removal of maternity benefit for job-seekers. Therefore, compared to current legislation, if the bill is passed there will be a deterioration in the situation of job-seekers, who will now only be entitled to the parental allowance. Although the amount of maternity benefit paid to job-seekers under legislation in force[301] is equal to the parental allowance,[302] the entitlement to maternity benefit arises in the eighth week prior to the estimated date of birth, whereas the entitlement to the parental allowance commences as of the child's birth.[303]

6.3 Support in nursing a member of the family

The treatment of a sick family member is an important personal obstacle in work, and when it occurs the employer is obliged to relieve the employee of his/her work duties.[304] Over the duration that a family member requires nursing, the employee is entitled to health insurance – support during the treatment of a family member.[305] Although the benefit may be granted to either a man or woman, in the Czech Republic this benefit is traditionally drawn by women caring for a sick child. Therefore their position in the labour market is weakened, they are frequently absent from work, and the employer banks on this possibility and thus can place a woman in a disadvantage position compared to a man.

A drawback which the proposed Health Insurance Act[306] should partially fix is the fact that employees who have started receiving support for nursing a family member must complete this course of support. The Health Insurance Act under discussion introduces the possibility of alternating (once) the persons entitled to collect the benefit. In practice this means that when a child is sick both the child's mother and father can help nurse the child, and the support for nursing the family member will not be lost. The Health Insurance Bill also introduces an entitlement to nursing benefit for employees (fathers) who are unable to work because they are taking care of a member of the household after a birth, if this person's condition immediately after the birth requires.

The proposed legislation is a step in the right direction; the next step should be any number of alternations in the period defined for nursing, and if nursing is provided by a third person on certain days who does not have an entitlement to benefit, the support period would be suspended for a predefined period (a number of days).

6.4 The labour market status of parents caring for children

6.4.1 Taking leave in the period between maternity leave and parental leave

301 Section 45 of Decree of the Central Council of Trade Unions No 143/1965 on the provision of monetary benefits in health insurance

302 The mount of maternity benefit received by job-seekers per calendar day is one thirtieth of the amount of the parental allowance payable per calendar month.

303 see Section 7(1) Act No 88/1968 on the extension of maternity leave, on maternity benefit, and on child allowance, and Section 30 of Act No 117/1995 on State social support

304 Section 127 of Act No 65/1965, the Labour Code, as amended

305 Section 25 of the Act on the Health Insurance of Employees (Act No 54/1956)

306 Parliamentary Press No 1005 (http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1005&CT1=0)

Under legislation in force, employers are obliged to enable employees, on request, to take leave so that it follows on from maternity leave.[307] At the time that maternity and parental leave is taken, the prohibition of serving notice on such employees applies. At the end of maternity leave and prior to the commencement of parental leave, employees may request the employer for normal leave; over this leave the prohibition of serving notice does not apply to these employees.

Leave between maternity and parental leave is a period in which employees are not protected against notice from the employer and thus their position on the labour market is unsure. This deficiency is not addressed by the proposed new Labour Code.[308]

6.4.2 Returning to work at the end of parental leave

Under current legislation, employers are obliged to place female employees, on their return from maternity leave, or male employees, on their return from parental leave until the time that the woman is entitled to draw maternity leave, in their original position and workplace.[309] Employees who return to work after parental leave do not have this protection; the employer is only obliged to assign them work in accordance with their employment contract. If the employer cannot assign work corresponding to the employment contract, this is an obstacle on the part of the employer in respect of which the employee is entitled to wage compensation.

It is worth considering whether it might be advisable to adjust the conditions for the return of employees to work at the end of parental leave in such a manner that the standard of protection is lower than on return from maternity leave.

6.4.3 Reconciliation of family and working life[310]

The problem of parents caring for children is the relatively infrequent application of work regimes enabling them to reconcile their family and working life. The Labour Code recognizes flexitime, working from home, and part-time work. In practice, these possibilities are rarely used. In the scope of preparing this report, all the ministries and governors of all Czech regions were approached with a view to determining how frequently atypical work regimes are used (flexitime, shorter working hours). Shorter working hours (part-time work)[311] are usually viewed as a truly exceptional institution that is negotiated by the employee only in cases where it may be imposed on the employer by the Labour Code, typically for women taking care of children younger than 15 years old and for pregnant women.[312] No occurrences of work from home[313] were ascertained.

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307 Section 108(4) of Act No 65/1965, the Labour Code, as amended

308 Parliamentary Press No 1153 (http://www.psp.cz/sqw/text/tiskt.sqw?O=4&CT=1153&CT1=0)

309 Section 147 of Act No 65/1965, the Labour Code, as amended

310 This section draws on 'Drafts measures and changes to the employment policy in relation to the equality of opportunities that help improve the situation of women in the family and employment', which were drawn up by the Czech Association of Women as part of the project 'Conditions for the reconciliation of working and family life - partnership within the family' (E/01//1/043), EQUAL Community Initiative.

311 Section 86 of Act No 65/1965, the Labour Code, as amended

312 Section 156 of Act No 65/1965, the Labour Code, as amended

313 'home workers' (teleworkers) – Section 267 of the Labour Code (Act No 65/1965)

If employers are to make more use of shorter working hours, the State should provide incentives via legislative and non-legislative instruments. Employees who care for dependent persons (mostly children) would welcome the opportunity to carry out work from home. This type of work regime, which is regulated very inadequately in the current Labour Code,[314] is an ideal solution for mothers or fathers caring for small children (especially children up to the age of three). Employees thus have the possibility of remaining in contact with their profession, and their placement back in their 'conventional' employment relationship (as a full-time job) is smooth and free of the problems that would occur by a stay at home that could run into several years.

The State should motivate employers to create a 'family-friendly environment' at work. This primarily entails the establishment of a children's corner at the workplace, where a carer or nanny would be present. Employees would thus not be saddled with the trouble of placing their child in a preschool care facility, collecting the child at the end of the day, etc., and they would be able to spend more time at the workplace; in certain cases they may even be no need to negotiate shorter working hours.

6.4.4 Setting of the retirement age

The previous report[315] pointed out that current legislation does not reduce the retirement age for a man bringing up a child. The retirement age is set differently for men and women; the retirement age for women is then reduced further depending on the number of children they bring up. The retirement age should gradually be equalized; in 2012 it should be the same for men and women who have not brought up any children, i.e. 63 years.[316] However, effective legislation makes it possible for the retirement age of men and women to differ even after 2012, as the retirement age of women will still be reduced depending on the number they have brought up. *It would be advisable to change current legislation so that the conditions for retirement are the same for women and men.*

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314 Section 267(2) and (3) of Act No 65/1965, the Labour Code, as amended:
'The working conditions of employees who do not work at the employer's workplaces, but who perform work for the employer at home in accordance with conditions agreed in the employment contract in working time scheduled themselves ('home workers'), are governed by the provisions of this Code, with the following derogations:
a) provisions on the scheduling of set weekly working hours and downtime shall not apply to these employees,
b) in cases of important personal obstacles in their work, they shall not be entitled to wage compensation from the employer,
c) they shall not be entitled to overtime pay or extra pay for work on public holidays or other wage components set under a wage regulation.
(3) Under a governmental order, the Government may set further derogations for home workers where their different working conditions require, or may provide that in cases of certain important personal obstacles in work they shall be entitled to wage compensation from the employer.'

315 see Chapter II/4.1.3 of the 2004 Report

316 Since 1996, the Pension Insurance Act, which came into effect 1 January 1996, has gradually raised the retirement age for the entitlement to an old age pension. For women the rate of increase is quicker due to the gradual harmonization of men and women's retirement age. Under current legislation, the raising of the retirement age should continue up to 2012, 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.

6.5 Amendment being prepared to legislation in the field of protection from domestic violence

Since the end of 2004, the Chamber of Deputies of the Parliament of the Czech Republic has discussed a parliamentary bill amending certain laws in the field of protection from domestic violence.[317] The bill reacts to certain lingering problems in the field of domestic violence which were not resolved by the introduction of the criminal prosecution of perpetrators of domestic violence in 2004.[318] One of the main problems mentioned is that the person at risk of violence – not the person perpetrating the violence – is forced to leave the shared household. The victim (in most cases the woman) is often forced to leave with a child to seek emergency housing; she does not live in the shared household with the violent person, but is obliged to pay the charges connected with the operation of the household. Given the need to pay the costs of judicial proceedings, legal representation, etc., the victim is in an oppressive financial situation. Although victims of domestic violence tend to be women, it should be noted that other groups of people (e.g. seniors) might be exposed to various forms of domestic violence.[319]

Some of the problems described are addressed by the above-mentioned bill, which was approved by the Chamber of Deputies in December 2005. The bill should introduce three fundamental changes. The first is the institution of expulsion. The second change is the checking of observance of obligations imposed on the violent person during the expulsion period, and after-care for the endangered person by an intervention centre, lying in psychological, social and legal assistance. The third change includes, in particular, the possibility for the endangered person to turn to a court, especially with a request for the issue of an preliminary injunction, based on which the person threatening the endangered person with violent behaviour is forced to leave the flat or house and its immediate environs, and is not permitted to return to this place over a set period.

Expulsion as a measure adopted by the police authority on the spot is designed as a preventive reaction to the dangerous conduct of a violent person from the aspect of the risk of future attacks. The proposed legislation sets the period of expulsion imposed by the police authority as ten days, which should be enough time for the endangered person to clarify the possible ways of proceeding in the given matter, with assistance from the intervention centre. An expulsion decision is a decision in administrative proceedings and as such can be reviewed by means of ordinary and extraordinary remedial measures.[320]

One of the basic requirements for the efficient working of the new concept will be the creation of intervention centres,[321] which, besides providing informed social, psychological and legal assistance, should also play the coordination and information roles among cooperating public administration authorities, especially bodies for the social-law protection of children, healthcare facilities, the police and the courts. Under the bill, the intervention centres will be entrusted with the monitoring of cases of domestic violence and with the

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317 Parliamentary Press No 828

318 for the circumstances of the crime under Section 215a of the Criminal Code – battering a person living in a jointly occupied flat or house, see Chapter II/6.2.10 of the Report on the State of Human Rights in the Czech Republic in 2004, p. 53.

319 see Chapter 4.8**100**

320 An ordinary remedial measure is an appeal, which does not have suspensory effect.

321 under an amendment to the Act on the competence of authorities of the Czech Republic in social security (Act No 114/1988)

processing of methodological guidelines for collaboration between individual cooperating institutions.

The Ministry of Labour and Social Affairs, Ministry of Justice, and Ministry of the Interior view the parliamentary bill in a positive light. However, in its opinion the Government was negative as regards the proposed amendment to the Rules of Criminal Procedure, where certain crimes have been removed from Section 163 of the Rules of Criminal Procedure, where the prosecution of crimes is contingent on the consent of the injured person. *The proposed amendment to the Rules of Criminal Procedure does not figure in the bill, which is a shortcoming. The adoption of legislation against domestic violence, even if it is a minimum standard, should be welcomed.*

6.6 Human trafficking

The Programme for the Support and Protection of Victims of Trafficking in Human Beings in the Czech Republic (the 'Programme') continued in 2005. In 2005, a working party was set up at the Ministry of the Interior for the coordination of the support and protection of victims of trafficking in human beings. The way this programme works is described in a Methodological Instruction of the First Deputy Minister of the Interior of 2 August 2005. This instruction covers the residency and other aspects connected with the status of the victim and witness in criminal proceedings. The programme is based on the cooperation of the Ministry of the Interior with non-profit organizations specializing in assistance for trafficking victims.

In the implementation of this programme, non-profit organizations identified several problem areas that they encounter in their activities. One of them is the fact that the inclusion of persons in the programme is at the recommendation of the police. In certain cases, then, the determining factor is not the person's willingness to cooperate, or the clear identification of a person as a victim of human trafficking, but the value of information that this person can provide for the purposes of investigating crimes. A positive benefit of the programme is the possibility of legalizing the stay of trafficking victims in the Czech Republic. Persons included in the programme who express a willingness to cooperate with law enforcement agencies can therefore obtain a visa with a view to sufferance, based on which they can enter the labour market.

The previous report[322] provided information on the introduction of a new crime of *Trafficking in human beings*[323] in the Criminal Code in 2004. This important legislative change also gave rise to certain difficulties with its application in practice. The intrinsic characteristics of the crime of trafficking in human beings differentiate several purposes for which trafficking in humans may occur. These are various forms of sexual exploitation, slavery or servitude and forced labour, or other forms of exploitation. However, law enforcement agencies are inclined to interpret the body of the crime solely as trafficking in human beings with a view to sexual harassment or abuse. The interpretation of other forms of trafficking in human beings is ambiguous and can be problematic in criminal prosecution.

322 Chapter II/6.2.9. of the 2004 Report

323 Section 232a of Act No 140/1961, the Criminal Code, as amended

7. Children's rights

7.1 Social and legal protection of children

Reports on the State of Human Rights repeatedly criticize the adverse situation in the social-law protection of children and the excessive use of the system of institutional care. The social-law protection of children has suffered long term from a lack of funding and social workers. Subsequently, the work with the child's family – especially social work in the field – is inadequate. Given the limited capacities of social workers, this work often stops when an order is made for the institutional care of a child without further efforts to tackle the situation within the family, which is essential if the child is to be returned home successfully.

One of the most problematic and most discussed reasons for removing children from their family is the inadequate material security of the family and thus of the dependent child. In practice, there are cases where institutional care is ordered because of the housing or tangible needs of the family, which in itself does not threaten or disturb the upbringing of minors. Cases where the grounds or housing or tangible needs, if they are the sole reason for the ordering of institutional care, do not pass muster in the light of the case law of the European Court of Human Rights. The ordering of institutional care solely on the grounds of the insufficient material security of children does not meet the condition of necessity in a democratic society, as the criteria of proportionality are not met, and this thus breaches the right of the parents and children to respect for family life[324]. The situation is complicated by the fact that there is currently no low cost housing for poor families, and save the odd exception[325] there is no social work in place to help families avoid rent arrears. The debts run up by families commonly result in their eviction and orders to place the children in institutional care.

7.2 Issues related to interim orders

The use of interim orders to remove a child from the place of its upbringing is a specific problem. In cases where a court is requested to issue an interim order, the court must make a decision in the statutory time limit of 24 hours. However, in cases where it is discovered that there is no serious threat constituting grounds for the removal of a child from the family environment, or that this threat no longer exists, the absence of time limits to settle an application for the withdrawal of such an order means that it takes much longer for an interim order to be cancelled. In practice, there are known cases where an interim order has not been cancelled for more than a year after the time the application for the withdrawal of the order was submitted. However, an interim order, which does not place high demands on proving the reasons for an application, is not meant to be used for the long-term regulation of conditions. If this happens, such a case is particularly undesirable in the event of an interim order to remove a child from the setting in which it has been brought up given the serious and powerful intensity of this intervention in family relations.

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[324] Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

[325] In some municipalities, there is a programme of field social work in socially excluded Roma communities, but this is not part of the social-law protection of children. There is also the social service of 'social activation services' for families with children.

7.3 Violence against children

In cases where children are the victims of violence, the trend is to use repressive measures and underestimate the significance of prevention. Here, too, the above-mentioned lack of social workers, who do not have the capacity to carry out preventive activity, is a negative factor. A worker skilled in issues related to child cruelty and abuse often carries out this specialization in conjunction with the agenda of the social-law protection of children. The State therefore often reacts to violence against a child by placing the child in an institution, even if the relationship of one of the parents with the child is good. There are not enough shelters where a parent and child can find refuge if they are forced to leave a home shared with a violent person. So far, the institution of a restraining order, used in several West European countries, has not been enshrined in legislation; a person perpetrating domestic violence could be ordered to leave the shared flat or dwelling and prohibited from contacting or approaching the victim for a certain period. There is still no express legislative ban on physical punishment used by parents and other persons caring for a child. Some parents still use physical punishment as a means of upbringing.[326]

7.4 Commercial sexual abuse of children

In the fulfilment of tasks stemming from the National Action Plan to Combat Commercial Sexual Abuse of Children, the Ministry of the Interior assigned funds to set up interrogation rooms for traumatized victims at police stations.[327]

7.5 Amendment to the Act on Institutional and Protective Care

In 2005, an extensive amendment to the Act on institutional or protective care in educational establishments,[328] the main goal of which was to ensure the clearer separation of the institutional and protective care regimes, and the clearer definition of the difference between institutional and protective care. This difference has not been particularly visible so far. Furthermore, in practice the approach adopted by courts in decisions on the imposition of protective care or on the ordering of institutional care tends to be haphazard. The courts often order institutional care, even for repeat young perpetrators of crimes, instead of imposing protective care as a criminal-law measure, which would be more suitable in such cases.

Although the amendment tightened the regime for protective care, it did not thoroughly separate protective care from institutional care. Children ordered into institutional care or placed in protective care can thus still be placed in the same facilities - children's homes with a school. The law lets the promoter of the children's home decide whether or not to set up separate facilities. Therefore, in practice the amendment to the law could result in a

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326 According to a survey conducted in 2005 by the Third Medical Faculty of Charles University among children from the fourth grade of primary school, 86% of Czech children had experienced some form of physical punishment; according to this survey, every fourth child is regularly beaten with a belt, strap or wooden spoon, which experts classify as cruelty.

327 The funds for these purposes were assigned to the following units: Czech Police Force – City of Prague Authority, District Headquarters of the Czech Police Force in Beroun, and Czech Police Force Severomoravsko Region Authority in Ostrava.

328 Act No 383/2005 amending Act No 109/2002 on institutional care or protective care in educational establishments and on preventive care in educational establishments, as amended

situation where the tighter regime of protective care also affects children in institutional care placed in the same facilities as children in protective care.

The amendment to the law makes the protective care regime more stringent in that children subject to protective care are not entitled to leave the facility or receive visits from persons other than those responsible for their upbringing, next of kin and an authority for the social-law protection of children. Visits and excursions will now be considered as a measure in the upbringing of children subject to protective care, i.e. they will be permitted as a reward under the conditions laid down by the Act.

The amendment enshrines the new power of the directors of selected educational establishments to order examinations to determine whether a child is under the influence of additive and narcotic substances, and places the obligation on healthcare facilities to comply with a request from a director to examine a child and provide the health care necessary for detoxication.

The amendment removed the situation where audiovisual systems were being used in educational establishments without any legal basis in order to ensure the safety of staff and the children placed here. The amendment also makes it possible, in establishments where children subject to protective care are placed, to use audiovisual systems for control purposes inter alia in the vicinity of the building, in corridors and separate rooms, and to install structural and technical means to prevent escape (e.g. bars, fences). The Ministry of Education, Youth and Sports makes decisions on the installation of audiovisual technology in a specific place based on a request from the facility. Such a decision by a public authority entails the risk of an incorrect decision, which could result in an infringement of the right to privacy. There are also doubts as to whether the use of an audiovisual system is an effective instrument for security, as it merely shifts the place where the violence occurs to an area that is not under camera surveillance.[329]

The amendment increased the maximum number of children in a care group in diagnostic institutions from six to eight and, in these institutions, permitted the establishment of more care groups for the purposes of long-term care. However, diagnostic institutions, as they function in practice and as their purpose is defined in the relevant law, are not intended for long-term care and are not suitable for such care as there is a constant fluctuation in the various types of problem children here.

The amendment made it compulsory for staff at facilities to undergo a psychological examination once every seven years so that a psychological opinion on their mental competence can be drawn up. However, the obligation of these members of staff to keep training has not been set; a system of professional and psychological training focusing on work with problematic young people, on stress management and on burn-out has not been set up.

The amendment established the right of the delegated public prosecutor to speak to the children privately (without any other persons present) and added the possibility for public prosecutors to demand from employees or other persons contributing to the care of the children the necessary explanations regarding findings in matters in the competence of the

[329] see the complaint by the Government Council for Human Rights in the matter of the use of cameras and listening devices in educational establishments for institutional or protective care; Government Resolution No 1164 of 24 November 2004 (http://racek.vlada.cz/usneseni/); Chapter 4.7 of the 2004 Report

public prosecutors, and to issue orders for the adoption of measures culminating in the elimination of any condition violating legal regulations. This resulted in a major reinforcement of the oversight competences of the public prosecutor's office. The amendment also classified several decisions of the director in the regime of the Code of Administrative Procedure and thus facilitated the lodging of appeals against such decisions. *Nevertheless in the future it would be desirable for the Code of Administrative Procedure to apply to a broader range of director decisions, e.g. concerning the prohibition or suspension of visits by persons responsible for care, the approval of measures in case or the placement of a child in a separate room. Decisions infringing the fundamental rights of children and persons responsible for their care should be reviewable.*

The amendment extended the transformation period in which the institutions should be transformed into family-type facilities with a small number of children in care groups by two years. A string of facilities do not meet the requirements of the law regarding the number of children in care groups and have been granted an exemption from the Ministry of Education, Youth and Sports. Care in many institutional facilities thus remains predominantly collective.

A new decree of the Ministry of Education, Youth and Sports regulates the provision of assistance to minor clients whose development is endangered or disrupted by socially pathological phenomena.[330] The decree places an emphasis on counselling, focusing on tackling problems that arise due to clients' behavioural disorders and undesirable influences, professional activities aimed at providing assistance in the social inclusion of a client, and on intensive care and therapy in the in-patient departments of these centres. In ensuring a systematic effect on the child, the cornerstone is cooperation with the family, and therefore, where possible, the child should be worked with in an out-patient or full-day form; the maximum in-patient stay is eight weeks.

Since 2005, the only facility for children up to the age of 15 with extreme behavioural disorders has been running in Boletice. The department has a capacity of 12 children and is used primarily for children who cannot be placed in ordinary types of educational establishments because of their repeated escapes, aggressive behaviour, and mental and psychiatric disorders. Care and education here are provided in accordance with an individual personality development plan drawn up by the competent diagnostic centre in collaboration with psychologists, psychiatrists and specialist teachers.

7.6 Criminal-law protection of children, including their sexual integrity

The protection of children, including their sexual integrity, is indirectly covered in the law by the special circumstances of a number of crimes whereby, if the victim is a person younger than 18, or 15, the crime is considered to be more dangerous and therefore is more severely punished, usually with a longer prison sentence. Under the Convention on the Rights of the Child[331] in general any person under the age of 18 should be considered a child.

The Criminal Code also differentiates whether a child is younger than 18 or 15; crimes where the victim is younger than 15 are punished more severely. This distinction of whether a

[330] Decree No 458/2005 regulating the details of the organization of institutional educational care in care centres

[331] Article 1 of the Convention on the Rights of the Child, published in the Collection of Laws under number 104/1991.

victim is younger than 15 or aged 15-18 is the same as the age limits for the restricted criminal liability of children aged 15-18, the aim of which is not primarily the protection of the child as a victim, but as the perpetrator of a crime. As these age limits are identical, in practice their purpose is often overlooked.

As regards the protection of children, including their sexual integrity, the draft of the new Criminal Code contained the same regulation[332] as the current Criminal Code[333], but in the course of the legislative process in the Chamber of Deputies the age limit the partial criminal liability of children was reduced from 15 to 14 as young perpetrators of crime, and there was an identical reduction in the age limit for the criminal protection of children as victims of a myriad crimes, including crimes of a sexual nature.

Therefore, it would be advisable to raise awareness about the need to distinguish between the child as perpetrator and the child as victim in criminal law and about the need to increase the protection of children in the 15-18 age group too. The solution appears to be the approximation of the age limit for the protection of a child to the age limit of formal adulthood.

7.7 Institutional safeguarding of the implementation of the Convention on the Rights of the Child

In its Final Reports from 2003, the UN Committee on the Rights of the Child recommended that the Czech Republic create or appoint a single body equipped with sufficient powers and resources to play the role of a coordinator in the implementation of the UN Convention on the Rights of the Child (the 'Convention').[334] Under a Government Resolution[335] the *Analysis of the Current State of Institutional Safeguarding of the Implementation of the Convention on the Rights of the Child ('Analysis´)* was thus drawn up. The Analysis made highly unsatisfactory findings in the coordination of policies as regards the rights of the child and the family, especially in the case of endangered children where the family fails and the child requires active State assistance. The tackling of these problems (e.g. the social-law protection of the child, various forms of surrogate care) is in the competence of several departments – the Ministry of Labour and Social Affairs, the Ministry of Education, Youth and Sports, and the Ministry of Health. The conclusion from the Analysis was to entrust the coordination of policies related to the rights of the child and the family, especially in the case of endangered children, to the Ministry of Labour and Social Affairs, and to enshrine the transfer of certain powers to this Ministry.

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332 see Parliamentary Press No 744/0 § 25 (http://www.psp.cz/forms/tmp_sqw/3e50003c.doc) and its amendment proposals, Parliamentary Press No 744/3, the amendment proposal of the MP Radim Chytka, labelled as K1 (p. 29) (http://www.psp.cz/sqw/historie.sqw?o=4&T=744)

333 Act No 140/1961, the Criminal Code, as amended

334 see the conclusions of the UN Committee on the Rights of the Child in the discussion of the First and Second Periodic Report on the Observance of the Convention on the Rights of the Child in the Czech Republic from 1997 (CRC/C15/Add.81) and 2003 (CRC/C/15/Add 201).

335 Government Resolution No 898 of 10 September 2003 on the final recommendations of the Committee on the Eights of the Child – inspection body for the Convention on the Rights of the Child (http://racek.vlada.cz/usneseni/)

The Government approved the Analysis[336] with no change on the competences of facilities for institutional and protective care. Under this resolution, the Ministry of Labour and Social Affairs was set the task of coordinating the national agenda for the implementation of the Convention. As of 1 August 2005, a new employee was recruited for the Ministry's Family Policy Department to take charge of the scheduling of tasks related to the Convention and to establish and coordinate working parties on individual themes.

Due to the opposition of the Ministry of Education, Youth and Sports and subsequently the Ministry of Health, the shift of competences in the sphere of institutional and protective care to the Ministry of Labour and Social Affairs was not approved by the Government. However, in practice this shift would have facilitated more systemic changes and thus advanced reform in the most problematic areas, i.e. in the care of endangered children. *Therefore, in the future it will be necessary to change the Competence Act so that all activities connected with the coordination of the ministries and other central institutions of state administration in the field of the rights of children are transferred to the Ministry of Labour and Social Affairs.*

8. Foreigners

8.1 Basic trends in 2005[337]

The state of the human rights of foreigners living in the Czech Republic remained free of major changes in 2005, both in the case of foreigners who are EU nationals, whose legal status has improved considerably now that the Czech Republic is a member of the European Union, and in the case of third-country foreigners. As regards the residency rights of third-country nationals, which are key rights for these foreigners, the Czech Republic is seeking a balance between efforts to grant foreigners certain rights and guarantees, and retaining the fundamental right of making decisions on the residency of foreigners in keeping with the country's interests. It is difficult to find a balance between these two principles; where the conflict, the brunt is too often borne by the foreigners.

On the one hand, Czech society increasingly recognizes the need for qualified foreigners in economic life and instruments that will enable the State to manage migration efficiently are being actively sought. On the other hand, foreigners are still being deterred from entering or staying in the Czech Republic by phenomena such as, in certain respects, unnecessarily stringent and non-transparent laws or the poorly transparent work of the Czech Republic's missions, which make decisions on short-term visas outside the scope of the Code of Administrative Procedure.

In the search for improvements, there is too much reliance on changes in legislation, which often results in changes for the better.[338] However, sometimes the laws are a step head of practices and even the stage of discussion. Foreigner legislation is so non-transparent and

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[336] Government Resolution No 530 of 4 May 2005 on the Analysis of the Current State of Institutional Safeguarding of the Implementation of the Convention on the Rights of the Child (http://racek.vlada.cz/usneseni/)

[337] More detailed information about migration can be obtained from the annual reports on migration in the Czech Republic, compiled by the Ministry of the Interior.

[338] E.g. a change in Title XII to the Act on the Stay of Foreigners. Significant improvements could sometimes be achieved in the scope of previous legislation.

complicated that sometimes even experts overlook the fact that certain desirable legislative improvements have been incorporated into the law in the meantime. Improvements in laws are difficult to reflect in the practices of the authorities.

8.2 Course pursued by the EU in 2005

In the field of legal migration, no fundamental EU acts were adopted in 2005, with the exception of the end of negotiations on the legal status of research workers from third countries, resulting in the issue of *Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research*.[339] In 2005, the financial programme *Solidarity and Management of Migration Flows (2007-2013)* was also prepared, part of which involves the creation of a *European Fund for the Integration of Third-Country Nationals.*

Significant measures aimed at combating illegal migration include the *Proposal for a Directive of the European Parliament and of the Council on minimum standards and procedures in Member States for returning illegally staying third-country nationals* and the *Proposal for a Decision to Create a European Return Fund*, which is also part of the creation of the above-mentioned framework financial programme (see above).[340]

8.3 Legislative changes in the Czech Republic in 2005

Further to developments in the EU, the Ministry of the Interior drew up several amendments to the Foreigners Act. The most significant legislative change at the end of 2005 was the amendment to the Act on the Stay of Foreigners (Act No 428/2005), which continued the trend of a gradual improvement in the status of foreigners staying in the country long term and the tighter conditions for the admission of new migrants. In particular, the amendment implemented *Council Directive 2003/86/EC on the right to family reunification* in the correct manner, incorporated in the law some of the ideas from the *Action Plan on Illegal Migration*, expanded the group of persons who are allowed to enter the Czech Republic without a visa to include holders of long-term and permanent residency permits in other EU Member States (i.e. they can remain in the Czech Republic without a visa for five days), extended the maximum validity period of permission to remain long-term in certain cases from one year to two years, defined in more detail the reasons for granting sufferance and imposed the obligation on accommodation facilities to provide foreigners with housing of a reasonable hygienic quality. The new regulation of detention in detention facilities for foreigners to be deported, the restriction n the period over which young foreigners may be thus interned, and

339 The mission of the directive is to lay down conditions for the recruitment of researchers from third countries (outside the EU) in EU Member States for a period of longer than three months, based on a hosting agreement concluded with research institutions.

340 The aim is to unify the procedures of EU Member States applicable to the deportation of foreigners from third countries, the introduction of transparent common rules, the use of coercive means, temporary detention and the prohibition of entry, with full respect for the human rights of the persons affected. The Czech Republic believes that the proposal is imbalanced and that it will not further the harmonization of Member States' practices; instead, it will protract the deportation process.

in particular the transfer of the administration of these facilities from the police to the Refugee Facilities Authority of the Ministry of the Interior are also correct moves.[341]

In previous years, criticism frequently centred on the fact that neither during proceedings nor during the actual deportation in cases where foreigners had been detained did the foreign police investigate whether the deported foreigner faced the risks described in Section 179(1) of Act No 326/1999. The fact that the amendment provided for investigations into the existence of obstacles to deportation as a mandatory part of each individual proceedings on administrative deportation and decisions should be welcomed.[342]

In 2005, the institution of invitations to the Czech Republic in accordance with Section 180 of the Foreigners Act was made more elaborate. The police may now require that the inviting person prove that he has funds not only to cover the high cost of his stay, but also funds at the amount of the standardized costs of accommodating the foreigner, the price of an air ticket for the foreigner and, if the invited foreigner does not have travel health insurance and the inviting person does not undertake to conclude travel health insurance for the invited foreigner, cash in the amount of EUR 30,000.[343] In this respect, it should be noted that in practice genuinely incurred costs of the outbound travel and health care of foreigners are not recovered from the inviting persons. Although the more stringent conditions comply with the requirement of the clarity and comprehensibility of the law and the consideration for a reduction in the risk of invitation abuse is also appropriate, the fact of the matter is that an invitation for one adult foreigner per month may be extended only by someone who is capable of presenting evidence that he has between CZK 60,000 and CZK 70,000 at his disposal (excluding health insurance); inviting a whole family would require several times this amount. It is evidently too early for a practical evaluation of practice in this point. It is also too early to assess the practical impacts of introducing the strict obligation of newly arriving foreigners to present health insurance before the visa is placed in their passport.

The ombudsman also addressed matters connected with the institution of invitations as the inviting person, because of the inappropriate formal appearance of the relevant official forms in certain cases, had to prove he had disproportionately high amounts intended to demonstrate sufficient funds to cover the costs of the invited foreigner in the Czech Republic (the forms did not make it possible to state for how many days the foreigner was being invited to the Czech Republic – there was only a specification of the approximate duration of the stay); furthermore, these forms existed only in Czech. It was also possible to apply for verification of an invitation only at the foreign police in the district of the inviting person's permanent residence. However, an initiative by the ombudsman resulted in a positive shift in that more precise forms were prepared with the possibility of specifying the number of days

341 see also the 2004 Report and Chapter II/8.1.

342 In accordance with the case law of the Municipal Court in Prague, the issue of the enforceability of decisions on administrative deportation in proceedings was examined before this amendment; however, assessments of this issue were not contained in the verdict part of the decisions. A continuing problem in this respect is the practice of ruling out the suspensory effect of appeals against foreign-police decisions on administrative deportation, which forces foreigners to leave the Czech Republic in the period set for their deportation, even though the bringing of an action at a court has suspensory effect under the law as regards the enforceability of decisions. (However, according to information from the Ministry of the Interior the suspensory effect of appeals is ruled out almost exclusively in the case of foreigners dwelling on Czech territory without justification.) In cases where a foreigner to be deported in accordance with Section 179(c) of the Act on the Stay of Foreigners is denied the right to a judicial review of such a decision and a decision is made to rule out the suspensory effect of an appeal, in the opinion of the UNHCR this procedure cannot be considered adequate protection against possible *refoulement*.

343 This EUR 30,000 corresponds to Council Decision 2004/17/EC and the related EU requirements.

that the foreigner would be staying in the Czech Republic; three language versions of the forms were produced and Czech citizens can now submit an application for verification of an invitation outside their place of permanent residence.

A change which aims to reinforce the security of the State and its other interests, but which is also highly restrictive for the foreigners affected, is the new enshrinement in the law of the possibility for foreigners to submit visa applications only 'at the mission in the state of which the foreigner is a citizen, or which issued the travel document of which the foreigner is a holder, or in a state in which the foreigner has been granted permanent or long-term residence' (Section 52(1)(c) of the Foreigners Act). Even more problematic is the fact that the Ministry of Foreign Affairs refuses to publish a list of countries from whose citizens this is required. As a result, this reduces the already very low legal certainty, predictability and transparency of proceedings at missions.

At the beginning of 2006, another amendment to the Foreigners Act could be found in the Chamber of Deputies of the Parliament of the Czech Republic.[344] The main aim of this amendment is to transpose other recently adopted Community regulations.[345] The draft makes important changes, e.g. it enables foreigners from third countries to acquire permanent residence much more quickly. EU nationals and their family members are issued with new types of documents for temporary and permanent residence. The obligation to include, with an application, a document on accommodation arrangements is also introduced (see below). There are also new regulations on the permission for EU nationals and their family members to have permanent residence – permanent residence is granted in standard cases after five years of interrupted stay in the country – possible exceptions are defined in the law (they create more opportunities to obtain this type of residence in comparison with third-country nationals). EU nationals will still be able to remain in the Czech Republic for an unlimited period without having to ask the police to issue the relevant document. If they wish to remain in the country for a period of longer than three months, it will be up to them whether they apply for the issue of the relevant document confirming their temporary residence in the country. The possibility of obtaining a visa for a stay of more than 90 days for the purpose of carrying on business in accordance with the Trade Licensing Act is simplified.

8.4 Problems related to the health insurance of certain categories of foreigners from third countries who have resided in the Czech Republic long term

Systemic deficiencies in the health insurance of foreigners from third countries, as detailed in the Report on the State of Human Rights in 2004, have not been resolved.[346] The

344 Parliamentary Press No 1107

345 They are: Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

346 2004 Report, II.8.4. EU social security regulations apply to the health insurance of foreigners from other EU Member States. Citizens from other EU Member States are either direct participants in the Czech system of public health insurance (persons employed in the Czech Republic and their family members or those who declare and prove residence in the Czech Republic) or come here with a European health insurance card and are treated in healthcare facilities in the Czech Republic on production thereof. The healthcare facility bills the care to the

most alarming situations are those where a child is born to long-term resident foreigners in the Czech Republic, which insurance companies do not commercially insure. For these foreigners, it is often difficult, if not possible, to cope with their social situation after the birth of the child if they are forced to cover the cost of the child's health care themselves. A well-known media example of this untenable situation was the case of the newborn boy Do from Varnsdorf in the Děčínsko district, who was born prematurely in 2005 and required immediate care.[347] Although his parents, Vietnamese living long term in the Czech Republic, were insured, the insurance companies refused to provide commercial insurance for the boy (from their point of view quite logically). The parents owed Most Hospital CZK 780,000 for the care provided. The Our Child Foundation announced a collection for the boy.[348]

According to information from the Ministry of Health, the problem of the health insurance of foreigners at present is being tackled – these children could be direct participants in public health insurance throughout their stay in the Czech Republic. This problem should be resolved in 2006.

8.5 Foreigners' access to education

At the beginning of 2005, the new Education Act (Act No 561/2004) entered into effect; despite certain pluses, it generally made the legal status of foreigners in education more complicated. Section 20 of the Act guarantees foreigners only access to 'primary, secondary and post-secondary vocational training under the same conditions as nationals of the Czech Republic, including education in the scope of institutional and protective care', which also applies to foreigners with permanent residence. Only EU citizens enjoy a status the same as Czech nationals in all areas of education and in all educational services.

Third-country nationals, including those with permanent residence, must therefore pay a higher fee (full non-capital costs) for primary art education, for language, special-interest and other education (e.g. school clubs), for preschool education (only Czech nationals are entitled to free teaching in the final grade of nursery school), and for school services (e.g. advice, accommodation and catering facilities). The status of third-country nationals with permanent residence is thus much worse than under the previous legislation, in spite of the general tendency to place foreign permanent residents on the same level as Czech citizens in all matters, unless there is clear justification not to; mere financial demands in the Czech Republic were not previously considered such a reason.[349]

Another problem is the restrictive definition of compulsory full-time schooling. Section 36(2) provides that: 'Compulsory full-time schooling applies to citizens of the Czech Republic, citizens of another Member State of the European Union and their family members resident on the territory of the Czech Republic based on a special residence permit, and other foreigners with permanent resident in the Czech Republic or temporary residence on long-

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representative health insurance company, which ultimately receives reimbursement of the care for foreign policyholders via the Centre for International Reimbursements.

347 Television NOVA provided information on this situation several times.

348 http://www.nasedite.cz/webmagazine/home.asp?idk=175

349 A solution will be found in large part in the form of an amendment to the Act on the Stay of Foreigners and other regulations discussed in the Chamber of Deputies as Parliamentary Press No 1107 (Part Six, Article IX), which places third-country nationals with the status of long-term residents, i.e. foreigners after five years' stay in the Czech Republic, on a par with EU nationals. Even so, in the Education Act it would be advisable to replace the criterion of citizenship with the criterion of permanent residence.

term visas, and asylum-seekers and parties to proceedings on the granting of asylum.' This provision does not include children - foreigners who are resident in the Czech Republic without a permit, i.e. not even EU nationals, for whom a resident permit is no longer required.[350] Here, the State is resigned to the fact that it must impose the obligation to attend school on all inhabitants on the territory of the Czech Republic.[351]

As the imposition of the obligation to attend school is a means to ensure the effective implementation of the right of the child to education, it is necessary to amend the law so that compulsory full-time schooling is imposed on all children in the Czech Republic for a certain period, e.g. for a period of longer than three months, irrespective of their legal status (especially unreported EU nationals, but also other illegally resident foreigners – see below).

8.6 The access of foreigners from third countries to paid employment and self-employed economic activities

The consequences of the new Employment Act were not felt in full until 2005.[352] This Act refined legislation on the employment of foreigners and improved the status, for example, of asylum seekers after their first year's stay and foreigners with a visa for the purpose of sufferance. Section 89 of this Act pursued the correct goal – not to permit circumvention of employment regulations whereby legal entities employ foreigners who are listed as statutory representatives and members of these business entities, which made it possible to circumvent the labour office, obtain a resident permit more easily, pay lower taxes and contributions, and ignore the legal provisions on the protection of employees. In practice, this was hampered by the fact that it is not clear whether the obligation to procure an employment permit implies the obligation to be subsequently actually employed in a labour-law relationship, whether, with work in smaller companies, it is possible to apply the principle of prioritizing citizens of the Czech Republic/the EU/the EEA and Switzerland for these jobs, who is meant to control everything, whether the statutory representative or partner carries out routine activity (whether the foreign police does too etc.), for what purpose these foreigners are meant to request a residence permit (whether for the purpose of employment or for the purpose of participation in a legal entity), etc.

An inconspicuous, but sometimes palpable deterioration in the status of foreigners (including a person with permanent residence and EU nationals), occurred with the introduction of new forms for registration in the Commercial Register (Section 32 of the Commercial Code). For the registration of the statutory representatives of business entities in the Commercial Register, all foreigners must now also present evidence of good character from the country of which they are a national, even if they have never set foot in that country. Previously good character was evidenced only to the police in the handling of residence authorization and at the trade licensing office. Here, too, it would be advisable to replace the criterion of citizenship with the criterion of permanent residence. On the other hand, under the above-mentioned amendment there is no longer an obligation for foreigners to prove the

350 Following an amendment to the Foreigners Act (Parliamentary Press 1107), EU citizens will only be issued with confirmation of temporary residence, although even without a permit EU nationals will be staying legally in the Czech Republic. This change must be reflected in Section 36 of the Education Act too.

351 In addition, a situation can be imagined where certain foreigners from the EU might intentionally try to avoid compulsory schooling, which could be achieved by entirely legal means.

352 Act No 435/2004 on employment

legitimacy of their stay before the court of registration. Previous legislation, however, seemed to be more expedient and simpler for foreigners.

8.7 The situation at foreign police offices, provision of information

In the past, the generally poor standards at foreign-police stations have been criticized by many institutions (including the ombudsman and the Government Commissioner for Human Rights). It was stated that this was a deep-rooted systemic problem that should be addressed. The situation at the foreign-police station in Olšanská Street, Prague, was generally considered to have the long-term worst standards, which was highlighted by media reports and an investigation launched by the ombudsman in March 2005 aimed at improving current practices – not only at this site, but within the foreign police as a whole. In 2005, improvements were made at the site in Olšanská Street following the relocation of part of the agenda concerning the nationals of other EU countries to another building. Further conditions for improvements will arise when the planned relocation of the SCPPP Prague district headquarters to new premises in Praha 3 takes place. The access to information improved somewhat too – basic information concerning legislation is available on web pages and a telephone information line should be available for foreigners as of 1 June 2006 (although getting through is difficult in practice).

Interesting observations about the situation in Brno and Prague were made in a project of the Human Rights League called 'Applying foreigner legislation in practice'. The project combined a legal analysis and sociological research with the aim of ascertaining the interaction between foreigners and staff at the foreign police, as well as third parties.[353] It focuses on the level of information, intermediary services and corruption. The research confirmed that foreigners believe the administration and inadequate level of information to be a fundamental problem. In response to the question 'What bothers you most about your stay here?', 42% of respondents mentioned the administration, 38% the separation from the relatives, and 23% how to obtain information. However, foreigners are generally satisfied with the work of the foreign police – 60% of respondents expressed moderate satisfaction with the outcome of their visits to the foreign police to date; about 40% said they were moderately or very dissatisfied with the outcome of their visits. In their contact (or in the organization of services connected with contact) with the foreign police, foreigners often use intermediaries (commercial agencies, non-profit organizations, lawyers) or their acquaintances. The largest source of information is clearly friends and acquaintances – last year respondents most frequently turned to a compatriot they knew (55%) or a Czech acquaintance (43%); approximately 11% of foreigners used commercial agencies and 3% of foreigners non-profit organizations. However, in terms of lifelong experience, as many as 40% of foreigners had used the services of a commercial agency, while use of services offered by non-profit organizations stood at around 8%. Czech seems to be only part of the problem – the official language of the laws is a greater hurdle. It is hard to determine the answer to the existence of corruption; the foreigners stated that they have little experience of corruption and almost no direct experience.

The survey underlined the need for comprehensive action – a simplification of the laws, a simplification of communication, more efficient services and system transparency.

[353] The investigation in this project took place between February and June 2005. Basic information about the project can be found on the website of the Human Rights League at http://www.llp.cz. The full research should be posted here at some time in the future.

According to the survey, the availability of information contained in private internal regulations is a problem. The cause of the problems is the frequent extensive changes in the laws and the quality of the information provided. The disadvantageous position of the foreigner is consolidated by the exclusion of certain parts of the Code of Administrative Procedure in certain proceedings and the partial exclusion of judicial reviews. The unclear State policy in relation to foreigners also proved to be a drawback.

As the research showed, the certain degree of non-transparency detected in the work of the foreign police (at least from the aspect of foreigners) is intensified by the fact that internal regulations are not published. The explanation for this procedure is that internal regulations contain information which, if published, could jeopardize the efficiency of the procedure applied by the departments of the foreign police service. Foreigners are often only informed of the content of certain internal regulations orally when they are asked to make additions to the documents they are submitting. (Although a judicial review of the work of the foreign police is possible, considering the protracted nature of judicial proceedings it cannot be used effectively in practice.) Even if we accept this argument, the fact remains that information stemming from internal regulations that are directly relevant to foreigners is not often available in a sufficient scope and form.

In summary, improving the situation at police stations and ensuring the faster, more effective provision of information to foreigners is still a topical task. If the situation is to be improved in the field, the laws need to be made more transparent too.

8.8 Other problem areas

In 2005, the employment of North Korean labourers in several Czech textile and footwear plants continued. Accusations of 'slave labour' and illegal restraint, which appeared in the national and international media,[354] were investigated by the police and the competent labour offices. However, during the inspection no breach of the law was found. The Ministry of Labour and Social Affairs also stated that a solution would not be possible without the cooperation of the Korean workers. In the circumstances, cooperation seems highly unlikely. However, the legality of the stay and work permits of North Korean seamstresses and their 'voluntary' submission of part of their pay to the North Korean Embassy, and perhaps even the objectively better living conditions compared to life in the DPRK cannot relieve the Czech authorities of responsibility for the fact that they indirectly enable the DPRK to control its citizens on the territory of the Czech Republic. This specific case also reveals certain more general problems which are still not paid sufficient attention. These include the working conditions of foreigners (and Czechs) in certain sectors of the economy, such as the textile industry. Another problem is the suspicion of the easy exploitation of foreigners who do not know their environment or the language and who are thus highly dependent on their employer or intermediary.

8.9 The integration of immigrants into Czech society

In a document approved under a Government Resolution of 5 January 2005, the new direction for the development of the concept of the integration of foreigners was set out.

[354] E.g. an article by Barbara Demick in the Los Angeles Times of 27 December 2005 and in the San Francisco Chronicle of 1 January 2006, Respekt 12 December 2005.

During 2005, the Ministry of Labour and Social Affairs, in collaboration with other ministries concerned, formulated the draft of the updated Concept for the Integration of Foreigners (approved by Government Resolution No 126 of 8 February 2006), which, in contrast to the previous concept based solely on mainstreaming, sets out priority areas and key requirements for the integration of foreigners.[355] In the context of preparations for the new integration strategy, a discussion began on mandatory language lessons for foreigners, and on the planned introduction of tests in Czech which have to be passed to obtain permanent residence. This debate again highlighted the fact that the State has not yet paid attention to the organization of Czech courses for foreigners. The only exception here is children – foreigners – EU citizens, for whom language preparation in Czech is enshrined in the Education Act.

In 2005, the competent ministries promoted the integration of foreigners by involving the nongovernmental sector in these activities.[356]

8.10 Citizenship, judicial reviews of decisions not to grant Czech citizenship

In 2005, Czech citizenship was granted to 1,177 people (excluding Slovak citizens). Most frequently, Czech citizenship was granted to people from Ukraine, Poland, Romania and the Russian Federation. The highest increase in the granting of Czech citizenship was recorded with asylum seekers (a rise by 39 people compared to 2004). Slovak citizens are a group in their own right. In 2005, Czech citizenship was granted to 246 Slovak citizens. At the same time, 1,013 Slovak citizens obtained Czech citizenship in a simplified manner – by means of a declaration.

In 2005, the Ministry of the Interior drew up an *Analysis of legislation concerning the acquisition and loss of citizenship*, which was discussed by the Czech Government on 13 July 2005; the Minister of the Interior was set the task of preparing and presenting to the Government, by 30 September 2006, a general principle to the Act on the acquisition and loss of Czech citizenship. A new trend in the acquisition of Czech citizenship will be an expansion in the possibility of dual citizenship. This will also be reflected in the field of granting Czech citizenship, where a document confirming the forfeiture of previous citizenship will no longer be required.

However, whole the *Analysis* covers new needs, it overlooks old problems – the ongoing need to maintain a reasonable solution for persons whose citizenship was affected by the split of the Czech and Slovak Federative Republic. This lingering need is evidenced by the fact that the acquisition of Czech citizenship in this manner accounts for almost half of the cases of the acquisition of Czech citizenship. According to information from the Ministry of the Interior, this issue will therefore be discussed further in the preparation and discussion of the general principle to the Act on the acquisition and loss of citizenship.

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355 The support of projects is considered one of the key elements of the integration strategy to date. Every year, the ministries announce grant proceedings for the support of foreigner integration; in 2005, several dozen projects were supported in this way. The projects thematically focus on areas such as increasing the awareness of foreigners and citizens, social and legal consultancy for foreigners, language proficiency and other skills required by foreigners, the prevention of intolerance, racism and discrimination of foreigners. Similarly, regions and municipalities supported myriad projects concentrating on the integration of foreigners in 2005.

356 For example, at the Ministry of Culture, 33 projects were submitted in 2005 which were evaluated by the Grant Committee of the Ministry of Culture for the Integration of Foreigners. Grants totalling CZK 800,000 were made for sixteen projects.

In 2005, legislative debate of a Senate bill continued – an amendment intended to amend Act No 193/1999 on the citizenship of certain former Czechoslovak citizens, as amended. The bill, which deals with the status of certain compatriots, cancels the time-limited possibility of submitting a declaration on Czech citizenship, which should now become a permanent possibility.[357]

The scope of judicial reviews in cases where decisions by the Ministry of the Interior reject applications for Czech citizenship is still an open issue; in practice this results in significant legal uncertainty for the foreigners concerned and non-uniform judgments, even within a single court with jurisdiction to deliver verdicts on the cases in question.[358] At present, the scope of judicial reviews of decisions not to grant citizenship is a matter being addressed by the Supreme Administrative Court, whose decision should help resolve the situation.[359]

Workers from nongovernmental organizations point out another practical problem – after being granted citizenship, refugees are often required to surrender all their documents – permission to stay as a refugee and their travel document – at the locally competent registry and are then without documents confirming their authorization to stay (and travel) until their new documents are issued. With some clients of the Centre for the Integration of Foreigners, this situation has lasted for one, two, or even three months.[360]

8.11 Illegal migration and its human-rights aspects

In 2005, awareness of illegal migration rose in the sphere of academic research and, in particular, in state administration and among non-profit organizations (e.g. the project 'International migration and the illegal work activity of migrants in the Czech Republic in the broader European context', commissioned by the Ministry of Labour and Social Affairs, and projects by nongovernmental organizations concerning illegal migration – see below).

The human rights aspect of illegal migration is clearly most affected in the field of the schooling of the children of migrants who do are not lawfully resident; this issue has been made significantly more problematic by the new Education Act (see above). Section 20(2) of the Act discusses foreigners as follows: 'The persons specified in paragraph (1) shall become

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357 Act No 46/2006 amending Act No 193/1999 on the citizenship of certain former Czechoslovak citizens.

358 On the one hand, the Municipal Court in Prague, in its resolutions filed under numbers 8 Ca 222/2003-23, 7 Ca 256/2003-25 and others, rejected an action due to inadmissibility, and on the other hand concluded in its judgment filed under number 5 Ca 10/2004-24 that '*it is not appropriate to dismiss the action and thus deny the claimant judicial protection.*'

359 Pavel Molek and Vojtěch Šimíček are studying this issue as they contemplate the constitutional nature of the current system of granting citizenship. The authors believe that. from the aspect of the current human rights situation, the traditional (negative) reply to the question of the right to the provision of citizenship is erroneous. They state inter alia that, with the establishment of the Supreme Administrative Court in 2003, there has been an evident shift in case law. 'In particular, there have been evident attempts by the Supreme Administrative Court to place certain pressure on the Ministry to at least provide due explanations in cases where decisions are made not to grant citizenship.' (P. Molek & V. Šimíček, Udělování státního občanství – na cestě od milosti státu k soudně přezkoumatelnému správnímu uvážení [Granting citizenship – on the way from the mercy of the State to judicially reviewable administrative deliberation], *Právník* 2/2005, pp. 137-156., cit. pp. 144, 145.) Vladimír Mikule was of another opinion. (V. Mikule, Ještě k udělování státního občanství a ke správnímu uvážení [Further observations on the granting of citizenship and administrative deliberation], *Bulletin advokacie 10/2005*, pp. 46-48.)

360 The Centre for the Integration of Foreigners states that its staff met with this problem among ten clients in 2005.

pupils and students of the relevant school under the conditions laid down herein if they prove to the head teacher, no later than on commencement of their education, the legitimacy of their stay in the Czech Republic'; this can be interpreted to mean that illegal migrants should not be admitted to schools at all or, with reference to the constitutional right to education, it could mean that head teachers are obliged to keep a child in their school (and at the same time they are to notify the foreign police and other authorities as appropriate). Even this second approach would, in practice, prevent the right to education for these children, and at any rate the situation is worse than before, when illegal foreigners were admitted to schools.

In 2005, unaccompanied minors in the 15-18 age category (who were detained in the scope of illegal entry to the Czech Republic or an illegal stay in the country) continued to be placed in detention facilities for foreigners with a view to their administrative deportation. The latest amendment to the Act on the Stay of Foreigners – see above – made changes for the better as regards unaccompanied minors. This amendment regulates new special conditions, including a reduction n the maximum duration of the detention of minors from 180 to 90 days. Despite the positive legislative changes made in 2005 in connection with unaccompanied minors, the UNHCR, for example, remains concerned that the Czech authorities continue to detain unaccompanied foreigners aged 15-18 years old and place them in facilities, inter alia with regard to Article 37(a) and (b) of the UN Convention on the Rights of the Child. In the opinion of the UNCHR, 'children who seek asylum should not be detained in detention facilities under any circumstances,' especially if they are 'unaccompanied children' (paragraph 7.6 of the UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1 February 1997).

Greater media coverage focused on illegal migration with discussions about the possibility of applying the 'regularization' ('legalization' or 'amnesty') of the stay of illegal migrants. This first emerged in reaction to the extensive regularization if illegal migrants in Spain in spring 2005[361] and then resurfaced at the end of the year in the wake of a project on migration by five nongovernmental organizations, which presented regularization measures in the broader European context and outlined in more detail some of the possibilities of regularization that the Czech Republic could consider (the legalization of labour-based migration, legalization on humanitarian grounds, measures to facilitate the waiving of administrative deportation, impunity in the event of departure from the country by foreigners who register voluntarily, etc.).[362] Section 314 of the draft of the new Criminal Code also provoked debate; this provision criminalizes, in a blanket manner, any assistance provided to illegal migrants.[363]

Many of the problems discussed in the context of regularization could be resolved in the future by an easier approach to the employment of foreigners in the Czech Republic, and in particular by measures to prevent the dependence of foreign workers on the 'client system'. A partial element in this respect is the facilitation of access to information on the legal method of finding employment in the Czech Republic while migrants are still in their source country. It would also be expedient to provide a certain protective time limit to foreigners who lose

361 In Spain, the stay of 700,000 illegal immigrants was legalized in 2005.

362 Observations from the project are summed up on a CD ROM entitled 'The Czech Republic and illegal migration'.

363 Parliamentary Press No 774/0. The Chamber of Deputies passed this bill on 30 November 2005. In France, there was a similar discussion to define the conditions when illegal migrants could be helped. This concerns situations such as danger to life or health etc.

their job, as is currently being discussed in a project by the Ministry of Labour and Social Affairs called *Pilot Selection of Skilled Foreign Workers.*[364]

It is clear that in the future even the Czech Republic will have to pay more attention to the problem of illegal migration and the human rights of individual foreigners who are present on the territory of the Czech Republic in violation of regulations.[365]

9. Refugees and other persons in need of international protection

9.1 Overall situation with regard to asylum in 2005

In 2005, the number of applications for asylum continued to fall; there were two main reasons for this. First, there has been a reduction as a result of the Czech Republic's accession to the EU and the application of the Dublin system. The second factor is the pan-European trend, where lower numbers are heading for EU countries compared to previous years. In 2005, 4,021 people sought asylum in the CR, a fall of 26.3% (from 5,459 asylum seekers) against 2004. Most asylum seekers came from Ukraine (24.5% of the total number of applicants), which has been among the leading source countries for many years. Citizens from Slovakia also submitted a high number of applications (711 persons). In 2005, there was a significant rise in the number of applicants from India (342 persons). These countries are followed by China and the Russian Federation.

In 2005, the Ministry of the Interior issued 4,375 decisions in asylum proceedings, and granted international protection (i.e. asylum or obstacles precluding travel to another state) to foreigners in 330 cases. This is the highest number in the history of the Czech Republic. The total percentage of forms of protection granted in 2005 was 11.1%.[366] The Ministry of the Interior granted asylum to 251 persons, of which most citizens were from the Russian Federation (69) and Belarus (47), followed by Armenia (19), Kazakhstan (18), Uzbekistan (17) and Ukraine (9). Obstacles precluding travel to another state were granted in 79 cases, most frequently to nationals of the Russian Federation (50).

The year 2005 marked the 15th anniversary of the moment that the first 'post-November' refugees appeared on the territory of what was then Czechoslovakia. This history was commemorated in an event by the Refugee Facilities Authority of the Ministry of the Interior called *Under One Sun Project – 15 Years of Refugees in the Czech Republic*. The aim was to create room for meetings between foreigners - asylum seekers and the majority society.[367]

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364 Viz http://imigrace.mpsv.cz/

365 For example, during a visit to the Czech Republic in January 2005, workers from the office of the Commissioner of the Council of Europe for Human Rights made it clear in an interviewed with the Commissioner for Human Rights that the general approach adopted by Czech authorities to illegal migrants was the most problematic in the 'foreigner agenda'. In contrast, they expressed their satisfaction with the changes made in the regime for the detention of illegal migrants.

366 The overall rate of forms of protection granted is calculated as the number of asylums and obstacles precluding travel to another state divided by the total number of asylums and obstacles precluding travel to another state and the number of asylum rejection decisions multiplied by a hundred.

367 The project motto was not to present refugees without the refuges themselves – the refugees were meant to speak for themselves. Between December 2004 and January 2006, several dozen national and regional cultural events were held and refugee issues were presented in unconventional areas, both regionally (e.g. South Moravia, Kyjov) and mentally

9.2 Developing a common EU asylum policy

In 2005, the process of creating a common EU asylum policy continued. *Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status* was adopted, thus rounding off the first phase of the development of a common European asylum system. Based on the multinannual 'Hague Programme on strengthening freedom, security and justice in the European Union', approved by the European Council in November 2004, it was stipulated that adopted legal instruments should be evaluated by 2007 and that the Council should present the European Parliament with Community regulations for the second phase, exceeding the minimum level of harmonization, by the end of 2010. The aim of the second phase is to create uniform asylum procedure in the EU and a uniform status for those to whom asylum is granted that will apply throughout the EU.

The implementation of the EU asylum policy should be based on solidarity between Member States and requires the existence of mechanisms to ensure a balance between them in efforts related to the acceptance of refugees and displaced persons. To this end *Council Decision 904/2004/EC* set up the *European Refugee Fund (ERF)* for 2005-2010.[368] The European Commission set the reference amount for the funding of projects from the ERF in 2005 at EUR 1,322,783.90 for the Czech Republic. The Fund could become a stimulus and means of intensifying activities aimed at improving the situation of refugees and other persons.

9.3 Changes to the legal framework of asylum and international protection in 2005

In 2005, primarily as a result of developments in the EU, further numerous amendments were made to laws; in particular, the process of adopting two amendments to the Asylum Act was completed. Amendment No 57/2005, which entered into effect on 4 February 2005, transposes two Community directives, *Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers* and *Directive 2003/86/EC of 22 September 2003 on the right to family reunification*.[369] The minimum requirements for the reception of asylum seekers are laid down in such a manner that in normal circumstances they are sufficient to ensure a dignified standard of living and comparable living conditions in all Member States, with the aim of helping to prevent the secondary movement of applicants, which currently occurs due to the differences between these conditions in the individual Member States.

In another amendment to the Asylum Act,[370] which entered into effect on 13 October 2005, the Ministry of the Interior responded to the problems of application in practice.[371] A

(theatre and refugees). Possible contact points for further cooperation with the academic community were also defined.

368 The aim of the ERF is to encourage efforts by Member States in connection with the reception of refugees and displaced persons with all the consequences, with consideration for the relevant Community regulations. The administration of national programmes for the ERF is decentralized, i.e. the recipient party is responsible for decision-making and for checking the implementation of projects. On 18 December 2005, the first round of the call for project applications closed; the second round ended on 14 February 2006. The projects will be implemented by 31 December 2006.

369 for the characteristics of the directives, see the 2004 Report, point II/9.2

370 Act No 350/2005 amending Act No 325/1999 on asylum and amending Act No 283/1991 on the Police Force of the Czech Republic, as amended, (the Asylum Act), as amended, and certain other laws

significant change in the amendment is the judicial review of administrative decisions. All actions in asylum cases are heard by a single judge at the regional court, and appeals on a point of law in asylum cases are heard by the Supreme Administrative Court. Further to the comments and suggestions raised by the ombudsman, the UNHCR and many nongovernmental organizations and their initiatives in parliament, the blanket exclusion of the admissibility of appeals on points of law in asylum cases was not achieved as originally anticipated in the governmental draft amendment to the Asylum Act.[372] In its place, the new institution of the inadmissibility of an appeal on a point of law was introduced as the first step in reducing the workload of the Supreme Administrative Court while preserving appeals on a point of law in asylum cases. The introduction of the inadmissibility of appeals on a point of law (the new Section 104a of the Code of Administrative Procedure), which was selected by the Chamber of Deputies as a compromise, can be considered a breakthrough in the current system of the administrative judiciary, the positive and negative results of which will become clear in its practical application, especially as regards the very narrowly set scale of admissibility – an appeal on a point of law must, in terms of its significance, considerably exceed the applicant's own interests – and as regards the fact that a decision on the inadmissibility of an appeal on a point of law need not be justified. The amendment has resulted in practical problems as regards a change in the method used to provide health care to applicants (see Chapter 9.4.1).

In 2005, preparations were also made for a further amendment to the Asylum Act and other affected laws in response to Community legislation, e.g. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the 'Qualification Directive'). This is another of the draft amendments intended to transpose European legislation into Czech national law by 10 October 2006. A fundamental change can be found in the proceedings on the granting of international protection, which may be granted in two forms – either in the form of asylum or on the form subsidiary protection.[373] If the applicant meets the conditions for the granting of both forms, asylum is granted as this is the higher form of protection. This amendment should help improve the status of persons holding a visa for the purposes of the sufferance of their stay, which remained arduous in 2005.[374]

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371 The amendment provides more precise wording for those provisions of the law that have provoked or could provoke disputes, elaborates on the procedure of the administrative authority, and adds some new institutions (e.g. signature clauses in the counterparts of decisions). It also amends the Act so that it complies with the new Code of Administrative Procedure and the current organization of the foreign and border police, with the aim of resolving doubts about the competence of individual police departments to carry out actions in accordance with this law. It also harmonizes the terminology of the Asylum Act with the Act on the Stay of Foreigners on the Territory of the Czech Republic, especially in terms of visa titles. There is also a new method for the regulation of conditions concerning the provision of accommodation, boars, basic hygiene resources and pocket money for asylum seekers registered at an asylum facility. An implementing regulation to the amendment is Decree No 376/2005 laying down the cost of board and accommodation provided in an asylum facility, the amount of pocket money and the dates for the payment thereof.

372 Parliamentary Press No 882; the amendment was approved as Act No 350/2005

373 Subsidiary protection is termed 'supplementary protection' in the bill.

374 These persons can work on the basis of a work permit, but they are not entitled to benefits under the Social Neediness Act or to the subsistence level; they are entitled to State social support benefits only after one year's stay. As the number of persons with this status rises, the situation is becoming serious. The status of these persons is discussed in detail by the SOZE workers Petr Èejka and Pavel Poøízek in an article entitled *Vízum strpìní - pro koho a proè?* [*Sufferance Visa – Who is it for and why?*] (September 2005) on the migraceonline server at
http://aa.ecn.cz/img_upload/9e9f2072be82f3d69e3265f41fe9f28e/PCejka_PPorizek_Vizum_strpeni.pdf

9.4 Problems of asylum practice

9.4.1 The health insurance of asylum seekers and foreigners who have been granted a visa with a view to sufferance

Since October 2005, serious problems have emerged in health insurance and the provision of health care to asylum seekers and foreigners who have been granted a visa for the sufferance of their stay. The above-mentioned amendment to the Asylum Act[375] has transferred the obligation to cover the health care of asylum seekers and foreigners holding a visa for sufferance purposes to the system of public health insurance; the amendment classifies both these categories of persons among public health insurance policyholders. The adoption of differing interpretations of Section 88(2) of Act No 350/2005[376] by the Ministry of Health, health insurance companies and the Ministry of the Interior resulted in absolute chaos in practice. Health insurance companies refuse to register these persons as their policyholders and most healthcare facilities refuse to treat them. A makeshift solution was not found until January 2006 – a permanent solution should be drawn up in the amendment to the Asylum Act.[377] Until the amendment enters into effect, the Ministry of the Interior (Refugee Facilities Authority) has tried to find a solution that would minimize damage to both clients and providers of health care. The Ministry of the Interior accepted the refusal of the health insurance companies to insure asylum seekers based on their legal analysis of the Asylum Act and the Public Health Insurance Act. Until the legislative obstacles are removed, the Minister of the Interior has issued an instruction, based on which health care will continue to be provided and covered on behalf of clients by the Refugee Facilities Authority.

9.4.2 Non-approval of a change in the place of an asylum seeker's reported address

As a result of an investigation by the ombudsman, the Ministry of the Interior changed the previous practice applied when permission is not granted for a change in the reported address of an asylum seeker; in the future, notifications on the non-approval of a change in the reported address will contain a brief explanation of the grounds for the decision so that it is clear why and under what conditions the approval was not granted to the asylum seeker. The absence of an explanation is not in keeping with the principles of good practice and does not comply with the requirement of persuasiveness as laid down in the Code of Administrative Procedure. Furthermore, the whole problem has a constitutional-law aspect, one of the fundamental principles of material rule of law, which is observance of the principle of the predictability of the law and the exclusion of space for arbitrary behaviour on the part of the executive authority or the decisive administrative authorities.

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375 Act No 350/2005 amending Act No 325/1999 on asylum and amending Act No 283/1991 on the Police Force of the Czech Republic, as amended, (the Asylum Act), as amended, and certain other laws

376 Section 88(2) of the Asylum Act reads as follows: 'Costs connected with the provision of health care under paragraph (1) shall be borne by the State; costs incurred by a healthcare facility are covered from public health insurance.' The amendment to the Public Health Insurance Act applies to this provision. In Section 7(1) of Act No 48/1997 on public health insurance, as amended, at the end of the list of persons falling under public health insurance the letter p) is added which includes 'asylum seekers and their children born in the country, foreigners who have been granted a visa for the sufferance of their stay and their children born in the country, unless they have income from employment or self-employment.'

377 Parliamentary Press No 1233/0. The Government proposed that the Chamber of Deputies should debate the draft in a manner permitting it to be approved in the first reading (Section 90(2) of Act No 90/1995 on the Rules of Procedure of the Chamber of Deputies, as amended).

9.4.3 Quality of services in asylum facilities

The 2004 Report on the State of Human Rights also discussed the case of the 'electric sockets' in asylum facilities, which had received media coverage. In negotiations between the Refugee Facilities Authority of the Ministry of the Interior and representatives of nongovernmental organizations, it became apparent that the term 'dignified living conditions' would have to be defined. Therefore the Refugee Facilities Authority of the Ministry of the Interior (SUZMV) drew up a binding document entitled 'Standards of accommodation services in residential and reception centres of the SUZMV', which was approved by the Minister of the Interior in 2005.[378] This document describes in detail the accommodation conditions of asylum seekers. The document will be made available to nongovernmental organizations in the near future in order to arrange for public controls. The document discusses the issue of electric sockets in accommodation areas – based on the measures that have been adopted, all rooms used for accommodation purposes are fitted with electric sockets, apart from the Residential Centre at Kostelec nad Orlicí. Here, according to information from the Refugee Facilities Authority, capital changes are required, and therefore this standard will be met sometime in 2006.[379]

9.4.4 Asylum proceedings in the transit areas of an international airport

In 2005, preparations were made to open a new reception centre for asylum seekers in the transit area of the Prague-Ruzyně International Airport; the new premises were opened in January 2006. The opening of this new centre is a welcome development because the previous centre was entirely inadequate.

In 2005, systemic and practical problems continued with access to the transit area for staff of the Refugee Facilities Authority, who are responsible for the everyday operation of the reception centre, and workers from nongovernmental organizations who wanted to provide asylum seekers with legal or social advice.[380] A nongovernmental organization (specifically the Refugee Assistance Organization) also points out that, at the airport in Ruzyně, it has come across cases where it took days for the formal acceptance of an application and sometimes days more before a decision was delivered, even though asylum decisions in this case are meant to be issued within five days.

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[378] The aim of the document is to regulate an area which had not previously been standardized. Part of the room furnishings is a specification of electrical appliances which the asylum seeker, after permission has been granted by the operator, may use in his room. This infers that electric sockets will be included in accommodation areas.

[379] There have never been any electric sockets at Kostelec nad Orlicí, which is a former barracks. The Refugee Facilities Authority of the Ministry of the Interior must install electrical wiring throughout the building. This investment project will be integrated into the 2006 investment plan. The problem also concerned the facility in Červený Újezd, but this was closed in April 2005. As of February 2006, the Bělá-Jezová facility will be used as a detention facility.

[380] The asylum centre is located in a reserved secure area. In accordance with Act No 412/2005 on the protection of confidential information and security clearance, and in accordance with other regulations, persons who work in these areas (or have frequent access to these areas) must hold a permanent identity card. An identity card applicant must hold a certificate from the National Security Authority on personal security screening.

9.4.5 Unaccompanied child asylum seekers in 2005

In 2005, 106 minors (2004: 95) applied for asylum; almost half were children from China and India. The overwhelming majority (approximately 90%) of those seeking asylum were aged 16 or 17.[381]

In 2005, care for minor asylum seekers improved and was stabilized. Minors are placed in specialized educational establishments designed for the institutional and protective care of foreigners. Two facilities are in operation: the facility for the children of foreigners and institutional care centre in Praha 4 - Háje (with a capacity of 12 places as a diagnostic facility where stays last for approximately two months) and the related Permon Institution (Příbram) with a capacity of approximately 45 places, where several minors are being given secondary vocational training. Minors may stay at Permon Institution even after the age of 18 if their institutional care is extended by a court or by an agreement in the scope of training for a future occupation up to the age of 26. Professional and specialized workers are employed at these facilities; the facilities are striving to foster a multicultural environment with regard to the ethnic and religious diversity of the children. Removing language barriers is a priority. Individual programmes are drawn up here for children with mental trauma; care, education and conditioning programmes are adapted to the environment the children come from in the context of the individual's specific abilities.

Whereas material and other care (e.g. health and psychological) for unaccompanied minor asylum seekers is now provided to a good standard, their representation in the asylum procedure is a point of dispute.[382] In accordance with long-standing experience, the Ministry of the Interior appointed set workers of nongovernmental organizations working with refugees as 'guardians for administrative procedure'; in addition, the Ministry of the Interior submitted proposals to the court for the appointment of a guardian for the purposes of the minor's stay.[383] However, this practice is now changing. From the aspect of the consistency of the interpretation of the law, the change is logical; however, in the opinion of nongovernmental organizations the practical consequence will be a restriction in the protection of the rights of these asylum seekers.

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381 At the reception centre in Vyšní Lhoty, only 25 minors applied for asylum; at Prague-Ruzynì Airport there were 41, at special facilities (see above) there were six minors and at detention facilities for foreigners 34 minors used this possibility.

382 Section 89 of the Asylum Act reads as follows: (1) If an asylum seeker is an unaccompanied minor, he/she is assigned a guardian by the court in accordance with a separate legal regulation in order to protect his/her rights and legally protected interests connected with a stay in the country. ...(2) The role of guardian is played by an adult relative of an unaccompanied minor who is present in the country; if there is no such person or if it is not possible to appoint such a person as the guardian, the role of guardian is played by another suitable natural or legal person or municipal authority of a municipality with extended competence, based on the place where the unaccompanied minor has been registered to stay. Competence assigned to a regional authority or municipal authority of a municipality with extended competence hereunder shall be performed as devolved competence.

383 The older procedure can be summed up as follows. As soon as the Ministry of the Interior discovered that an asylum application had been submitted by an unaccompanied minor, it issued an administrative decision appointing a guardian for administrative asylum procedure, who was a worker from a nongovernmental organization. The Ministry then negotiated with this guardian in proceedings, and all actions carried out with the minor were implemented with the participation of this guardian. In addition to this guardian for administrative procedure on the granting of asylum, the Ministry of the Interior also submitted a petition to the court to appoint a guardian for the minor's 'stay'. In most cases, the authority for the social-law protection of children competent according to the child's place of stay was appointed the guardian.

Conventional practice was affected by two decisions of the Regional Court in Hradec Králové, which ruled that the guardian appointed by the administrative authority was not a guardian with whom negotiations should be held in proceedings, but that the administrative authority should immediately initiate the appointment of a guardian 'for the stay' of the asylum seeker and then negotiate with this guardian in the asylum procedure. The Ministry of the Interior therefore decided to adopt a new approach. After discovering that an application has been submitted by an unaccompanied minor, it submits a petition for the appointment of a guardian 'for the stay' of the minor, whereby it nominates an authority for the social-law protection of children (hereinafter 'OSPOD'). However, these authorities are reticent about playing the role of guardian in administrative proceedings. They argue that under the law on the social-law protection of children they are not competent, that the staff of authorities for the social-law protection of children are not trained for such services, and that there is not enough funding to hire the interpreters required for guardianship. The Ministry of Labour and Social Affairs backs this opinion. Authorities for the social-law protection of children thus practically refuse to play the role of guardian in full and limit themselves to attendance at interviews conducted with a minor in asylum procedure; they do not want to contribute, for example, to the preparation of an action. The functions that a proper guardian should perform are carried out by those who have been squeezed out of the process because they are 'superfluous', i.e. the workers of nongovernmental organizations. They do not have the obligation or right to do this – they cannot peruse the files or speak to the minor in private, even though these are essential activities for the due performance of guardianship.

Overall, the situation in this field is chaotic, which also applies to the appointment of guardians for children-foreigners in other situations – the appointment of a guardian for detention proceedings and the appointment of a guardian for proceedings on administrative deportation.[384]

Another problem is the delays in the asylum procedure of unaccompanied minors. At the end of 2005, there were 56 unresolved asylum requests submitted by unaccompanied asylum-seeking minors in the Czech Republic. The UNHCR expressed its concern at the number of unresolved asylum requests from unaccompanied minors and the number of individual proceedings where the duration had exceeded the time limit laid down in the Asylum Act. The UNHCR is of the opinion that children, considering their vulnerability and special requirements, should be granted the status of refugee as a matter of priority and that all efforts should be made to ensure the decisions in proceedings are made effectively and fairly (paragraph 8.1 and 8.5 of the UNHCR Guideline). According to partnership nongovernmental organizations, a decision on asylum is issued to most unaccompanied minors who seek asylum only when they come of age (at 18). The UNHCR received information about several cases where proceedings on asylum applications lasted longer than two years, and in the meantime unaccompanied minors came of age.

[384] If a detained person is an unaccompanied foreign minor, the police are obliged to appoint him a guardian in accordance with Section 124(3). The police notify the unaccompanied foreign minor of the appointment of a guardian and inform him of the tasks of the guardian. The guardian is appointed after detention. The foreign police appoint the Černošice Municipal Authority (the Velké Přílepy detention facilities for foreigners) as the guardian, which appealed against this. Černošice Municipal Authority was also appointed by the police as the guardian for proceedings on administrative deportation. There is no mentioned of a guardian for administrative deportation in the laws; on the contrary, under Section 178 of the Act on the Stay of Foreigners a person more than 15 years old has legal capacity for the purpose of this law. Nevertheless, this procedure is perhaps the most important for a minor, because a decision is also made on obstacles precluding transfer to another country in the case of deportation, and for this a guardian should definitely be appointed.

9.4.6 Inadequate documentation of unaccompanied children not seeking asylum; disappearance of children

In keeping with the Act on the Stay of Foreigners, as amended, unaccompanied foreign minors who do not seek asylum have the right to be issued with documents by the foreign police proving their legal status/stay if they are in institutional care in the Czech Republic. However, non-profit organizations bring attention to the fact as a birth certificate must currently be presented, unaccompanied children have practically no possibility of obtaining documents from the foreign police in the Czech Republic. The only document they currently receive is a court decision on their institutional care. In this respect, the UNHCR states that the *Statement of Good Practice published by the organization Separated Children in Europe Programme* (2004) notes that 'records and documents are essential for the protection of the long-term interests of separated children'. The authorities should thus eliminate the existing gap between legislation and its implementation.

The UNHCR expressed a certain disquiet as regards the situation of missing foreign minors. The UNHCR does not have a full overview of the situation at its disposal regarding missing unaccompanied minors in Europe. While some flee from their first country of entry to other countries where they have relatives or next of kin, in the Czech Republic the UNHCR has noted the ongoing phenomenon where unaccompanied minors disappear from institutional care with mixed feelings, if unaccompanied minors are thus placed in a more vulnerable position and exposed to the risk of human trafficking. In 2005, unaccompanied minors originally from China and India in particular went missing. Furthermore, almost all the minor asylum seekers who arrived at the airport in Prague escaped from the Czech Republic.

9.4.7 Integration of refugees in 2005

Despite the considerable efforts channelled by the State into the integration of refugees, the situation is not particularly encouraging as regards the actual integration of refugees into Czech society beyond the scope of safeguarding their staple material needs. In 2005, the concept of integrating refugees[385] in 2005 did not result in any fundamental strategic changes – as in previous years it focused on housing, on the teaching of the Czech language, and, marginally, on employment.

In 2005, 40 integration flats were provided for 102 refugees (of which seven offers were under Variant II, which allows a flat to be rented from a private lessor), and CZK 13,482,407 was released to municipalities.[386] Despite this, cases where refugees have lived in the makeshift conditions of refugee integration centres for several years were not an exception in 2005 either.

Learning Czech was encouraged in 2005 under the 'Guideline of the Minister for Education, Youth and Sports on the provision of courses of Czech for refugees'. The courses were provided by the Brno-based Society of Citizens Assisting Migrants (SOZE) under a contract with the Ministry of Education, Youth and Sports.

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385 Government Resolution No 104 of 26 January 2005 (http://racek.vlada.cz/usneseni/)

386 Under a Government Resolution, it is recommended every year that regional governors proceed in accordance with the Government material setting quotas for the integration of asylum seekers in individual regions. This is not the devolved competence of regions; the fulfilment of quotas cannot be forced and their fulfilment remains a matter for the individual regions.

The specific programme for the support of employment for refugees has not yet resulted in a major improvement compared to the situation in the past.[387] The unemployment of refugees is several times higher than the average unemployment in the Czech Republic (only 38% of refugees more than 18 years old are employed); moreover, refugees suffer from long-term unemployment. Only 20% of employed refugees carry out work in a field which is at least close to their qualifications. According to information from the Ministry of Labour and Social Affairs, in the period from November 2004 to January 2005, 71 refugees were registered at labour offices in the Czech Republic; of this number, only nine refugees were placed in retraining courses. According to the Ministry, the main problem here is that refugees have a poor (if any) knowledge of Czech. Therefore, we can only welcome the pilot project by the Ministry of Education, Youth and Sports to increase the current scope of Czech courses from 100 lessons, or in some cases 150 lessons, to 480 lessons.

In 2005, the Ministry of the Interior instigated two studies to evaluate the current level of integration and identify necessary changes. One project was a detailed study by the Institute of Ethnology of the Academy of Sciences of the Czech Republic[388] and the other was a much narrower study focusing on housing, which was prepared by the Government Commissioner for Human Rights.[389] In addition, at the request of the Government Commissioner for Human Rights, the Ministry of Labour and Social Affairs drew up an overview of the regulation of old age benefits in relation to refugees in other countries. The study by the Institute of Ethnology revealed inter alia that while the housing situation is relatively good, the situation in employment is much worse; the action plans have so far had little impact. It also brings attention to the problem of pensions – refugees generally have a claim to a pension in their source country, but as a rule it is not possible for them to obtain evidence of these entitlements; as a result of this and other circumstances, refugees are often left with no option but the subsistence level.[390] According to the analysis by the Ministry of Labour and Social Affairs, however, other countries do not have a specific solution to this problem either.

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387 On 1 October 2004, the labour offices began providing a range of individual action plans for refugees as instruments in the active employment policy with the aim of supporting this category of foreigners as a disadvantaged group as it seeks to enter the labour market. Placement in individual action plans makes it possible to draw on comprehensive, individually tailored services provided or mediated by the labour office, thus increasing job-seekers' prospects on the labour market and preventing long-term unemployment.

388 *Conclusions from research into the integration of asylum seekers and the efficiency of the national integration programme* – Annex to Part 3 of the document on the security of the integration of asylum seekers in 2006, Government Resolution No 5 of 4 January 2006.

389 An analysis of the possible perspective solutions of the national integration programme in the field of housing of refugees. This document was presented to the Government for its information at a meeting held on 12 October 2005.

390 According to the study by the Ministry of Labour and Social Affairs entitled 'Analysis of the social entitlements of refugees', however, the situation in other countries is handled in much the same way as in the Czech Republic – the financial security of refugees is safeguarded with minimum pensions if the relevant pension system regulates such pensions, or with social welfare benefits ensuring the minimum income from 'non-insurance' systems. The study sums up that in countries where, in the framework of the first pillar of the pension system, there is a guaranteed minimum pension, the purpose of which is to cover all inhabitants in the same manner, this is generally a pension that plays a similar role to the subsistence level in the Czech Republic. If the pension system does not guarantee a minimum guaranteed pension, refugees receive security solely in the form of social welfare benefits. The pension scheme method is based on the nature of the pension system in place in a particular country, its traditions and its historical development.

Experience shows that a comprehensive approach should be taken to the integration of foreigners. Besides the issues of housing and language teaching, special attention needs to be paid to the actual placement of refugees on the labour market (including the recognition of the education achieved), the social security of refugees (including pension schemes), and the issue of reunifying their families or the acquisition of citizenship. In spite of certain tasks contained in Government Resolution No 104 of 26 January 2005, according to nongovernmental organizations a long-term neglected question is the problem of handicapped refugees and their placement in social facilities, or another method for the provision of adequate social services. Given these circumstances, the launch of the Integration 2005 pilot project by the Refugee Facilities Authority was a welcome move (1 October 2005 – 31 December 2005). The project focuses on motivating refugees accommodated in integration asylum centres of the Refugee Facilities Authority to grasp the initiative in searching for housing and employment, and on providing assistance in these activities. Nongovernmental organizations were also contractually involved in the project.

III. Conclusion

The situation in human rights in the Czech Republic in 2005 can be evaluated as essentially stable. This is in line with the stage of development and consolidation of democratic conditions in Czech society, where, besides public institutions, an important role is also played by the advanced civil sector with a functioning network of nongovernmental organizations involved in activities to promote the observance of human rights. Compared to previous years, from the aspect of human rights there was no step backwards in the Czech Republic in terms of legislation or highly problematic events in practice stemming from major systemic shortcomings. Evidently the most controversial event, and also the event which attracted the most media coverage, was the excessive police intervention against participants at the CzechTek rave. The assessment of the situation by the competent authorities and public opinion differed – and continue to differ – significantly. The public discussion and proposed remedial measures recommended by the ombudsman in the final report of his investigation should prevent similar excesses from happening in the future.

One of the most discussed events concerning the protection of human rights in Europe last year was the as yet unresolved investigation into the alleged existence of secret detention centres run by the US secret services (the CIA), which are used to detain foreign nationals suspected of terrorism, and the unreported transportation of such persons. In this respect the Secretary-General of the Council of Europe initiated an exceptional procedure in accordance with Article 52 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and asked all Member States, including the Czech Republic, to provide information on how the implementation of the relevant provisions of the Convention is conducted in their national law. We can expect this debate to continue in 2006, including in the broader context of infringements of human rights and fundamental freedoms in the fight against terrorism.

A positive change and significant reinforcement of the mechanisms for the protection of human rights in the Czech Republic in 2005, which is a key matter from the aspect of the above-mentioned European discussions too, was undoubtedly the expansion in the competence of the ombudsman to include systematic preventive visits to detention facilities. Some laws which have not yet been approved but which will introduce new institutions in Czech national law should also be welcomed; these include a bill regulating new possibilities of protection from domestic violence and the bill on registered partnership. Positive changes in the field of health and social work should emerge from the bills on health care and social services which were prepared in 2005. In the past year, an expert discussion on some overlooked themes in the field of biomedicine and patient rights should also begin; these include sterilization and the provision of patients' informed consent in general, or alternative medical methods.

In 2005, a number of amendments were made to legal regulations to improve the protection of human rights, which are discussed in detail in this report (e.g. the amendment to the Act on the Stay of Foreigners, which humanizes the detention regime, changes in proceedings on legal capacity and in detention facilities which permit the persons concerned to have an active influence on the course of proceedings, or a change in the calculation of the cost of confinement, which will have a positive impact on the resocialization of convicted prisoners on their release from prison), specific measures were adopted that will contribute to the development of a more constructive and more humane approach on the part of public authorities to those who are dependent on the services or assistance of society (e.g. work on

the standards of accommodation services provided by the Refugee Facilities Authority of the Ministry of the Interior and standards of social service quality), and measures were taken that help citizens protect their rights in other ways (the establishment of labour inspectorates, a reinforcement in the status of the public prosecutor in the supervision of institutional or protective care).

A major lingering systemic deficiency is the fact that no comprehensive legislation has been adopted in the field of discrimination and equal treatment, and no body has been set up to address this agenda, including the handling of individual cases, systematically. In the future, a debate should be held on a change in the system used to investigate delicts by police officers and other public servants, including misdemeanours, disciplinary delicts or crimes, as there has been long-term criticism of the insufficient guarantees of independence in this respect. The absence of legislation in the field of mental health is also a negative aspect, as is the lack of a law on protective treatment. Czech society also has a debt to the ever growing number of persons who find themselves without a roof over their head and are unable to cope with their situation alone even though may want to 'return' to society. The resources channelled into these areas are insufficient, which could indirectly encourage alarming aggression and enmity vis-à-vis the homeless on the part of certain citizens. In 2005, another ongoing problem that the state authorities have failed to resolve received media coverage; this was the problematic access that some groups of foreigners legally residing in the country have to health insurance, which could transform into a drama affecting whole families in individual cases. Another unresolved issue is the national implementation of the decisions of international control bodies, in particular decisions of the European Court of Human Rights in non-criminal cases. The overly long duration of judicial proceedings, as pointed out to the Czech Republic by the European Court of Human Rights on repeated occasions, requires systemic action.