

Communication to:  
Office of the United Nations High Commissioner for Human Rights  
United Nations Office at Geneva  
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**SHADOW REPORT TO THE HUMAN RIGHTS COMMITTEE**  
**THE CZECH REPUBLIC**

*This report of **the League of Human Rights** aims to provide the Human Rights Committee with specific information complementary to the Czech government's Second Periodical Report on Performance of the Obligations Arising from the International Covenant on Civil and Political Rights*

10 June 2007

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with the support of the International Federation for Human Rights (FIDH)

*The League of Human Rights (LIGA) is a Czech non-governmental, non-profit, public interest law organization officially registered in August 2002. Liga strives for systemic changes to achieve human rights compliance by state authorities. Its mission is to create a future in which the Czech State actively protects the human rights of its citizens, and respects both the spirit and the letter of the international human rights conventions to which it is a signatory.*

*LIGA's work is based on the defense of human rights and other public interests by legal means; legal and psychological aid in specific cases of **police ill-treatment**; racist attacks; **the rights of children**; domestic violence; patients; **victims of coercive sterilization and the disabled**; and the interpretation of international human rights law obligations. LIGA experts are members of the following Czech Government Human Rights Council's committees a) for civil and political rights; b) against torture, cruel, inhuman and degrading treatment; c) for the elimination of all forms of racial discrimination, d) for biomedicine and human rights.*

*The current chair of LIGA was the first representative of the Czech NGO sector in the first ever session of the Human Rights Committee on the situation in the Czech Republic in Geneva in July 2001, before the official establishment of the organization at the invitation of FIDH, and presented a shadow report there. He also presented a preliminary shadow report of LIGA to the HRC members in March 2007 in New York. The League of Human Rights is a member of the International Federation for Human Rights (FIDH) and member of the Coalition for International Criminal Court (CICC).*

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## I. Executive Summary

Unfortunately, the first two most pressing issues still correspond to the most urgent recommendations referred to in paragraph 27 of the concluding observations (CCPR/CO/72/CZE) of the Human Rights Committee (hereinafter referred to as "the Committee") adopted already after the examination of the initial report of the Czech Republic in July 2001.

- 1) Main concern in relation to articles 2, 7, 9 and 10 para 1 of CCPR with regard to police misconduct. Police impunity prevails and in October 2006 the Government didn't approve the *Proposal of the Czech Government Council for Human Rights to establish an autonomous body for the investigation of misconduct by officers of the Czech Police Force, municipal police forces, and Prison Service of the Czech Republic*, providing an explanation that the government has been working on this issue regardless of this particular proposal (see detailed description in Sub-chapter [3.1](#)).
- 2) Main concern in relation to art. 24 para 1. and art 26 with regards to discrimination of Roma children in education: Even after the adoption of the new basic school legislation of 2004, only the label "special schools" disappeared. Otherwise desegregation in education has not started yet and four types of "abnormal" basic schools or classes in which Romani children are segregated from pupils from the majority population can be recognized (see detailed description in Sub-chapter [11.4](#)).

The other main points of concern include:

- 3) Another relation to art. 24 para 1. and art 26 of CCPR with regards to disproportionate placement of Roma children in child care institutions. Czech Republic has the highest amount of children in such institutions in Europe (see short note in Sub-chapter [9.2](#)).
- 4) Regarding the objection raised in points 2) and 3), in conjunction with the need of undertaking the steps leading to the fulfillment of the obligation under art 26 of CCPR, the collection of anonymous statistical data on Roma discrimination is absolutely necessary from the side of government to start the process of combating discrimination (see short note in Sub-chapter [11.8](#)).
- 5) LIGA feels the need to expose to the HRC the issue of coercive sterilization of Roma women in the Czech Rep. as this issue has not been reported in the period covered by the Czech government's second periodic report (see detailed description and explanation in Sub-chapter [2.2](#)) in relation to the compliance with art. 7 and 26.
- 6) With regard to art. 9 para 1., art. 10 para 1 and art. 14 para 1, the abuses of rights of people with intellectual disabilities and mental illnesses are reported (see short notes in Sub-chapters [5.1](#), [6](#), [10.1](#)).
- 7) As to the art. 19, LIGA still considers the application of criminal law in concrete cases in contravention of free speech principles (see short note in Chapter [8](#)).
- 8) With regard to articles 7 and 26, LIGA would like to stress the lack of effective state preventive actions to prevent child abuse and neglect as well as a lack of rehabilitation and resocialization services for victims of child abuse and neglect (Sub-chapter [9.1](#))
- 9) LIGA would also like to point out serious interferences with the privacy of victims of crimes by inappropriate media reports revealing the identity of the victim as well as the serious interference

with the psychological and physical integrity of victims through secondary victimization in criminal proceedings due to lack of protective legislative safeguards and inadequate practices of criminal authorities (Article 17 ICCPR, see Chapter [7](#))

## II. Article 3: Equality of Men and Women in Enjoying Rights Guaranteed under the Covenant

### 2.1 Women's Political Participation<sup>1</sup>

- 2.1.1 After the parliamentary elections in June 2006, the number of women in the Chamber of Deputies decreased from 34 to 31; with 15.5% representation of women in the Chamber of Deputies, the Czech Republic is thus below the world average. Only 11% of Czech Senators are women, and of 14 Regional Commissioners, not one is a woman. The representation of women in the Czech Parliament is the lowest of any European Union Member State, and rivals the lowest levels of representation of women in parliamentary bodies anywhere in the world. Women are best represented at local levels – in towns and villages—and at the European Parliament: At the local level, 22.7% of elected officials are women, while 20% of all MEPs are female.
- 2.1.2 Representation of women at the ministerial level is as follows: 30.5% representation as section managers at the ministries, and 21% representation among ministerial department directors. In the current government there are only three women ministers, for the Ministry of Education, Youth and Sports, Ministry of Defense and the Minister for Human Rights and Minorities..
- 2.1.3 At the Constitutional Court, 30.8% of the judges are women, while 64% of all judges in the Czech Republic are women. This continues to reflect the legacy of the Communist-era period in which the judiciary was a highly feminized profession primarily because it was considered more an administrative role than a decision-making one.
- 2.1.4 Minority women, and Romani women in particular, are almost completely excluded from mainstream politics. No Romani women – and indeed no Roma at all – have had seats in parliament during the current or previous parliament, and there has been only one Romani parliamentarian at all (Monika Horakova, 1998-2002) since the Czechoslovak Federation dissolved in 1993. Roma are entirely absent from the national level administrations and few regional or local authorities have any Roma in either representative or administrative functions. Government policies begun in the late 1990s to provide “Roma advisors” at the local level, but very frequently these positions are staffed with non-Romani individuals. The Czech Republic compares extremely unfavorably in this regard with similarly situated post-Communist states such as Hungary and Slovakia, where levels of representation in both the administration and in representative, elected positions is steadily on the rise.
- 2.1.5 In reports, Government representatives confuse women's political participation with the appointment of women to ministerial positions and do not understand that what is meant under CEDAW is women's participation as voters or as candidates for office (e.g., Government representatives refer to the Law on Municipal Officials – No. 213/2002 Coll., where the principle of nondiscrimination is mentioned, without realizing that this law is irrelevant to political participation). The text of the Czech Action Plan “Priorities and Procedures for the

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<sup>1</sup>This chapter is copied from Shadow report to the Committee on the elimination of all forms of discrimination against women for the Czech Republic Author of Sub-Chapter on Women's political participation is **Gender Studies**, Gorazdova 20, 120 00 Praha 2, The Czech Republic, tel./fax: 224 915 666, contact: Alena Králíková , [alena.kralikova@genderstudies.cza](mailto:alena.kralikova@genderstudies.cza)

Enforcement of Equality of Women and Men” justifies this incorrect perception of the concept of political participation, stating the governmental task as follows: “To actively support via concrete measures the nomination of appropriate female candidates to positions in governmental offices and top positions at ministries and directly controlled institutions. To evaluate measures accepted for the equal participation of women and men in top positions and in working teams.”

- 2.1.6 In reports reviewing the fulfillment of the Priorities and Procedures document, the Government states that it monitors completion of this priority; however, no prominent developments in this area can be identified. The standard argument is that people are appointed to positions in relevant departments according to their qualifications and not their gender, and that the selection is definitely not based upon discrimination against one or the other sex.
- 2.1.7 A twinning project with Sweden also recommended measures leading to increased women’s participation in politics, and the Election Code was then amended. The first version of the amendment counted on introducing quotas for candidate lists during all kinds of elections; after the first round of comments from other ministries and relevant bodies, the amendment was dramatically altered. Its final version included only a 30% quota for elections to the Chamber of Deputies of the National Parliament and to the European Parliament, and no quota for either regional or local bodies. Moreover, the code will not take effect until the period after the 2006 parliamentary election, which definitely represents a huge deficiency as the majority of the current governmental political parties have not voluntarily applied any quota system to their candidate lists. The only exceptions to this are small political parties currently not sitting in the Chamber of Deputies, which did, however, try to exploit their explicit promotion of women's political participation during the recent pre-election campaign. This strategy was not successful in terms of getting them votes.<sup>2</sup>

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<sup>2</sup> Committee on the Elimination of Discrimination against Women (CEDAW) stated in its concluding comments

on the Czech Republic in August 2006 (para 19., 20.) following:

19. *The Committee reiterates its concern about the continuing under representation of women in Parliament and Government, including in standing and ad hoc committees, at the international level, and in the private sector. The Committee is also concerned about an apparent reluctance within Government ministries to apply temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee’s general recommendation 25 on temporary special measures. It is also concerned about the suspension of the adoption of the draft election bill that envisaged at least 30 per cent representation of either sex.*

20. *The Committee encourages the State party to take sustained measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee’s general recommendation 25 and to establish concrete goals and timetables so as to accelerate the increase in the representation of women in elected and appointed bodies in all areas of public life, including in the foreign service, at all levels, and to monitor their achievement. It further encourages the State party to proceed with the finalization and adoption of the new election bill that envisages adequate temporary special measures. It also recommends further efforts to increase the number of women in appointed positions, in decision-making positions in public administration, and in the private sector. Such measures should include the setting of time-bound targets; implementation of awareness-raising campaigns; provision of financial incentives to political parties; and development of targeted training and mentoring programs for women candidates and women elected to public office. The Committee urges the State party to carefully monitor the effectiveness of measures taken and of results achieved in its next periodic report.*

### **Recommendations for Governmental Action**

- As a matter of the highest urgency, the Government **should undertake measures to redress the extreme under-representation of Romani women** in representative and official administrative positions.
- Within its actions as developed in the Action Plan document (Priorities and Procedures for the Enforcement of Equality of Women and Men), **the Government should focus on planning and running its activities in a more coordinated way** – activities developed during one year should follow on in the preceding year, build upon previous experience, respond to events realized at national and international level by other bodies and institutions, monitor the success and relevance of all actions realized, etc.

## **2.2 Coercive and Unlawful Sterilizations of Romani Women**

- 2.2.1 The particularly serious issue of coercive and unlawful sterilizations of Roma women was extensively reported by the League of Human Rights and its partners in a 2006 Shadow Report to the Committee on the Elimination of all Forms of Discrimination against Women. Updated parts of the Report are reproduced here:
- 2.2.2 From the 1970s until 1990, the Czechoslovak Government sterilized Romani women programmatically, as part of policies aimed at reducing the “high, unhealthy” birth rate of Romani women. This policy was described by a Czechoslovak dissident in initiative Charter 77, and documented extensively in the late 1980s by dissidents Zbynek Andrš and Ruben Pellar. Helsinki Watch (now Human Rights Watch) addressed the issue as part of a comprehensive report published in 1992 on the situation of the Roma in Czechoslovakia, concluding that the practice had ended in mid-1990. A number of cases of coercive sterilizations taking place up to 1990 in the former Czechoslovakia have also been recently documented by LIGA and ERRC. Criminal complaints were filed with Czech and Slovak prosecutors on behalf of sterilized Romani women in each republic in 1992. The Czech prosecutor at that time evidently concluded that there had been wrongdoing, but no persons were ever criminally prosecuted and no victims received compensation or even public recognition of the harms they had suffered.<sup>3</sup> No Romani woman coercively sterilized by the Czechoslovak authorities has ever received justice for the harms to which they were systematically subjected to under the Communist regime.
- 2.2.3 During 2003 and 2004, the ERRC, LIGA and partner organizations in the Czech Republic undertook a number of field missions to the Czech Republic to determine whether practices of coercive sterilization have continued after 1990, and if they were ongoing to the present. The conclusions of this research indicated that there was significant cause for concern, and that until as recently as 2001 and possibly as recently as 2004 Romani women in the Czech Republic have been subjected to coercive sterilizations, and that Romani women are at risk in the Czech Republic of being subjected to sterilization without their fully - informed consent.
- 2.2.4 In cases for which the matter is as serious and has such potentially irreversible consequences as sterilization, the condition of fully informed consent is met only when the patient has been

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<sup>3</sup> See Public Defender of Rights, “Final Statement of the Public Defender of Rights in the Matter of Sterilizations Performed in Contravention of the Law and Proposed Remedial Measures”, 23 December 2005, pp. 28-35 (Hereinafter “Ombudsman Report”; page references refer to the official English-language translation available at <http://www.ohchr.org/english/bodies/cerd/docs/ngos/Public-defender-rights.pdf>).



adequately and appropriately informed of the procedure, its alternatives as well as the consequences and risks associated with it, and when the patient has subsequently consented to the procedure of her own free will beyond any acts of coercion or misinformation. In addition, all relevant information must be provided sufficiently in advance of the procedure such that individuals have time to consider all implications in full, and such that ample opportunity is provided for the individual to change her mind.<sup>4</sup>

2.2.5 During the course of research in 2003 and 2004, researchers found that Romani women have indeed been coercively sterilized in recent years in the Czech Republic. The cases documented include:

- Cases in which consent had not been provided at all, in either oral or written form, prior to the operation;
- Cases in which consent was secured during delivery or shortly before delivery, during advanced stages of labor, i.e., in circumstances in which the mother is in great pain and/or under intense stress;
- Cases in which consent appears to have been provided (i) based on a mistaken understanding of terminology used, (ii) after the provision of apparently manipulative information and/or (iii) absent explanations of consequences and/or possible side effects of sterilization, or adequate information on alternative methods of contraception;
- Cases in which officials put pressure on Romani women to undergo sterilization, including through the use of financial incentives or threats to withhold social benefits.

In a number of the cases documented in 2003 and 2004, explicit racial motives appeared to have played a role during doctor-patient consultations.

2.2.6 In June 2004, the League and the ERRC met with the Public Defender of Rights (Ombudsman) and his staff to discuss the investigation of the cases. During the summer months of 2004 lawyers and researchers of four cooperating organizations gathered evidence for complaints to the Ombudsman. The first ten of these were filed in September 2004.

2.2.7 Although it was not intended to publicize these complaints, information leaked, and beginning in mid-September 2004 Czech media gave extensive coverage to the matter. With a few exceptions, this coverage was cautiously sympathetic to the victims. A number of women gave interviews to television and the press, with their faces blacked out and names concealed. As a result of this media attention, a number of other victims came forward and filed complaints on their own with the Ombudsman.

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<sup>4</sup> The World Health Organisation in its publication, *Considerations for Formulating Reproductive Health Laws*, states that, “one of the key principles in the provision of reproductive health services is free and informed decision-making. This is expressed as ‘informed consent’ although informed decision-making or informed choice would be better terms. The legal duty is to present information that is material to the choice that the patient has to make, in a form that the patient can understand and recall. The purpose is to equip the patient to exercise independent choice.”

The European Convention on Human Rights and Biomedicine (ECHR) states in Article 5 that “An intervention in the health field may only be carried out after the person has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time.” The explanatory report to this Convention states that “this information must be sufficiently clear and suitably worded for the person who is to undergo the intervention. The person must be put in a position, through the use of terms he or she can understand, to weigh up the necessity or usefulness of the aim and methods of the intervention against its risks and the discomfort or pain it will cause”.

- 2.2.8 Eighty-seven victims of coercive sterilization – all but one of them women and the overwhelming majority of them Romani – submitted complaints to the Ombudsman in the period to September 2005. Many complaints came from Moravia – especially northern Moravia – although the overall geographic dispersion of the complaints, which are from throughout the Czech Republic, confirmed researchers' initial hypothesis that coercive sterilization is a systemic issue in the Czech health care and Czech social assistance systems.
- 2.2.9 In early 2005, approximately 25 Romani women coercively sterilized by Czech medical officials established a victim advocacy group called the Group of Women Harmed by Sterilization to press authorities for justice. This development – in which the victims themselves have organized, come out to the public and taken control of the process of pressing for change – has been among the most important dimensions of the action.

#### The Investigation and Report of the Ombudsman

- 2.2.10 Throughout 2005, on the basis of these complaints, the Ombudsman opened investigation into these practices. During the investigation, the Ombudsman sought and reached an agreement with the Ministry of Health whereby the Ministry would establish an expert review panel which would, on the basis of a request by the Ombudsman, seek the relevant medical files from the hospitals concerned and answer questions the Ombudsman would provide on any given case. The expert review panel was tasked with examining not only whether the interventions had been performed according to good medical practice, but also whether the legal qualifications for performing them had been satisfied.
- 2.2.11 Because of the long time taken by the expert review panel's inquiry, the Ombudsman decided to conclude his inquiry after reviewing 50 cases. The Ombudsman therefore drew up a report on these cases under section 18 par. 1 of the Ombudsman Act, reproaching the Ministry, for an inadequate inquiry as well as faulty, or even lacking, conclusions from findings of facts.
- 2.2.12 The Ombudsman's Report published in December 2005 concludes that **“The Public Defender of Rights believes that the problem of sexual sterilization carried out in the Czech Republic, either with improper motivation or illegally, exists, and Czech society has to come to terms with this.”**
- 2.2.13 The Ombudsman's Report concludes that in the cases under examination, shortcomings are identifiable in the legal quality of the sterilized persons' consent. The report finds that in the vast majority of reviewed cases legal and procedural safeguards were not observed. In discussions with the Ombudsman's staff, it has been noted that while under Communism the main policy and law was followed (meaning that Czech social workers dutifully implemented policy encouraging the sterilization of Romani women), and following the official end of policies fostering a climate conducive to coercive sterilization in 1991, a number of doctors have apparently acted fully outside the law to continue this practice. At a press conference at the launching of the Ombudsman's Report, **Deputy Ombudsman Anna Šabatová spoke of this phenomenon as a “fully deformed praxis in the Czech medical community”.**
- 2.2.14 Approximately 1/3 of the Ombudsman's Report (pages 25-59) concerns “Sterilization and the Romani Community” and reaches the conclusion of racial targeting. Case summaries included in the report highlight events in which, for example, the medical files reveal that social workers and doctors recommended caesarean section births in order to manufacture “indicators” through which sterilization would appear legitimate and necessary. The text of the report also includes detailed summaries of Czechoslovak state policies toward the Roma in the 1970s and 1980s, in which social workers were enlisted in the task of controlling the Romani birth-rate –

regarded as too high by policy-makers – and creating a culture of invasive control over Romani families which endures to today. The report also includes a separate section on the history of eugenics in Czechoslovakia, which the report’s authors evidently regard as key for the policies and practices detailed in the report.

- 2.2.15 However, despite examining extensive evidence that forces conspiring to compel Romani women to forfeit their ability to give birth through extreme and invasive coercive sterilization practices were in fact infected to the core with racially motivated considerations, the Ombudsman stopped short of concluding that these issues were racially discriminatory, apparently because this conclusion remains simply too controversial, as Czech public opinion is as yet unable to acknowledge that racism against the Roma is a vivid reality in the Czech Republic today.
- 2.2.16 The Ombudsman also dismisses the possibility that the crime of genocide may have been perpetrated, although certain facts in certain areas give rise to concerns that that conclusion may be premature. For example, in the housing estate of Chanov, just outside the northern Czech city of Most, a targeted campaign involving both offers of financial incentive and threats to withhold social welfare or take children into state care was carried out throughout the 1980s and resulted in the sterilization of tens if not hundreds of Romani women. The person named repeatedly by surviving victims of these practices as the leader of the campaign to sterilise the Romani women of Chanov is a social worker named “Mrs. Machacová”, who some believe may have since died. However, the partners know of no official investigation carried out into the actions of social workers and/or doctors in Chanov.
- 2.2.17 Three areas of recommendations are brought by the Ombudsman in his report:
- 1) Changes to Czech domestic law to better anchor the principle of informed consent in these areas;
  - 2) Supplementary measures to ensure a change of culture with regard to informed consent in the medical community, as well as among users;
  - 3) A simplified procedure for compensating victims when social workers have been involved in implementing coercive sterilization policies.
- 2.2.18 The League of Human Rights and cooperating partners have welcomed the Ombudsman’s report as the most significant development in challenging these harms in any country in the post-Communist world. Notwithstanding the fact that all partners believe that (i) a number of issue have been arbitrarily excluded from the report; and that (ii) certain issues are not characterized entirely accurately (particularly the role of racism in influencing and bringing about this systemic practice), (iii) it has been recognized that, given the particular political circumstances currently prevailing in the Czech Republic, the report as it exists is a very strong document, with a number of very important conclusions, and a wealth of new information on these issues.
- 2.2.19 It is therefore of very serious concern that (i) in the fourteen months intervening since the publication of the report, no high-level authority in the Czech Republic has made any public pronouncement on the matter, despite efforts by the Ombudsman’s office and others to seek statements on the findings of the report by Parliament and/or the Prime Minister’s office and/or other agencies of government; and (ii) there is no indication that any Czech governmental authority intends to act soon on these or any other recommendations existing on this issue.<sup>5</sup>

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<sup>5</sup> A draft recommendation prepared on the matter by the Czech government’s advisory Subcommittee on Biomedical Ethics and Human Rights was reviewed by the government’s advisory Roma Affaires Council on 19 March 2007 and approved for the submission to the government despite strenuous opposition by

## Civil Court Proceedings

- 2.2.20 So far there have been two cases where courts ruled favorably for the victim of coercive sterilization. The case of Ms. Ferenčíková is reproduced below. Another case was in 2000, when a court in the town of Plzen had awarded 100 000 CZK (approximately 2,500 Euros) in damages to a woman sterilized there in 1998. She had repeatedly explicitly refused to be sterilized, but doctors had performed the operation anyway.
- 2.2.21 On 10 October 2001, Ms. Ferenčíková gave birth in the Vitkovice hospital in the city of Ostrava to her second child, a son named Jan. The child was born at 4:45 AM by caesarean section birth. Ms. Ferenčíková's first child had also been born via caesarean section. At the time of her second birth, Ms. Ferenčíková was also sterilized by tubal ligation. Although her files indicate that "the patient requests to be sterilized", procedures set out under Czech and international law to ensure that, for the extremely invasive and in most cases irreversible sterilization procedures, consent must meet the standards of full and informed, were not followed by doctors at the Vitkovice hospital. Although it had been foreseen well in advance of labour that she would give birth by caesarean section, Ms. Ferenčíková's "consent" to the sterilization was apparently secured by doctors several minutes before the operation, and when she was already deep in labor. As a result, Ms. Ferenčíková emerged from her second birth traumatised and irrevocably harmed by the doctors to whom she had entrusted herself for care. Ruling on 11 November 2005, the Ostrava regional court recognised that Ms. Ferenčíková's sterilization was coercive and therefore illegal, and ordered the Vitkovice hospital to apologize in writing because the act "seriously encroached into your most intimate sphere, and caused you durable physical and psychological harms". Nevertheless the Court rejected Ms. Ferenčíková's claim for financial compensation with the reasoning that the statutory limitation for the claim has already expired. Both the Vitkovice hospital, Ferenčíková's legal representative, and League of Human Rights lawyer Michaela Kopalová filed an appeal against the decision. However, each party filed an appeal for different reasons. Nevertheless, the judgment of the regional court was approved by the High Court in Olomouc on 17 January 2007 with similar reasoning. A League lawyer will lodge an appeal with the Supreme Court, because the financial compensation for the unlawful sterilization has been refused by the courts so far. The Supreme Court considered a claim for financial compensation as legitimate in a similar case in the past and expressed a different legal opinion with regards to the clause of statutory limitation.
- 2.2.22 Despite two favorable rulings by Czech courts, it is important to recognize that in most of the cases of which the League of Human Rights and its partners are aware in which women have been subjected to the extreme harm of coercive sterilization it is very unlikely that court proceedings can even be initiated, let alone won, unless an administrative mechanism to provide compensation to victims is established which would provide to victims some level of presumption of harm. Otherwise almost all of the victims will have no access to due compensation for one or more of the following reasons: (1) statutory limitation for the claim having already expired, (2) no money to risk a civil claim, (3) records destroyed by the hospital, (4) rigidity of the courts in applying standards of proof in civil claims.

## Criminal Investigation

- 2.2.23 On 11 March 2005, the Ombudsman sent eight sterilization cases which had also been reviewed by the Czech Health Ministry to the Supreme Public Prosecutor, along with the information that the facts of the cases indicate that crimes may have been committed. In three

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representatives of several government Ministries, including the Ministry of Health.

of these cases, the expert review panel of the Ministry of Health had also proposed sending the materials to the prosecutor.<sup>6</sup> Since March, other cases were subsequently sent to the Supreme Public Prosecutor and then to the relevant Czech Police departments during the course of 2005. Czech criminal law includes provisions banning among other things bodily harm, and therefore in principle should provide one mode through which victims might seek and secure justice.

- 2.2.24 After one and half years of investigation, the approach of the criminal investigative bodies to these complaints gives rise to serious concerns that these procedures will not ultimately prove effective as a remedy for these extreme abuses, despite clear indications of reaches of criminal law in the cases concerned. Police have interrogated the witnesses, the sterilized women themselves, their husbands/partners, the health care workers involved, and have also commissioned expert evaluations, After this investigation, using unconvincing arguments, they have shelved most of the cases. Almost all of the cases originally filed have already been dismissed by the prosecutor.
- 2.2.25 A number of aspects of the criminal proceedings give rise to serious concerns. For example, the views of the expert institution relied upon during the investigation held that a correctly indicated and correctly performed medical procedure could not constitute a crime. This opinion is open to dispute, since if the procedure is performed without the consent of the patient, then it would breach the law, and evaluation of the act as to its criminal character would then depend on further evaluation of the act. Moreover, in sterilizations performed without consent, a women's health is seriously damaged and her reproductive ability is impaired – usually irrevocably -- for the rest of her life. The public prosecutor charged with enforcing the legality of some of these preliminary proceedings did not concern himself with the claims of the sterilized women that, even though they had technically signed sterilization requests, they had signed them under such circumstances that the sterilizations performed could not be considered legal because they did not satisfy the requirement of informed consent.
- 2.2.26 The manner in which the evidence has been evaluated during these preliminary proceedings also gives rise to fundamental concerns. In one case, the criminal investigation appears to have been closed on the grounds that a handwritten note on the reverse side of the medical protocol made 50 minutes prior to the intervention reading “patient requests sterilization” is to be deemed as proper consent to the sterilization. The expert also bizarrely characterized the victims as “irresponsible” if they had not agreed to sterilization voluntarily, indicating possible bias on the part of the expert. The conduct of the doctors, however, was characterized by the expert as correct.
- 2.2.27 Each body active in the criminal proceedings has the right to evaluate the evidence during the individual phases of the proceedings, within limits. This particularly applies to the police. In the cases of women sterilized without their informed consent, the police performed a legal evaluation of the merits of the case, which according to the victims' legal representative is a matter for an independent court only to perform. It is therefore no surprise that the police, lacking the requisite legal education and expertise, evaluated the question of the (non)-existence of free and informed consent in a matter diametrically opposed to that of the Regional Court in Ostrava in the subsequent civil complaint proceedings (see above), and dismissed the case. The police body also did not concern itself in-depth with the racial motivation for these acts. In one case a Constitutional complaint was already filed in the name of one of those women whose cases were dismissed.

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<sup>6</sup> See Section 3.2. of the Ombudman's Report.

2.2.28 As a result of the foregoing, Czech criminal law has not yet proved a viable mode for providing redress for Romani victims of coercive sterilization.<sup>7</sup> **Only shortly before the submission of this report, one district attorney in Most decided, that in two cases crimes from the side of two doctors have been committed, but those cases of 1993 and 1998 falls under the statute of limitation clause.**

**For the very last official position see the Czech government response no 1. on the QUESTIONS PUT BY THE RAPPORTEUR IN CONNECTION WITH THE CONSIDERATION OF THE 6<sup>th</sup> AND 7<sup>th</sup> PERIODIC REPORTS OF THE CZECH REPUBLIC at the session of CERD 1.-2. March, 2007.**

*“It is reported that Romani women have been subjected to coercive sterilization without their informed prior consent. Has the State party conducted thorough, impartial and effective investigations? Have the victims been compensated? (State report, paras. 126-132).”*

The ombudsman sought the cooperation of the Ministry of Health in examining health documentation regarding the sterilization of women in accordance with Directive of the Ministry of Health of 17 December 1971 on sterilization (the ‘Directive’). For this purpose, an advisory body of the Minister for Health was set up. The advisory body completed an investigation into cases for which the relevant healthcare documentation could be retrieved.

The 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 Directive were respected; in other cases administrative errors were found, and in certain cases errors were found in the medical indication.

Of the 76 cases evaluated

- sterilization had not taken place in 12 cases,
- the conditions of the Directive had been met in 14 cases,
- the conditions of the Directive had not been met in 41 cases,
- doubts about the authenticity of signatures (three crosses etc.) were identified in eight cases.

Five cases have been investigated since the Convention on Human Rights and Biomedicine entered into force. In three cases the Directive’s conditions were satisfied; in two cases the conditions were not met. The advisory body recommended that the Minister for Health 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.

<sup>7</sup> Committee on the Elimination of Discrimination against Women (CEDAW) stated in its concluding comments

on the Czech Republic in August 2006 (para 23., 24.) following: „23. *The Committee is particularly concerned about the report, of December 2005, by the Ombudsman (Public Defender) regarding uninformed and involuntary sterilization of Roma women and the lack of urgent Government action to implement the recommendations contained in the Ombudsman’s report and to adopt legislative changes on informed consent to sterilization as well as to provide justice for victims of such acts undertaken without consent.*

24. *The Committee urges the State party to take urgent action to implement the recommendations of the Ombudsman/Public Defender with regard to involuntary or coercive sterilization, and adopt without delay legislative changes with regard to sterilization, including a clear definition of informed, free and qualified consent in cases of sterilization in line with the Committee’s general recommendation 24 and article 5 of the European Convention on Human Rights and Biomedicine; provide ongoing and mandatory training of medical professionals and social workers on patients’ rights; and elaborate measures of compensation to victims of involuntary or coercive sterilization. It also calls on the State party to provide redress to Roma women victims of involuntary or coercive sterilization and prevent further involuntary or coercive sterilizations. The Committee requests the State party to report on the situation of Roma women pertaining to the issue of coercive or involuntary sterilization, in its next periodic report, including a detailed assessment of the impact of measures taken and results achieved.“*

Further to the conclusions of a meeting held on 25 January 2006, the advisory body proposed the following remedial action by the Ministry of Health:

1. draft the wording of the informed consent to sterilization and publish it in the Journal of the Ministry of Health (for information on implementation, see the reply to Question 13),
2. issue a methodological interpretation of the Ministry of Health, to be published in the Journal of the Ministry of Health as a conclusion drawing on the results of the advisory body's investigation,<sup>8</sup>
3. inform the lay public via the website of the Ministry of Health,<sup>9</sup> leaflets and brochures about the conditions for sterilization, including the risks and consequences of this operation, and about the rights of patients in general,
4. in the scope of postgraduate studies, ensure that physicians are taught about patient rights in general, and about the conditions of a patient's informed consent to the provision of health care,
5. in cases of incorrect procedure or a causal nexus, i.e. where there is a serious error, set up a central expert committee<sup>10</sup> and, based on the outcome, decide on further procedure or submit a complaint to law enforcement agencies,
6. inform the ombudsman of approved remedial action and of the fact that proceedings have been adjourned in cases where a request for the verification of data has been made,
7. in cases where healthcare documentation has been destroyed by a natural disaster, notify the relevant healthcare facilities of the proper management of such documentation so that it is filed accordingly, thus preventing similar damage to other documents,
8. inform the relevant healthcare facilities of the consistent observance of legislation in force concerning sterilization.

Based on the recommendations of the advisory body, five complaints were passed on to the central expert committee. The Ministry of Health is taking the corresponding remedial action approved by its advisory body.

The matter of the alleged forced sterilization of Roma women is being discussed further by the government's advisory bodies, i.e. the Government Council for Human Rights and the Government Council for Roma Community Affairs. However, these opinions, which also contain proposals for solutions keeping to the same line followed by the ombudsman's proposals, have not yet been finalized and presented to the government.

2.2.29 For the reaction of CERD on this government response see recommendation no 14. of March 13, 2007 (CERD/C/CZE/CO/7). *“The Committee notes with concern that women, a high proportion of whom being Roma women, have been subjected to coerced sterilization. It welcomes the inquiries undertaken by the Public Defender of Rights on this matter, but remains concerned that to date, the State party has not taken sufficient and prompt action to establish responsibilities and provide reparation to the victims. While noting that a distinction should be drawn between sterilizations that have occurred before and after 1991, when an official policy encouraging such violations was ended, the Committee is deeply concerned that the State party has not taken sufficient action to abide by its positive obligation to impede their illegal performance by doctors after 1991, and that sterilizations without the prior informed consent of women are reported to have been carried out as late as 2004. (articles 2, 5 (b) and (e) (iv), and 6)The State party should take strong action, without further delay, to acknowledge the harm done to the victims, whether committed before or after 1991, and recognize the particular situation of Roma women in this regard. It should take all necessary steps to facilitate victims' access to justice and reparation, including through the*

<sup>8</sup> This interpretation will be a response in particular to the submission of special informed consent.

<sup>9</sup> [www.mzcr.cz](http://www.mzcr.cz).

<sup>10</sup> Decree No 221/95 on central expert committees.

*establishment of criminal responsibilities and the creation of a fund to assist victims in bringing their claims. The Committee urges the State party to establish clear and compulsory criteria for the informed consent of women prior to sterilization and ensure that criteria and procedures to be followed are well known to practitioners and the public.”*

#### **Recommendations for Governmental Action**

- The Prime Minister should issue, as a “Decision of Government”, **a public apology** to the victims of the practises described in the Ombudsman’s Report.
- The Czech Legislature should act without delay **to adopt the legislative changes necessary to establish the criteria for informed consent in the context of sterilisation** set out in the recommendations of the Ombudsman’s Report (Recommendations Section A – “Legislative measures”).
- The Ministry of Health should act without delay to **implement in full the recommendations on “Methodological measures”** set out in section B of the Ombudsman’s Report
- The Czech Legislature should act without delay to establish by law **the compensation mechanisms proposed in the Ombudsman’s Report** (Recommendations Section C – “Reparation measures”).
- The Government should **establish a fund to assist victims of coercive** sterilisation in bringing claims under the compensation mechanism or, where relevant, before courts of law, such that all victims of coercive sterilisation have access to justice. Such a fund should be able to: (i) provide compensatory damages to victims in such cases where the mechanism established pursuant to the Ombudsman’s Report may not be able to; (ii) support the work of advocates in bringing claims to court; (iii) where relevant, ensure payment of court fees and other relevant costs arising in the course of establishing coercive sterilisation claims before courts of law and/or other instances.
- The Government should seek, in cooperation with the Council of Europe, legal opinions as to the best method for providing compensation to victims of coercive sterilisation practices during the period post-1991 (i.e., those not necessary covered by the measures included in Recommendations Section C – “Reparation measures”), but possibly beyond relevant statutes of limitations, such that the Government is in full compliance with its obligations under the European Convention on Human Rights and other relevant international law.
- That in cases in which hospital records of relevance to establishing claims of coercive sterilisation have been destroyed, the government should make public the criteria by which individuals shall establish the veracity of claims for compensation for practices of coercive sterilisation.
- Within the limits of the powers available to his office, the General Prosecutor **should monitor investigative proceedings in the matter of criminal complaints** filed in the course of the Ombudsman’s investigation into these practices, and report to the public the findings of these investigations.



- The Czech government should make **financial assistance available to women who have been coercively sterilized, such that they might undertake artificial insemination measures** should they so choose;
- The Czech Ministry of Foreign Affairs raises with the Slovak Government the issue of compensation for persons who are currently Czech citizens but who have been coercively sterilized in the Slovak Republic.

### **III. Article 7: Protection against Torture and Cruel, Inhuman or Degrading Treatment or Punishment**

#### **3.1 Police Impunity and No Independent Body to Investigate Complaints on Police**

- 3.1.1 According to Section 2, para. 4 of the Czech Police Act, criminal offences alleged to have been committed by members of the Police are initially investigated by the Inspectorate of the Interior Minister, which is a body supervised by the Ministry of the Interior. According to Section 3 para. 1 of the Police Act, the Police is also supervised by the Ministry of the Interior. The Inspectorate itself is entitled to investigate any crimes alleged to have been committed by police officers. The Inspectorate cannot be deemed “impartial,” because it reports to the same ministry as the Police and there is a close professional link between these two bodies. The members of the Inspectorate are officially termed, “police officers,” as are members of the Police. They are recruited exclusively from among the members of the Police force, and they maintain the rank assigned to them within the Police when working for the Inspectorate.
- 3.1.2 Cases of criminal offences alleged to have been committed by members of the municipal police are investigated by ordinary units of state police. Although there is no official institutional link between these two bodies, there are often strong feelings of sympathy between the state police and municipal police which has a negative impact on the impartiality of investigations.
- 3.1.3 In the first and so far last Concluding Observations of the HRC on the Czech Republic on 27 August 2001, the HRC stated: *“16. The Committee is concerned that complaints against the police are handled by an internal police inspectorate, while criminal investigations are handled by the Interior Ministry, which has overall responsibility for the police. This system lacks objectivity and credibility and would seem to facilitate impunity for police officers involved in human rights violations (arts. 2, 7, 9). The State party should establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by the police.”*
- 3.1.4 Similar recommendations to set up an independent body to oversee the police and conduct independent and impartial investigations of alleged crimes by members of the police were also issued by other United Nations committees. See the Committee against Torture (CAT) in its concluding observations on the Czech Republic on 14 May 2001 (A/56/44, paras.106-114) and 3 June 2004 (CAT/C/CR/32/2), the Concluding Observations of the CERD on the Czech Republic on 18 August 2003 and the Committee on the Rights of the Child in its concluding observations on the Czech Republic on 18 March 2003 (CRC/C/15/Add.201).
- 3.1.5 However, no independent body has been established to investigate all types of offences by members of the police. The Government remarks that at least in these cases there is the supervision of a state attorney. The state attorney becomes active only once the investigation is conducted and closed by the Inspectorate. It is then up to the state attorney to bring charges against the suspects if the Inspectorate makes the recommendation. The Inspectorate can also decide not to bring charges and then the victim can appeal to a state attorney. It is true that a state attorney can exercise its supervision on an investigation at any time, but this rarely happens in practice. In any case, the actual investigative acts are conducted by the Inspectorate.
- 3.1.6 The Government Council for Human Rights, an advisory body to the Government, recommended to the Government on the basis of a comprehensive analysis from the League

to establish an independent body to investigate all complaints of misconduct of members of both state police and municipal police in spring 2006. Unfortunately, the Government didn't approve this proposal at its session in October, providing an obscure explanation that the state has been working on this issue regardless of this particular proposal.

**For the very last official position see the Czech government response no 11. on the QUESTIONS PUT BY THE RAPPOREUR IN CONNECTION WITH THE CONSIDERATION OF THE 6<sup>th</sup> AND 7<sup>th</sup> PERIODIC REPORTS OF THE CZECH REPUBLIC at the session of CERD 1.-2. March, 2007.** „It is reported that Roma, in particular children are subject to ill-treatment by police officers and are placed in detention and coerced into confessing to minor crimes resulting in a criminal record. Please indicate what steps have been taken to combat these phenomena (previous concluding observations, para. 11).“

There are competent internal control groups (departments) within individual sections to handle complaints about police officers concerning breaches of discipline or decent and ethical conduct.

The Inspectorate of the Minister of the Interior is competent to examine crimes by police officers, and the public prosecutor's office is then competent to investigate them. Based on a statement from this body, in fulfilling its mandate it seldom encounters this type of crime among police officers. In 2006, according to a statement by the Inspectorate of the Minister of the Interior, there were no crimes by police officers with a racist or otherwise xenophobic undertone. These mechanisms are applied irrespective of whether or not a police officer is accused of behaviour with a racial undertone.

In criminal proceedings, the Inspectorate of the Minister of the Interior figures – in accordance with Section 2(4) of Act No 283/1991 on the Czech Police Force, as amended (the 'Czech Police Force Act') – as a police authority competent to handle all crimes perpetrated by members of the Czech Police Force. The activities of the Inspectorate of the Minister of the Interior are supervised in accordance with Section 174 of the Rules of Criminal Procedure from the start of pre-trial proceedings by the public prosecutor. The Inspectorate of the Minister of the Interior, which is a body of the Ministry of the Interior comprising persons holding police ranks, is thus responsible for the detection and investigation of circumstances indicating that a crime has been perpetrated by a police officer, and for the identification of the perpetrator.

#### Lack of implementation of basic safeguards preventing ill-treatment

The Committee Against Torture of the Government Council also proposed amendments to legislation regarding compliance with the standards of the Committee for the Prevention of Torture of the Council of Europe – informing a third person of detention at a police station, access to a legal representative and to a doctor of a person's own choosing. When performing its visiting duties, the Committee encountered the opinions that arranging for a legal representative and a doctor is extremely complicated. In addition, the Ministry of Health has proposed, in a new restrictive amendment to the Health Care Act, to ban access to a doctor of a person's own choosing at a police station. The Ministry of the Interior supported this proposal. This proposal is directly contrary to CPT recommendations. There remains a problem with the police's unwillingness to inform others of persons brought to a police station (under Section 12(8) and Section 13(5) of the Police Act) but not arrested. The police and the Ministry of the Interior are therefore not showing any interest in implementing the CPT's recommendations on guaranteeing the three basic rights of persons stripped of their freedom at a police station.

#### Case Study

*After several years of generally uncontroversial actions in public spaces, there was an inappropriate police action against a dance party in and around a rented field in West Bohemia at the end of July 2005. The police acted a priori against all persons, including hundreds of those on the rented land. Even after much experience with dance parties during the last eight or more years, the police*

*were not able to train and educate policemen or devise tactics to cope with such events in the event of a breach of the law so that the government's obligation to comply with human rights is not breached and there is not a mass breach of the right not to be subjected to inhuman and degrading treatment or punishment by them. In statements made by the responsible government representatives regarding the breach of the government's obligations to protect human rights, all blame for the absence of preventative and assistance measures on the government's part was – as has been usual in the past – placed on the participants in the gathering.*

*The most problematic aspects of the action at CzechTek were:*

- **The mass and intentional covering of identification numbers** by the police, which intentionally complicated the identification of perpetrators of criminal offences by the police;*
- **The poor co-ordination of the action under uniform command** and, due to this, the diffusion of responsibility for committing criminal offences, including the criminal offence of general endangerment, in particular with regard to the second action – at night – by the police;*
- **Mass beating of dozens participants without any reason with truncheons, fists and boots on various parts of the body and throwing dangerous items** (smoke bombs, detonators) into cars and at bodies (including heads) in spaces occupied by people. All the aforementioned actions affected males and females, including minors. For example, one brutal policeman smashed a fourteen-year-old girl's elbow with long life consequences, another girl injured her lung with broken rib. Several boys had rib, eye, hand and leg injuries of different gravity.*
- **None of the policemen was punished. The state prosecutor postponed all the cases poorly investigated by the Interior Ministry Inspectorate.***

*The problem of attacks on the physical integrity of citizens by the police is a lasting sad reality in the police's everyday activity. In specific cases, the bodies active in criminal proceedings still make insufficient efforts to find the offender and bring him to trial. Even when there is evidence in the form of photographs of a specific policeman revealing five of the six digits of his identification number, there is no attempt to determine his name by the Ministry of the Interior's Inspectorate.<sup>11</sup> In the event of photographed injuries to several parts of the body, including the face, supported by medical confirmation, the intensity of the beating is found to be less than that required for a criminal offence by the public prosecutor.<sup>12</sup>*

*Czech courts have yet to acknowledge that policemen who attack Roma without any reason are committing racially motivated attacks. In May 2005 the Regional Court in Hradec Králové gave conditional sentences to two policemen in the well-known case from 2004 of the Daniš family, where three drunk policemen broke into his flat at night and attacked Mr Daniš's mother and pregnant sister whilst shouting racist insults. Neither the judge nor the public prosecutor (despite a number of complaints by the League lawyer in the position of the victims' legal representative) examined the possibility of a racial motive. The victims are still attempting to get justice for these racially motivated attacks from a civil court.*

<sup>11</sup> A specific case of the investigation of police violence and knowing destruction of a car by the intentional throwing of two smoke bombs into the car at CzechTek.

<sup>12</sup> A specific case of the beating of a high school student in Uherské Hradiště.

### Recommendations for Governmental Action

- The government should **establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by both the state police and municipal police.**

### 3.2 Domestic violence

3.2.1 In 2004 the results of international research on violence against women were published in which the Sociological Institute of the Czech Academy of Sciences and the Philosophical Faculty at Charles University contributed research on the Czech Republic showing that almost 38% of women in the Czech Republic older than 18 years of age encounter violence from their partner at some point in their life. Only 8% of these women ever report their partner's violence to the police; in only 3% of reported cases are perpetrators ever charged; and in only 1% of those cases in which charges are brought is a perpetrator ever sentenced.

3.2.2 In recent years, the Czech government has developed policies to begin to address domestic violence. The most significant progress in 2005 was the practical implementation of the new criminal offence of “abuse of a person living in a shared household” (para. 215a of the Criminal Code, in force since 1 June 2004) and **the criminal prosecution of domestic violence has improved.**

3.2.3 On 14 April 2006, a new bill was passed which amends the domestic violence protection legislation. Some of the proposed amendments mentioned above concerning victim consent with criminal prosecution and the regulation of “application” offences were ultimately not adopted after the discussion in Parliament. **As of 1 January 2007, the police** will have new powers: If they are called to a domestic violence incident, they may order the perpetrator to leave the shared household for 10 days. The victim can ask for an extension of this measure by court order and also augment it through a **restraining order** prohibiting the perpetrator from approaching and/or contacting the victim. The law also provides for the establishment of **intervention centers in each region.** These centers will provide acute psychological and social work aid to the victims, either as shelters or clinics, and will also arrange for further forms of aid to be provided to the victims longer-term.

3.2.4 Experts have criticized this amendment, saying that it does not sufficiently protect the victim, because during the first 10 days after the police order, the victim is most at risk outside the common household, and the amendment does not address this. The perpetrator usually cannot accept this loss of control over the victim and tries very hard to contact and pressure the victim. If the victim allows the perpetrator to return, the situation usually gets worse. The perpetrator will have committed the crime of obstructing a court order and may become even more violent, while the victim may fear repeatedly calling the police.

3.2.5 Another problematic point concerns **determining situations in which the police can order the perpetrator to leave.** The law states that it must be a situation wherein, “based on the established facts, especially taking into account previous attacks, it is reasonable to assume that harmful attack against life, health, personal freedom or an especially serious violation of human dignity is likely to occur.” The police are being trained to implement the law; guidelines on implementing the provision are being prepared; and monitoring and information systems for such offences and police intervention will be introduced. Experts are concerned that the police will be reluctant to order the perpetrator to leave in cases where

there is a lack of prior record on the perpetrator in the information system. Also, the term “especially serious violation of human dignity” is too vague. It will be up to the police guidelines to recommend how to deal with these drawbacks. **It is also not clear how the courts will react if the victim applies for a court restraining order *without* a police order having been previously issued, or whether the courts will only issue orders in cases where a previous police order exists.**

- 3.2.6 Also, a new provision has been introduced into the Civil Procedure Code requiring bond (CZK 50,000 EUR 1770) be posted by any applicant for a court injunction in order to compensate for any eventual damages caused by said injunction. This new provision also applies to victims of domestic violence applying for restraining orders. The victim can apply to have the bond waived; nevertheless, this represents yet another obstacle for the victim to overcome and requires that the victim have access to legal aid. Such aid should be provided by the intervention centres due to start operating by the beginning of 2007, but it is already evident that there are problems with the financial and personnel resources available for such centres, and it is highly doubtful they will be established in time to meet the needs generated by the new law. Despite the drawbacks described above, the new regulation does represent significant progress in protection against domestic violence in the Czech Republic.
- 3.2.7 Cases where the perpetrator of domestic violence is a police officer are very problematic. The police have successfully avoided this issue, but research from abroad shows there is a higher number of perpetrators of violence among the police and armed forces than in other professions. There has been no research undertaken on this issue so far in the Czech Republic. Most victims’ complaints against police officers are “swept under the rug” in practice, because allegations of crimes committed by police officers are investigated by an agency lacking independence. Even ex-police officers are never prosecuted for domestic violence. In cases where the perpetrators of violence are police officers, public prosecutors, judges, or members of other influential professions, the victims are in a very complicated situation and there are no effective legal mechanisms addressing such situations.
- 3.2.8 The most urgent problems in the area of domestic violence are **insufficient attention paid to children who have witnessed domestic violence or are direct victims of domestic violence** (the court does not take domestic violence into account in decisions on custody, and children are forced against their will to have contact with the violent parent) **and the poverty mothers often face if they decide to leave the aggressor. Court prohibition of contact between child and parent is very rarely imposed even in cases in which there is a suspicion of sexual abuse of the child by the parent.** The children are often forced to maintain contact with one of the parents against their will.
- 3.2.9 “Stalking” is not addressed at all. There is no effective protection against such behavior and no police methodology developed to address it.
- 3.2.10 Most victims of domestic violence are mothers with minor children. If they decide to leave the aggressor, they often face substantial financial difficulties. Due to her cohabitation with the aggressor, the victim often cannot save money. Economic violence is often present, in which the victims are forced to hand over their income to the aggressor, or the victims are often mothers on maternity leave dependent on social benefits. If the victim is married to the perpetrator, problems arise due to their joint ownership of assets. The perpetrator often remains in the shared household but stops paying rent and utilities; the debts are then recovered from the victim. The perpetrator can also create many other debts for which the victim has joint liability. Due to the housing market situation, there is often no other

alternative for the victim to solve her housing problem than to rely on the division of the shared property by the court, and court proceedings take a very long time. Enforcement is broadly lacking in cases in which alimony payments are in arrears (there must have been failure to pay alimony for six months before criminal prosecution can be undertaken). Social support benefits are usually not enough to cover the perpetrator's debts, and the victim cannot dispose of any joint assets without the consent of the perpetrator. The financial situation of the victim is almost always significantly worse after leaving the perpetrator, which, for many victims, is a deterrent to resolving the domestic violence. Divorce proceedings take too long and the personal status of the victim remains unresolved for a long time, which prevents her, for example, from taking out a bank loan to solve her housing problems.

### **3.3 Insufficient Criminal Protection against Rape and Other Forms of Violence**

3.3.1 **The criminal definition of rape is insufficient.** Lack of consent is not a determining factor in the definition of rape. Rape is defined as forcing sexual intercourse under imminent threat of violence, by violence, or due to abuse of a person's vulnerability (para. 241 Criminal Code).

3.3.2 **The criminal code requires consent of the victim for the prosecution of some crimes** (including intentional bodily harm), committed against the victim by the perpetrator, if the victim would have as a witness a right to reject to testify (lineal ancestors, siblings, husband or partner and other close relatives or in similar relationship). In case of a rape the consent is required if the perpetrator was a husband or partner of the victim. Though the criminal code states that the consent is not needed if the consent was not given or revoked due to the intimidation, under pressure, due to dependency or subordination, this is rarely investigated. Victims often under pressure and intimidation from perpetrators do not provide consent or recall the consent to the prosecution later.

#### **Recommendations for Governmental Action**

- Government should rigorously enforce the current regulations on the criminal prosecution of domestic violence (“abuse of a person living in a shared household” according to para. 215a of the Criminal Code), and upheld current regulation **whereby consent of the victim is not required in order to prosecute the perpetrator.**
- The Government should allocate sufficient human and financial resources necessary for the establishment of therapeutic programs for perpetrators and **promptly establish accredited therapeutic programs for perpetrators of domestic violence, as well as therapeutic programs for victims;** provide sufficient funding for NGOs to introduce such programs; and support a diversity of scientific approaches to therapy for perpetrators.
- The Government should introduce systematic and complex training for the police on their professional response to domestic violence (including how to assess the situation when called to intervene, how to deal with victims, how to use police powers to ensure the safety of the victim, how to arrange for aid to the victim, etc.) at all levels of the police structure nationwide.
- The Government should establish the legal basis for creating **interdisciplinary teams,** requiring the state authorities concerned to a) participate in the teams, b) develop a unified

methodology for the work of the teams, and c) ensure that the teams are established nationwide.

- The Government should ensure that **medical professionals receive systematic and comprehensive training on domestic violence** and how to provide assistance to victims in relation to health care services.
- The Government should **ensure that the new act on protection against domestic violence is implemented effectively and meaningfully for victims, i.e., that police received adequate training on how to assess situations in which they are entitled to order a perpetrator to leave, emphasizing that no record of previous incidents is required as a condition for issuing such an order**; that the courts grant restraining orders irrespective of the existence of previous police orders; and that victims are sufficiently protected against intimidation outside the shared household once the police order has taken effect.
- The government should respectively amend the criminal definition of rape in a sense that the constitutive element of the crime of rape is the lack of the consent of the victim. The Government should introduce legal regulations providing protection against the **phenomenon of “stalking”**.
- The Government should **establish an independent mechanism for investigation of allegations of crimes committed by police officers or ex-police officers, public prosecutors, and judges**.
- The Government should ensure **that divorce proceedings and proceedings on division of shared property are completed speedily in cases of domestic violence** as well as the speedy execution of back alimony; in cases where the victim and perpetrator separate, it should ensure that legal measures are introduced **which prevent the perpetrator from generating debt for which the victim is liable**.
- The government should **discharge from the criminal code the requirement of consent for the prosecution of a perpetrator**, which has close relationship to the victim, in cases of crimes against physical integrity



#### IV. Article 8: Protection against Slavery and Servitude

##### 4.1. Commercial Sexual Exploitation of Children, Including Child Pornography and Child Trafficking

- 4.1.1 **Collection of data about sexually abused children is not centralized.** The statistics on sexual abused children are compiled by Police, Ministry of Labor and Social Affairs and Ministry of Justice (within the statistics of courts and public prosecution). Because the methodology of the statistics is not unified and interconnected, they are incompatible.
- 4.1.2 **A few partial studies have been carried out on commercial sexual exploitation of children (CSEC),** but comprehensive research study on the prevalence of CSEC, its causes, typology of victims and perpetrators, latency, and effectiveness of so far adopted measures to combat it is lacking. Systematic information about CSEC is missing.
- 4.1.3 **The coordinated system of cooperation among child protection agencies, educational institutions, health care facilities, police and NGOs does not exist.** That leads to unsystematic responses to individual cases of sexual abuse and CSEC, which might cause needless secondary victimization. An elaborated, unified and coordinated system of crisis intervention, long-term care for victims, and rehabilitation is not in place. The victims are granted neither legal nor psychosocial assistance; the system of social rehabilitation is insufficient and rambling. Rehabilitation and resocialization services for the child victims of CSEC are provided only by NGOs (only KARO and Projekt Šance), which have limited regional outreach and capacity.
- 4.1.4 Due to the shortage of staff the **child protection agencies can not exercise their preventive function** and undertake terrain social work with children and families at risk.
- 4.1.5 Although the National Action Plan **includes educational programs on CSEC, these programs are targeted to experts.** Public awareness campaigns targeted to children, parents, and the public are missing.
- 4.1.6 The Czech Republic still **lacks a system of treatment for pedophile aggressors and other sexual deviants.** There is no system of simultaneous treatment for the perpetrators while serving the imprisonment sentence and following compulsory ambulatory treatment after release.
- 4.1.7 The child victims of sexual abuse or CSEC (as well as other crimes) **are often repeatedly victimized during the criminal proceedings by insensitive and repeated questioning** (there are only 4 special interviewing rooms with one-way mirrors in the Czech Republic). There is neither legal nor professional ethical regulation of the media reports on victims of crime, which leads to insensitive interference with the victims' privacy including publishing the names of victims.
- 4.1.8 An important factor contributing to CSEC is the number of institutionalized children. The children who run away from institutions or dysfunctional families are considered to be the group most at risk of CSEC. Another particularly vulnerable group is unaccompanied minor foreigners. The alien police and frontier police do record unaccompanied minors crossing the border, if they do not seek asylum.

- 4.1.9 There are no funds allocated to support specific non-governmental programs focused on CSEC within state subsidies program for the restoration of families with children at risk of dysfunction (Ministry of Education, Youth and Sports).
- 4.1.10 The reporting obligation of child abuse including sexual abuse is insufficiently regulated especially in the medical profession.
- 4.1.11 The Czech Republic has not ratified neither the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography nor the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. The reason for not ratifying both instruments is insufficient legal regulation of liability of the legal entities, neither criminal, nor administrative nor civil. Also the “mere” possession of child pornography has not been criminalized yet.
- 4.1.12 It must be acknowledged thought that the solutions to most of the above mention problems are incorporated into the National Plan of Action against Commercial Sexual Exploitation of Children for 2006-2008.

#### **Recommendations for Governmental Action**

- The government should **establish the liability of legal entities as well as criminalize mere possession of child pornography and ratify promptly the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime**
- The government should **unify the methodology of collecting statistical data on sexually abused children and establish a nation-wide register of these children**
- The government should undertake a **comprehensive study to map real prevalence of CSEC, its causes, typology of victims, perpetrators and effectiveness of the measures adopted so far**
- The government should establish a **coordinated system of response of the involved state authorities** (e.g. child protection agencies, police, public prosecutor, judge and social and rehabilitation services) to the cases of child sexual abuse
- The government should establish a **state guaranteed system of assistance and rehabilitation services for the child victims of sexual abuse** while providing funding for non-governmental organizations offering these services
- The government **should strengthen the preventive capacity of child protection agencies through** increasing staff numbers and the qualifications and competence of the staff to undertake terrain social work, and detect children at risk as well as to appropriately react to child abuse to reduce the secondary victimization of the child to a minimum

- The government should undertake **awareness raising campaigns targeted to children and parents, especially those at risk**
- The government should **establish a system of treatment of perpetrators of sexual violence against children, including juvenile offenders**
- The government should ensure that all state officials (child protection agencies workers, police investigators, public prosecutors, and judges) dealing with cases of child sexual abuse **are trained and apply the best practices to reduce secondary victimization of the child**
- The government **should introduce legal regulations concerning media reports on child victims of crime**
- The government **should record unaccompanied minors crossing the state border**

## **V. Article 9: Right to Freedom and Personal Security (Para. 1)**

### **5.1 Problem of Involuntary Hospitalisation in a Psychiatric Facility**

- 5.1.1 Psychiatric facilities in the Czech Republic are often a place where personal freedom is restricted. Persons can only be placed in such facilities in the cases defined by the Act on Care for People's Health.<sup>13</sup> The lawfulness of limiting personal freedom in a medical facility has to be reviewed by a court, under Sections 191a-191g of the Civil Procedure Code, Act No. 99/1963 Coll. (the "Code"). However, even after an amendment to the Code, Act No. 205/2005 Coll., came into effect on 1 August 2005 and improved some aspects of the procedural position of involuntarily hospitalized citizens, procedural rights of persons detained in medical facilities are still not secured. In total, court review of lawfulness of person's admission in psychiatric institution is most often solely formal and in fact it is based only on medical opinion of a psychiatrist.<sup>14</sup>
- 5.1.2 There is mandatory representation by an attorney in cases where the person in question has not chosen another representative. Nevertheless, in some courts an attorney is appointed only together with the decision in merit and the person concerned is therefore without any representation. However, sometimes even if there is an attorney appointed before the judge decides the case, the attorney in fact does not represent the person, does not meet them or contact them, and does not seek for any guidance from them. It also sometimes happens that neither the person concerned nor the attorney is present when the treating doctor is questioned by the judge, which is clear violation of fair trial practices.

### **5.2 Situation in Social Care Institutions**

- 5.2.1 Since social care institutions house people who are dependent on the care provided to them, there are restrictions on the personal freedom of such persons.<sup>15</sup> However, in contrast to the restrictions on personal freedom in medical facilities, for social care institutions the review of the lawfulness of such restrictions is not set forth in legislation in a sufficiently detailed manner.<sup>16</sup>
- 5.2.2 For example, in practice it is unsatisfactory that persons with mental handicaps are prevented from leaving an institution even though they are able to deal with matters outside the institution independently. Tying the chance to move around outside an institution to the guardian's consent, which is imposed by Section 78(1) of Decree No. 182/1991 Coll., is a breach of the constitutionally guaranteed right to protection of personal freedom. This provision is unconstitutional. A guardian does not have the power to decide whether a person can leave an institution, as leaving an institution is not an act in law and a guardian only represents a person in care during acts in law.

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<sup>13</sup> Section 23(4) of the Act on Care for People's Health, No. 20/1966 Coll., exhaustively lists the conditions under which it is not necessary to respect the principle that all medical acts are taken only with a patient's informed consent.

<sup>14</sup> E.g. after request for information about these proceedings the Prague 8 District Court provided the League with information that in year 2006, there were 858 cases of review of lawfulness of admission and in all the 858 cases the court ruled that admission was lawful (letter from the Prague 8 District Court from 1<sup>st</sup> June 2007).

<sup>15</sup> Social care institutions are recognized as places where people's liberty is *de facto* limited by both European Committee for Protection Against Torture (CPT) and Czech Ombudsman (see art. 1 para 4 letter c) of the law no. 349/1999). Furthermore, law no. 108/2006 On Social Services allow for use of physical or medical restraints.

<sup>16</sup> In medical institutions this is a judicial review in accordance with Sections 191a-191g of the Civil Procedure Code, Act No. 99/1963 Coll.

- 5.2.3 The situation in many institutions, where most clients are stripped of their ability to perform acts in law and the institution represents them as the guardian, is inappropriate. The lack of public guardians, however, basically makes another option unfeasible. The fact that a large amount of persons residing in social care institutions for the mentally handicapped are stripped of their ability to perform acts in law is alarming. In many cases it would be appropriate to consider the full or partial return of this ability. The problem is the lack of information about the rights of persons placed in institutions, not only among the institutions' clients, but also among their staff.

#### **Recommendations for Governmental Action**

- The government should ensure **effective review of lawfulness of admission and detention of person in health institutions.**
- The government should ensure **that a system of court review in cases of detention in social care institutions is applied.**
- The government should ensure, in cooperation with Bar Association, that **attorneys receive training on rights of people with mental disabilities, especially rights related to detention and detention proceedings.**
- The government should amend the current legal regulation and **abolish the requirement of the guardian's consent in order to leave social care institutions and secure that it is not used in practice anymore.**
- The government should ensure that the **institution does not act as a guardian** of people in the institution and ensure that a **sufficient number of public professional guardians are available.**
- The government **should provide training to the staff of the institution about the rights of the people placed in the institution.**
- The government **should ensure that the people placed into institutions are aware of their rights.**

### **5.3. Grounds for Placing A Child in Institutional Upbringing**

- 5.3.1. The Committee on the Right of the Child (hereinafter CRC) in its last concluding observations (CRC/C/15/Add.201, 31 January 2003) was concerned about "the insufficient assistance and guidance to parents in their child rearing responsibilities in the upbringing and development of the child (article 18) resulting in numerous cases . . . in alternative care in institutions. The Committee was further concerned that preventive efforts and family counseling are inadequate and that placement in an institution may be a solution for social problems and crisis situations in the family."<sup>17</sup> The CRC was further concerned about predominant institutional responses to provide assistance to children in difficulty and a disproportionately large number of children

<sup>17</sup> CRC/C/15/Add.201, 31 January 2003, para. 42

are placed in a residential institutional care environments. Since 2003 the situation has not improved. Counting children placed in the social care institutions as well as institutional education facilities, out of 10,000 children 480 children are placed in institutions. The absolute number is approximately 20,000 children in institutions. **The system of alternative family care is not sufficiently supported and placement of the child in alternative family care takes too long.** The differentiated types of alternative family care according to the specific needs of children (professional foster care) are missing. **Due to the lack of supportive family support services children are often placed in institutions because of social reasons** (50% of children in institutions) such as poverty, inadequate housing conditions or truancy. This is valid even in cases of court ordered supervision over the family, which are often not accompanied by supportive social services.

- 5.3.2. In the academic year 2005/2006 approximately 16% children were placed into an institution under the competence of the Ministry of Education by the **preliminary court ruling** (1252 out of total number 7621). The court is obliged to decide on the proposal for preliminary ruling in 7 days or in 24 hours (in case of emergency ruling according to the § 76a of the code of civil procedure). The courts decide on the proposal for preliminary ruling only on the basis of “verified information” (not evidence), and the preliminary ruling is executable regardless of pending appeals. The appeal proceedings usually take several months (approximately 6). The child can needlessly spend several months in the institution. The length of the placement in the institutional care based on preliminary ruling is excessive considering that this is preliminary emergency measure, which takes a very long time to revert.

#### **Case Study**

*On 16th November 2000, 5 children (the youngest child being only 5 months old) of Mrs. Wallova and Mr. Walla were forcibly removed from their parents and placed in different institutions. The reason was not abuse or neglect of the children, but, according to the opinion of the authorities, inadequate housing. The family was temporary living in an office, which was adequately heated, clean and hygienic. The child protection authorities concluded that the parents did not promptly find sufficiently adequate housing and that the instability of housing and economic conditions were interfering with the development of children. The parents applied to the local municipality of Tabor for social housing. The social housing was not provided and the children were placed into an institution instead. Child protection authorities did not provide the family any kind of social assistance or assist to find suitable and affordable housing. In October 2006 the European Court of Human Rights decided in the case of the Wallovi family that the Czech Republic violated Article 8 of the European Convention on Human Rights by placing the children into an institution only because of social reasons.<sup>18</sup> Despite the decision of the Court, two of the children still remain in the foster care, where they were placed from the institutional placement without the consent of their parents. Currently, state authorities have offered Mrs. Wallova and Mr. Walla assistance to gradually reestablish a relationship with their children placed into foster care and work towards returning the children back to their biological family.*

#### **Recommendations for Governmental Action**

- The government should, in order to decrease the number of the children in institutions, increase the **number and the qualification of the staff of child protection agencies and increase allocation of their working time for terrain social work, motivate and evaluate the workers of the child protection agencies based on successful recoveries of biological families or**

<sup>18</sup> Walla and Wallova v. The Czech Republic, Eur. Ct. H. R., 26/10/2006

**placements of children in alternative family care, and ensure financial interest of the local authorities in decreasing the number of the children in institutions.**

- The governments should establish **system of professional alternative family care and establish social incentives for foster families.**
- The government should **educate judges to prefer alternative family care to institutional placement** and to avoid, to the extent possible, institutionalization of children on basis of preliminary rulings.
- The government should **stop investing in building new institutions and reallocate these finances for the support of alternative family care** (search, training, education and subsequent support of foster families)
- The government **should undertake on recurring basis an “audit” of children placed in institutions to identify children** that might be placed into alternative family care.

## VI. Article 16: Recognition as a Person Before The Law

### 6. Removing/Restricting Ability to Perform Acts in Law

- 6.1. Wide stigmatization of both people with mental health problems and persons with intellectual disabilities results in the continuation of abuse of institutes of legal incapacitation and placements under guardianship. While the newly adopted UN Convention on Rights of Persons with Disabilities<sup>19</sup> stipulates for the removal of current guardianship systems and their replacement by systems of supportive decision-making, in the Czech Republic there are still no alternatives to guardianship.
- 6.2. Moreover, there is still the problem of the insufficient definition of the conditions under which a person can be stripped of his ability to perform acts in law or under which this ability can be restricted. In proceedings on the ability to perform acts in law, the courts often decide only on the basis of a psychiatric assessment and do not adduce evidence that could prove the ability of a party to perform acts in law. The mere presence of a mental defect or problem cannot, of itself, be regarded as a reason for restricting the ability to perform acts in law independently. Courts would then have to apply the presumption that the ability should be retained. Deprivation of this ability is, unfortunately, used when a restriction would be sufficient. Quality of expert opinion used as the main proof in the incapacitation proceedings is often poor.
- 6.3. The current practice of Czech courts is that persons are first limited/deprived of their legal capacity, and after such decision is in force, the judge seeks for an appropriate person to be a guardian. It often results in period when person is already incapacitated but there is no guardian to act in behalf of the person, which results in *de facto* denial of the person's right under Art. 16 of ICCPR as has been recognized by the Czech Constitutional Court in their decision from 7 December 2005, No. IV. ÚS 412/04. Nevertheless, as the Czech Code on Civil Proceedings recognized incapacitation proceedings and proceedings to appoint guardian as 2 different proceedings, the practice continues despite the Constitutional Court's judgment. Furthermore, it is not certain that the guardian appointed to the person concerned would be capable of representing the person. There is almost no control over the guardian's performance.

#### Recommendations for Governmental Action

- The government should **remove plenary guardianship** and replace it with different alternatives to guardianship that are flexible to needs of people concerned.
- The government should **clarify legal tests and strengthen standards of proof for any interference with a person's legal capacity.**
- The government should **secure a high quality of experts opinions** issued for the proceedings.
- The government should guarantee that **no person who is without full legal capacity is without an appropriate guardian.**

<sup>19</sup> Namely art. 12 para. 2 of the Convention. Council of Europe Committee of Ministers' Recommendation No. R (99)4 on principles concerning legal protection of incapable adults calls for alternatives to incapacitation in principles no. 2 and 3.



- The government should improve **systems of public guardians** and **secure that guardians undergo appropriate training and are supervised.**

## VII. Article 17: Protection of Privacy

### 7. Victims of Violent Crimes, Secondary Victimization and Protection of Privacy

- 7.1. The criminal proceedings **often lead to secondary victimization of vulnerable victims of crime** (victims of rape and sexual abuse, child victims of abuse, victims of domestic violence, victims of trafficking, victims with mental disability, victims of racial attacks etc.) by **interference with their psychological integrity and privacy**. Victims are often traumatized in the course of the criminal proceedings due to the insensitive and/or repeated questioning, confrontation with the attacker, lack of provisions of information about their rights, progress of the proceedings as well as information about the perpetrator (release from custody etc.), inaccessibility of legal aid, insufficient protection from intimidation and retaliation including using anonymous witnesses, impossibility to obtain compensation from the perpetrator in the criminal proceedings, and inappropriate media reporting revealing identity of the victim or information that might lead to identification of the victim.
- 7.2. Because of the **inadequate training** of criminal authorities (police, public prosecutors, and judges) victims are often exposed to insensitive and/or repeated questioning. There is a **lack of technical equipment**, which could significantly reduce repeated questioning of victims. Only 4 police stations are equipped with interviewing rooms with a one-way mirror. The courts are not equipped for the questioning through video-links. There is insufficient protection of the victims from confrontations with the attacker, such as mandatory representation of the accused by attorney.
- 7.3. The criminal proceeding code does not provide for the possibility of compensation for the moral and psychological damage caused by the crime. The possibility to obtain the compensation for the moral and psychological damage in a criminal proceeding is particularly relevant for the most vulnerable victims of crimes (such as child victims of sexual abuse, victims of domestic violence, victims of rape etc.), in whose cases this might be often the only damage suffered. Moreover the criminal proceeding code limits the victim's right to obtain legal aid in the criminal proceedings for the victim's application for compensation in criminal proceedings. The victim, who has suffered only moral and psychological damage, **do not have a right to seek a compensation in criminal proceeding and therefore is also not entitled to free legal aid. Without legal representation, which supports and protects the victim, the victim is more vulnerable to secondary victimization during the criminal process.**
- 7.4. The **legal protection of the victims from intimidation is insufficient**. The criminal proceeding code regulates the institute of anonymous witness, but this institute is of little relevance in cases where the perpetrator knows the victim. The criminal proceeding code does not provide for the possibility to conceal the address of the victim or witness. The criminal code provides for possibility to order the accused to leave the courtroom only if the verity of the witness's testimony would be endangered but not to protect the victim from confrontation with the perpetrator.
- 7.5. The new criminal proceeding code bill introduces preliminary restraint orders to protect the victim (order not to contact the victim, to leave common accommodation, prohibition to contact specific persons or restraint from certain location). Though this proposal should be praised, the restraint order is unreasonably limited to crimes that have a sentence of at least 3 years. The judge decides about the restraining order on the motion of the public prosecutor, but the victim does not have a right to apply for the restraining order him/her self.

- 7.6. The provision of **information to the media in the course of a criminal proceeding does not provide adequate protection to the victims' privacy**. The legal regulation does not put emphasis on protection of the interest of victims, witnesses, and bereaved. The current legal regulation can not be interpreted as prohibiting provisions of personal data of the victims, witnesses, or bereaved. Had the criminal authorities had the possibility to deny providing information leading to the identification of the victim, witnesses, or bereaved, it would not have itself been sufficient to protect the privacy of the victim from inadequate media reporting. The only current protection against inadequate media reporting is in the civil code, in a course of legal protection of personality, which can be used only subsequently after the sensitive information has already been published. The proceeding is costly and legally complex and therefore inaccessible to the victims. Regulations in the form of journalist ethical codes on reporting on victims do not even exist.
- 7.7. Provisions on information about victims' rights, availability of legal aid, services for victims, how to obtain compensation, development of the criminal proceedings and the role of the victim in the stages of criminal proceeding, to the victims in a course of criminal proceeding is generally unsatisfactory and contributes to secondary victimization. **The most serious problem remains the provision of information about the location of the dangerous accused or convicted perpetrator**. The legal regulation provides victims and witnesses with a right to be informed about the release or the escape of the accused or convicted from detention facilities or prison. The victim has to fill a request to be provided this information with the judge or public prosecutor. The problem is the time limit in which authorities should provide the information – the day of release or escape from a detention facility. In cases of release or escape from prison the prison facility has an obligation to inform the victim (the law omitted informing a witness in case of release or escape from prison and addresses only victims) in writing (!) a day after the release or escape. Considering the area of the Czech Republic the time limit prevents the goal of the provision of providing information. Victims and witnesses should be informed immediately after the escape from detention facility or prison is discovered and preferably some time before planned release of the perpetrator from the detention or imprisonment.

#### **Case study**

*The case of O.*

*On 7<sup>th</sup> May 2007 a neighbour of family M. saw through a video device a naked and roped boy. He alarmed police, which entered neighbouring house of Mrs. M., mother of O., and found O. (8) locked, naked and roped with tape on the floor in a small cabinet under the stairs without windows. Identity of O. (including his full name) as well as the identity of his brother J. and 13-years old girl A., who was allegedly living with the family, was revealed in the media. The police testimony of O. concerning his abuse leaked into media and was published as well as grossly humiliating videotape of O. naked and roped on the floor was available at Internet.*

#### **Recommendations for Governmental Action**

- The government should, in the course of re-codification of the criminal code, **strengthen the protection of the victims of crime from secondary victimization**
- The government should introduce into the criminal proceedings code the **principle of protection of victims of crime from secondary victimization and to define a category of vulnerable victims**

- The government should introduce concrete **provisions for protection of the vulnerable victims into the criminal proceedings code**
- The government should **grant equal right to receive legal aid to victims who do not seek compensation in criminal proceedings**
- The government should establish a **right of the victim to require to be interviewed only in the presence of his/her legal representative**
- The government should, within **the re-codification of criminal proceedings code, prohibit criminal authorities to release information that might lead to the identification of the victim, witness, or bereaved as well as regulate media reports on victims of crime and establish sanctions for inappropriate reporting (e.g. in the press law).**
- The government should define crimes where the victim and witness would be automatically **informed about the release or escape of the perpetrator from detention or prison facilities, regardless of the assessment of the criminal authorities that the victim or witnesses is in danger**
- The government should ensure that the victims and **witnesses are informed about the release of the perpetrator from detention or prison on the day of the adoption of the decision about release**
- The government should ensure that the victims or **witnesses are immediately informed by phone, email, and writing in especially dangerous cases by police in person about escape of the perpetrator from detention or prison.**

## VIII. Article 19: Freedom of Expression

### 8. Limitation of Freedom of Expression by Criminal Legal Practice

- 8.1. The worst cases of violation of freedom of expression are concerned with the use of punishment orders criticized by Human Rights Committee in its recommendations of August 27, 2001 (para 20.) in cases of crimes of defamation, approval of criminal acts (previously committed by other people) and abusive use of hate speech crimes.

#### Case study

*The last example of an abusive use of a hate speech crime was the punishment of two immigrants from Georgia through a punishment order for a conditional sentence of 6 months for committing the crime of supporting and promoting movements aiming at suppression of rights and freedoms of people. In October 2006, two students were protesting during a time of tension between Georgia and Russia before the Russian embassy in Prague with a home made picture of a Russian soldier with “swastika on his uniform” stepping on the map of Georgia. Even this peaceful protest against a “foreign state” could be punished with the reasoning that both persons committed a crime of suppression of rights and freedoms of Russians! Luckily both Georgians found a criminal attorney who filed a “resistance complaint” against this punishment order within the tense, prescribe period of 8 days. Otherwise they could have had an entry in their criminal record for many years. This punishment led to fierce criticism from human rights groups. During the public criminal proceedings in March 2007, following their resistance complaint, the judge admitted her mistake and acquitted both of them. However, the state prosecutor has appealed against the acquittal, so at least one more proceedings will take place before the court of appeals. Both the public prosecutor and the judge have been young women not working in the justice system in the communist times. They were still able to accuse and convict people by punishment order for this verbal crime.<sup>20</sup>*

- 8.2. Although the criminal law has to be a last legal means for regulating behavior, due to the easiness of writing a criminal accusation in comparison to paying court fees in cases of civil suits against abusive speech, this institute is overused both by politicians and ordinary citizens in cases of defamation and the approval of criminal acts. The cases of defamation involve both private disputes and attempts from the side of politicians to harass journalists.
- 8.3. The examples of the prosecutions of “approving“ criminal acts committed before and “praising“ the perpetrator (in both cases abroad) included the approval of the terrorist attack at the WTC in 2001 (older case of right wing nationalist that wanted to be visible and quoted in media), and a new case where a vegetarian activist was investigated by the Brno police for approving the violent actions of radical environmental groups protecting animals abroad as A.L.F. or the Justice Department in the TV discussion.
- 8.4. Defamation criminal accusations are misused not only against journalists but also in private disputes as a “means of revenge” when one party “knows/has closer ties to” the criminal investigation organs. In one of accusations, Mr. Petr Partyk, who is in fact a lawyer, spent a couple of months in prison sentenced for defamation (for allegedly sending some pornography from his computer to more addresses and endangering the reputation of his neighbor). He was sentenced just for a couple of hundreds of hours to work for the public benefit, but he refused to obey the absurd court decision and so he had to go to jail.

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<sup>20</sup> The abusive use of punishment order is reported also for different minor crimes of Roma. Because of the inability to monitor this issue and the non-existence of data collecting on Roma, we cannot provide Human Rights Committee with any reliable statistics.

- 8.5. Criminal accusations of defamation are also filed by some politicians if they are not happy with the article of a journalist. The former Prime Minister and currently the opposition leader Jiří Paroubek was threatening journalists in couple of cases with a criminal investigation. In winter 2006, former BBC journalist Daniel Kaiser wrote in *Hospodářské noviny* (“Business Journal Daily”) about police investigation inspectorate as of a social democratic “residenture” (body working politically on the basis of social democratic orders. The chair of this party, Mr. Jiří Paroubek, filed a criminal accusation against Mr. Kaiser for defamation. Although the case was postponed in the end, there was a criminal investigation conducted for such a statement, the police came to the office of *Hospodářské noviny*, questioned the journalist etc. There was no indictment filed in the end, but still the beginning of investigation is absurd and lead a “show investigation” that is dangerous both for human rights standards and the democratic culture.
- 8.6. Unfortunately, the new criminal code proposal that has to be very modern, Unfortunately it is not based on principles of the protection of freedom of speech includes the crimes of defamation and approval of a crime again<sup>21</sup>! The politicians pressured the criminal law experts preparing the new criminal code so that they had to include the crime of defamation, although they tried to avoid the inclusion of this crime in the proposal one year ago. Also, the Judges’ Union criticized the inclusion of defamation into the criminal code and the ineffective actions of criminal justice organs that have to waste time to investigate such criminal accusations.

#### **Recommendations for Governmental Action**

- The government should submit the new criminal code without the inclusion of the crimes of defamation and approval of a crime to the parliament. The cases of defamation have to be decided purely on the basis of civil law clauses in the future.
- Czech criminal investigation organs have to stop criminalize verbal statements in cases of suspicion of defamation or approval of a crime (especially in absolutely absurd situation when they prosecute people for approving crimes committed abroad in the past).

<sup>21</sup> This is the wording of the prepared new criminal code, which is the same as the old one.

§ 156 – Defamation:

1) The person that tells untrue facts that are able to seriously threaten a person’s seriousness to citizens, in particular damaging his reputation in employment and infringing upon his family relations or causing other serious harm, will be punished by imprisonment for one year.

2) If the perpetrator committed the crime described in paragraph 1 by printing, film, radio, TV or other similarly effective means, the punishment shall be a limitation of freedom for two years or a ban of activity.

§ 338 – Approval of a crime:

1) The person that publicly approves of a committed crime or the person that publicly praises a perpetrator for

his crime will be punished by imprisonment up to one year.

2) A person that expresses his/her agreement with the crime will receive the same punishment in case of

- a) rewarding or compensating the perpetrator or a close person for a punishment, or if
- b) for such a reward or compensation organizes a money collection.

## IX. Article 24: Protection of Children Without Discrimination

### 9.1 Child Abuse and Neglect

- 9.1.1 The Czech Republic still ranks high among the countries with a **high number of abused children and the number of undetected case is considered to be much higher**. The non-governmental organization “Fund for Children in Need” estimates that about 40,000 children are abused each year. Over the previous 10 years, the number of physically abused children quadrupled, and the number of psychologically abused children was 12 times higher. However, experts attribute the growing statistical number of abused children to an improved system of detection of child abuse. The Ministry of Labor and Social Affairs registered 7,500 cases of abuse or neglect in 2005. Social protection bodies annually proposed that 1,835 children were removed from their families due to mistreatment in 2005 (626 more case than in 2000). This involves cases of physical, sexual, and psychological abuse. Often it takes months or years for the problem to come to light. In 2005, there were at least 3 cases of children killed at the hands of an abusive parent. According to police statistics, 4,300 children were raped or sexually abused from 2001 to 2004. In 2005, the police investigated 875 cases of sexual abuse and 9 case of commercial sexual exploitation.
- 9.1.2 The problem of violence against children falls under the competence of the Ministry of Interior, the Ministry of Labor and Social Affairs, the Ministry of Education, Youth and Sports, the Ministry of Health Care, and the Ministry of Justice. Due to this fact the system is uncoordinated, **lacks uniformed statistics,<sup>22</sup> monitoring and methodical guidelines, and often leading to further systematic abuse of the child.**
- 9.1.3 **Ex post repression prevails over the prevention** in state response to violence against children. The abused children are often placed in an institution, where their deprivation is worsened even though a non-abusive parent or a member of the broader family is able to take care about the child. The primary responsibility for the prevention and detection of child abuse rests with the child protection agencies. The child agencies are unable to fulfill their preventive function because of an excessive workload, and a insufficient number of staff with insufficient qualifications and education. The required specialization of the workers is often not respected and a specialized worker with children is missing in some of the child protection offices. Child protection agencies are often unable to fulfill their legal obligations and have no possibility to fulfill a preventive function and work in the terrain with children who might be abused or neglected. Social monitoring of families is often ineffective, and in many cases limited to investigations on whether the household is clean but without revealing the relationships and problems in the family.
- 9.1.4 Although the situation has improved the cases of secondary victimization of the child victim in the criminal justice system, **there remains repeated and insensitive questioning, insensitive media reports revealing identity of the child victims, and lack of victims’ access to quality legal aid.**
- 9.1.5 **The general legislative ban of corporal punishment of children by parents or other persons responsible for child education is lacking.** The family law states that parents have a right to use adequate educational measures with respect to the child’s dignity. The law on

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<sup>22</sup> Child protection agencies monitor child abuse and neglect and, also Ministry of Justice and Ministry of Interior collect statistical data regarding their agenda, the statistics of the different authorities are not compatible

administrative offences defines very generally an offence, which might be committed by corporal punishment of the child (inadequate punishment with the intent to humiliate the child). A more serious punishment might be prosecuted as a crime of child abuse, bodily harm etc. Despite of the above outlined legal regulations, according to a survey conducted by the 3. Medical School of Charles University in Prague in 2005, 86% of children have experienced or will experience some form of corporal punishment.

- 9.1.6 The most urgent problem in the area of domestic violence is the **insufficient attention paid to children who have witnessed domestic violence or are direct victims of domestic violence**. Courts do not take domestic violence into account in custody decisions. Courts often do not respect the child's view and enforce a contact with a violent parent against the child's will. In some cases courts do not even make an inquiry into child's view or reasons for rejecting parent. **Court-ordered prohibitions of contact between a child and parent is very rarely imposed, even in cases in which there is a suspicion of sexual abuse of the child by the parent**. Children are often forced to maintain contact with one of the parents against their will. Also problematic is the process of enforcing the decision and contact with parent. Neither executors nor child protection agencies workers are trained in how to execute a decision on custody or contact with the parent in a manner that is most sensitive to child. The enforcement of the decision is often extremely stressful for child and does not respect the child's rights of protection of psychological integrity and health.

#### **Case study**

*The case of O.*

*On 7<sup>th</sup> May 2007 a neighbor of family M. saw through a video device a naked and roped boy. He notified the police, who entered the neighboring house of Mrs. M., mother of O. There, they found O. (8) locked, naked and roped by tape on the floor in a small cabinet under the stairs without windows. On 10<sup>th</sup> May O., his brother J. and a girl A.(13), who lived with Mr. M., were placed into an alternative non-governmental child institution. Allegedly the 13-years old A. was raised by M. in the same household with Mrs. M. sons O. and J. The identity of A. was not clear. Mrs. M. was awarded custody of A. by the court decision in spring 2007. Because of the custody proceedings regarding A., Mrs. M. and her household was regularly monitored by social workers of child protection agency. The social workers had not found out any problems in the family.*

#### **Recommendations for Governmental Action**

- The Government should unify all the competences of ministries as well as other central organs dealing with protection of children under one ministry (the Ministry of Labor and Social Affairs) or establish new institution in charge of protection of children in order **to improve coordination and reform the child protection system**.
- The Government should **increase the staff of child protection agencies, improve the qualifications of the staff of child protection agencies, and thoroughly respect the specialization of the workers of child protection agencies including the specialization in children at risk of violence and children with CAN**.
- The Government **should establish a national central register of children with CAN to register data necessary to research and prevent violence against children**.



- The Government **should create a system of state responses to violence against children with an emphasis on preventing the institutionalization of children with CAN.**
- The Government should **fund public campaigns** that work to prevent and address incidences of child abuse and neglect, contribute to changing attitudes, and report child abuse and neglect.
- The Government **should create system of therapeutic and rehabilitation services for child victims.**
- The Government should **ban corporal punishment** as well as undertake **awareness-raising campaigns to end the use of corporal punishment** by people responsible for the education of children.
- The Government should ensure that **social workers** in child protection agencies **receive** systematic and comprehensive **training on violence in the family with a special focus on children** as victims or witnesses of domestic violence and ensure that **workers of child protection agencies are sufficiently protected against intimidation by violent parents.**
- The Government should especially **focus on situations of children experiencing or witnessing domestic violence**; judges should be trained about domestic violence and its impact on a child and his/her relationship with the abusive parent; the government should ensure that courts take domestic violence into account in their decisions on custody; **children should never be forced to maintain contact with a parent who has perpetrated domestic violence.**

## **9.2. High Amount of Children - Roma Children in Particular - in Child Care Institutions**

9.2.1 Many Romani families claim that they are forced to move from their houses and flats because they are threatened that, otherwise their children will be taken from them and put into institutional care. Although it is often not possible to substantiate these allegations for lack of data, the truth is that there are a disproportionately high number of Romani children in institutional care. This situation is also appalling given the fact that Czech Republic has the highest amount of children in institutional care in Europe<sup>23</sup>. Exact numbers on the amount of Roma children concerned are not available because it is forbidden by law to officially collect such data. It is reported that a disproportionately high number of children in institutional care are Roma. According to the Czech TV (Česká televize) this figure is 80%.<sup>24</sup> Even though the number may not be entirely accurate according to LIGA, it illustrates the horrible scope of the problem. There are many reasons for taking children away from a family and putting them into institutional care. Inadequate housing is one of the main reasons. Unfortunately, all too often the system prefers placing children into institutional care rather than helping the family to improve its social situation.

<sup>23</sup> Birmingham University, "Mapping the Number and Characteristics of Children under Three in Institutions across Europe at Risk of Harm" project has shown that at a rate of 60 per 10,000, the Czech Republic takes more children into state care than any other country in Europe.

<sup>24</sup> TV News at 7 p.m. on 4 February 2007.

**For the very last official position see the Czech government response no 16. on the QUESTIONS PUT BY THE RAPPOREUR IN CONNECTION WITH THE CONSIDERATION OF THE 6<sup>th</sup> AND 7<sup>th</sup> PERIODIC REPORTS OF THE CZECH REPUBLIC at the session of CERD 1.-2. March, 2007. “It is reported that a disproportionately large number of Roma children are being removed from their families and placed in State institutions or foster care. Please provide updated data of Roma children placed in state institutions or foster care. Please indicate the existing policies to ensure that no direct or indirect discrimination exists in the child protection legal system.”**

Children may be removed from their family only if there are serious reasons for this which place their health or sound development at risk. Only a court may rule on the removal of a child, as a rule based on a petition filed by a body for the social-law protection of children. The concept of the child is derived from the Act on the Social-Law Protection of Children, which contains a direct reference to the Convention on the Rights of the Child, including all principles of non-discrimination. The Convention itself, in Article 2(1), provides for a prohibition of discrimination inter alia on grounds of race, colour... language... national, ethnic or social origin. For the same reason, the ethnicity of children who are placed outside their family is not monitored as this information is irrelevant in the decision-making process.

The proportion of Roma children in the total number of children in institutional care may reflect the social situation of part of the Roma community. The frequently unsatisfactory conditions, and conditions which jeopardize the above-mentioned sound development of children, are naturally taken into account as a reason to remove children.

## X. Article 25: Right to Vote

### 10. 1. Ban To Exercise of The Right to Vote for People Under Plenary Guardianship

Art. 2 Letter b) of the law no. 247/1995, on elections to the Parliament of the Czech Republic deprive persons deprived of their legal capacity of their right to vote. Law does not cover any legal test to consider whether adult person under plenary guardianship is capable to vote or not. As the deprivation of legal capacity is solely the area of civil law, the judge is not entitled to consider the question of whether the person is capable of exercising his or her right to vote during the guardianship proceedings. This regulation is therefore automatic without any distinction. This measure, which affects tens of thousands of adult people deprived of their legal capacity, cannot be seen proportional. The main international instrument in the area of guardianship: Recommendation No. R (99) 4 adopted by the Committee of Ministers of the Council of Europe on 23 February 1999 in Principle No. 3 para. 2 declares that *[i]n particular, a measure of protection should not automatically deprive the person concerned of the right to vote.*

#### Recommendations for Governmental Action

- The Government should **remove a blanket ban on the right to vote for persons deprived of their legal capacity** in order to secure that persons with disabilities are not deprived of their right to vote.

## XI. Article 26: Ban on Discrimination

### 11.1. Anti-discrimination Law

11.1.1 Discrimination, including racial discrimination, is prohibited by many laws. **However, the provisions are dispersed throughout various laws, and they often do not cover all areas related to discrimination.** Subsequently, the Government prepared a new, comprehensive Bill on Equal Treatment and Protection against Discrimination (Anti-discrimination Bill; see para. 24 of the Government Report). Unfortunately, the bill was rejected by the parliament's Chamber of Deputies in the spring of 2006. As a result, no such legislation was passed and no similar bill is being considered. However, had the new Act been passed, it would have fully implemented all EU anti-discrimination directives into the Czech legal system, in particular the Directives 2000/43/EC, 2000/78/EC and 76/207 EEC as amended by the Directive 2002/73/EC. It should have applied to all matters covered by the Directives, including labor, access to employment, access to goods and services, health care, education etc. The Act should have broadened the definitions of direct and indirect discrimination, harassment, and victimization. Furthermore, it should have provided legal remedies, including just satisfaction for victims of discrimination. It should have also extend the powers of the Ombudsman, in order to serve as a body for the promotion of equal treatment, and all provisions concerning anti-discrimination in various laws should have been substituted by the provisions of the new Anti-discrimination Act.

11.1.2 As a result of the failure to pass the Anti-discrimination Bill, certain problems have arisen with similar legislation. One example is the new Labor Code passed in 2006, which entered into force on 1 January 2007. The Code regulates the relationship between employers and employees and is therefore particularly important for combating discrimination in the workplace (Note: the Code does not cover access to employment, since it is considered time before a labor contract is concluded, therefore this is covered by the Employment Act – see para. 23c of the Government Report). The new Labor Code includes a general prohibition of discrimination, it then refers to a special act for further details. However, this Act, which was supposed to be the Anti-discrimination Act, does not exist. As a result, there is a weakening in the protection against discrimination in labor law relations.

#### Recommendations for Governmental Action

- To enact comprehensive, anti-discrimination legislation that ensures effective protection for the victims of racial discrimination in all relevant areas.

### 11.2. Police III-Treatment of Members of National and Ethnic Minorities

11.2.1. According to a sociological survey conducted in 2004 and reported in the Government Strategy for the Work of the Police of the Czech Republic in Relation to Minorities for 2006 –2007,<sup>25</sup> there is a visible antipathy within the police force against persons of different ethnic origins, and in particular against the Roma. In the opinion of most police officers, the Roma account for a significant percentage of criminal activity, both in their specific place of residency and in the surrounding regions. In addition, when victims of crimes are minorities, the incidents are often considered insignificant or an isolated phenomenon. Alarminglly,

<sup>25</sup> [http://www.mvcr.cz/dokument/2006/mensiny\\_2006\\_7.pdf](http://www.mvcr.cz/dokument/2006/mensiny_2006_7.pdf)

nearly one third of police officers consider this type of criminal activity an instrument to deter members of the minority from committing crimes. They are also sceptical to employ members of minorities in the police force.

- 11.2.2. The negative sentiments also have a reverse effect.. There is significant distrust between minority groups and the police, especially for the Roma. The main reasons given for their dissatisfaction included the police's frequent and unjustified identity checks, distrust expressed towards them by the police, and the patronizing behaviour of police officers. This distrust results in a significant number of under-reported cases of discrimination with the police. Consequently, the Roma are even more vulnerable to all kinds of discrimination because of the virtual impunity of perpetrators. In order to change this unsatisfactory relationship between minorities and police, a genuine partnership between the police and all sections of society, particularly the Roma, must be established. There are many tasks that must be fulfilled before this aim can be achieved.
- 11.2.3. National Strategy for the Work of the Police in Relation to Ethnic Groups and Minorities was adopted in 2003. It proposes several mechanisms in order to improve the relationship between the police and minorities. These include liaison officers for minorities working under regional police authorities and pilot projects for Romani assistants to the police. The Romani assistants, which now operate in several regions of the Czech Republic, have proved to be quite successful. They should be extended to other areas. Nevertheless, other mechanisms to improve the relationship should also be enacted. One positive example that proved to be effective in many countries is the encouragement of the reporting of racist incidents by way of setting up a 24-hour hotline or a centre outside of the police (for example within local governments), and to follow-up with effective investigations of these complaints.
- 11.2.4. Another highly desirable and effective measure is to employ members of different ethnic groups within the police. This is indeed envisaged by the mentioned National Strategy for the Work of the Police in Relation to Ethnic Groups and Minorities. Nevertheless it has not been very effective so far as the government admits: “The recruitment of members of minorities to the Police is still neglected. The number of police officers that consider themselves to belong to a minority group is not being recorded, and therefore it is not possible to consult specific data. The programmatic recruitment of members of minorities to the police concerns only a minimum number of police units, and thus the police force remains relatively homogeneous. Thus far, the Ministry of Interior has not developed an effective mechanism to promote the recruitment of minorities.”<sup>26</sup> As a result, police officers of different ethnic origin are virtually non-existent, in particular members of police who patrol the streets.
- 11.2.5. The cases mentioned below illustrate the grave consequences of persistent racial prejudices within the police force and also more general problems with police in dealing with members of other ethnic origin and foreigners. Moreover, the Jičín case brings into light a systematic problem in the Czech criminal justice system: the reluctance of the police to consider the racial aspects of violent crimes. This has been an issue of recent concern with the European Court of Human Rights. In the well known case of *Nachova v. Bulgaria*, the Court found the State of Bulgaria to be in violation of the prohibition on discrimination due to the fact that the Bulgarian authorities failed “to take all possible steps to investigate whether or not discrimination may have played a role” in the killing of two unarmed and non-violent Romani deserters from the army. The Grand Chamber stressed the obligation of state parties to ensure that “when investigating violent incidents . . . State authorities have the additional

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<sup>26</sup> Strategie pro práci Policie České republiky ve vztahu k menšinám pro období 2006 – 2007, p. 11, [http://www.mvcr.cz/dokument/2006/mensiny\\_2006\\_7.pdf](http://www.mvcr.cz/dokument/2006/mensiny_2006_7.pdf).

duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.”

### **Case studies**

#### *The Jičín Case:*

*In May 2003, three off duty police officers forcibly entered the flat of a Romani family in a tlen called Jičín. The police officers physically and verbally assaulted two Romani women and one boy. During this assault, various racist insults were allegedly uttered such as “black gobs, blafl mother\*\*\*\*\*”, “Gypsies, it would be best to shoot you all”, etc. However, the prosecutor who investigated the case treated it as a simple crime of forced entry into a dwelling, and despite numerous appeals from the League of Human Rights lawyer who represented the victims, the attorney refused to investigate the case from a racial dimension. Consequently, two of the identified attackers were found guilty in court for the crime of forced entry into a dwelling. Of course it cannot be said with certainty that the primary motive for the crime was racial. The problem, however, is that the relevant authorities refused to consider racial discrimination as possibility, even though the circumstances of the case pointed in this direction. The League of Human Rights lawyers have sued the convicted policemen for moral damages before a civil court, and have tried to open the question of racial motive before this court again.*

#### *The “Joyride” Case:*

*In April 2004, two English-speaking foreigners had a quarrel with a bartender in a Prague bar over the expensive receipt for their drinks. The bartender called the municipal police who quickly arrived on the scene, but as the two men could not speak Czech, the police listened only to the bartender. Afterwards, the two men were brought by car to the Holesovice State Police Station on Frantiska Krizika Street in Prague 7, where they waited for an hour while the police tried to decide what to do with them. After the state police saw that there was nothing they could do in this case, the original municipal policemen took them away from the police station and told them to enter the car again. The police continued to drive around the foreigners in circles for approximately 15 minutes in silence. They turned down an alley and headed toward the river, where the car came to an abrupt stop in the middle of nowhere. The police dragged the two men out of the car, and started kicking them and beating them with a club. The next day both men were treated at the hospital where they were bandaged, and they obtained medical reports. They went back to the Holesovice police station, this time in the company of a reporter and translator to file a complaint. However, they had to wait hours before anyone was free to speak to them and take their testimony. The case was investigated by the police, concluding that there was not enough evidence to charge.*

### **11.3. Racially Motivated Violence**

Cases of racially motivated violence persist. Unfortunately, the cases are not always vigorously pursued by the relevant authorities. Sometimes the Police play down the gravity of the violence. There are cases when the Police refuse to pursue if no substantial bodily harm was caused, despite the fact that any use of violence on a person because of his or her race, ethnicity, or nationality is a crime (Section 196/2 of the Criminal Code). Additionally, other public bodies besides the Police can be reluctant to appropriately act in cases of racially motivated violence. A case from Jeseník illustrates the unease with which some public officials pursue cases of racial violence (see also above the Jičín case).

### **Case study:**

#### *The Jeseník case*

*In June 2003, three youngsters claiming to be policemen forced their entry into a Romani flat in the town of Jeseník. After they entered, they attacked a woman who was pregnant at the time, by throwing a cobblestone into her head. As a result of the incident, the woman is now blind in one eye. Her husband was cut by knife in his face and chest.*

*The district court in Jeseník confirmed that the attack was racially motivated and that it was “premeditated and malicious.” However, the court gave the three men relatively mild suspended sentences of three years of imprisonment. The sentences were criticized by the victims, several Roma organizations and several government officials. However, the district state attorney refused to file an appeal even when ordered by a superior regional state attorney. As a result, the regional state attorney had to order a transfer of the case to a state attorney in the neighboring district of Bruntál. The new state attorney filed the appeal. The appeal court quashed the decision of the district court, and the case was retried in Jeseník by a different judge because the original had refused to handle the case. It took over a year and half for the new trial to be completed. On 4 November 2005, the three men were sentenced to 3, 4 and a half and 3 and a half years of imprisonment, respectively. The accused appealed, and the Regional Court slightly lowered their sentences.*

### **Recommendations for Governmental Action**

- The Government **should improve the relationship between the police and members of minorities** by strengthening the existing mechanisms and establishing new ones.
- The Government should strengthen efforts in **recruiting members of minorities to the police**. Clear targets should be set on how many members to recruit in a given time in the near future.
- The Government should **eradicate racial prejudices among the police through education** and by **ensuring that no persons with xenophobic beliefs enter the police force** by way of testing the xenophobic value orientation of all current police officers.
- The Government **should thoroughly investigate any signs of xenophobia of police officers**, and if such allegations are proven, it should **automatically result in a dismissal of such persons from the police**.
- All relevant authorities should vigorously and effectively investigate and prosecute all racially motivated violence

## **11.4. Persisting Segregation of Roma Children in Education**

- 11.4.1 The fact that Romani children were frequently sent to special schools for mentally disabled children was a source of a widespread criticism from various international bodies including the HRC. Concluding Observation of August 27, 2001 (para 9.). In 2006, The League of Human Rights wrote with its partners a Shadow Report to the Committee on the Elimination of all Forms of Discrimination against Women that the European Roma Rights Center conducted research on the situation of Roma in the Czech school system already during the school year 1998-1999, and documented extreme levels of racial segregation in Czech schools. Intensive research was carried out in the Czech city of Ostrava. This revealed the following facts for the 1998-1999 school year:

- More than half of the student body of so-called "remedial special schools" for the mentally disabled were Romani;
- More than half of the population of Romani children of the age of mandatory school attendance in Ostrava were being schooled in remedial special schools;
- Any given Romani child was more than 27 times more likely than a non-Romani child to be schooled in a remedial special school.
- Those Romani children not attending remedial schools were frequently in large urban ghetto schools with bad reputations;
- Over 16,000 non-Romani children in the city went to school every day without meeting a single Romani classmate – meaning, they attended entirely segregated, all white schools.

11.4.2 Field research in a number of municipalities elsewhere in the Czech Republic revealed little or no significant difference between the situation in Ostrava and that of other urban or semi-urban areas. Follow-up research in 2003 and 2005 in the Czech Republic undertaken by the ERRC and the League of Human Rights, with the Association of Roma in Moravia, indicated no significant change in levels of placement of Romani children in separate, substandard classes or schools of various types.

11.4.3 This situation was supposed to have changed with the new School Act that was passed in 2004, and which entered into force on 1 January 2005. The Act should have eradicated and resolved the persisting discrimination and segregation of Romani children in the Czech schooling system. The Act officially removed the special schools from the system. However, special schools (*zvláštní, pomocná škola*), were solely re-named as ordinary basic schools (*základní škola*). The new Act also contains an anti-discrimination provision that is only declaratory.

11.4.4 The League of Human Rights welcomes the removal of the negative connotation, which was typically associated with the “special schools”. Nevertheless, the new Act failed in its promise to eradicate the segregation in Czech schools. The segregation of Romani pupils in basic schools still persists.

11.4.5 On the basis of recent researches of the League of Human Rights educational experts in 2006, **four types of “abnormal” basic schools or classes in which Romani children are segregated from pupils from the majority population can be recognized.** The existence of these schools and classes is in accordance with the new Act.

- Former special schools were simply re-named. Romani pupils in these schools constitute above 60% and often above 90% of pupils. The curriculum in these schools is designed for mentally handicapped children and contains only a fraction of what is taught in mainstream schools. The children are acknowledged as mentally handicapped. Consequently, nothing has changed (staff, curriculum, spirit...).

- Some basic schools are attended mainly by Romani children because the vicinity of the school is inhabited mostly by Romani families (commonly called “*gypsy schools*”). If the number of Romani pupils in this kind of basic school reaches approximately 40%, the Romani parents start to send their children to this school and parents of the majority population start to send their children to other basic schools. These children are not acknowledged as mentally handicapped.

- Special, separated classes for pupils that are officially acknowledged as mentally handicapped are created in normal, basic schools. Many of these pupils are Roma. The curriculum is designed for mentally handicapped pupils. These pupils are identified as “group integrated.”



- Separated classes in normal basic schools are attended only by Romani pupils, which are not acknowledged as mentally handicapped. The curriculum is standard. The reason for the segregation of Romani children could be the demand of Romani parents themselves, or because of demands from parents from the majority population, who do not want their children to attend the same classes as Romani children.

This classification shows two persistent problems in the Czech educational system: **racial segregation and substandard education for Romani children.**

**Case study:**

*Roma children = Mentally handicapped children?*

*There is a small, basic school in a small town, Ivanovice na Hané, in the Southern Moravia region. All the Romani children from Ivanovice and the neighbouring villages were officially acknowledged as mentally handicapped, and they attend two segregated special classes for mentally handicapped pupils in a normal basic school in the town.*

- 11.4.6 In 2006, the League of Human Rights wrote with its partners in a Shadow Report to the Committee on the Elimination of all Forms of Discrimination against Women the following: A particularly pernicious role in the placement of Romani children in separate, substandard, and fundamentally degrading classrooms is played by the person of the educational psychologist. Although by law a parent's consent is required in order to secure the placement of a child in any given school, in practice, a combination of (i) the school director of the substandard school; (ii) the school director of the placing school; and (iii) educational psychologists deploying tests which are not made public, exert intense pressure on Romani parents – often themselves systematically undereducated and therefore illiterate -- to accept placement of their children in separate, substandard classes. As a result of regular reports of bullying by non-Romani children, and in some cases also by teachers in mainstream schools (an issue which has not been addressed by any government policy or action), many Romani parents capitulate to such pressure.
- 11.4.7 Another reason for such a high proportion of Romani children in classes for the mentally handicapped is that there are no culture-free tests available for the diagnosis of pupils with potential special needs. Many Romani children are diagnosed as mentally handicapped because of the cultural bias in currently used tests (Wechsler III, Kern – Jirásek, S-B 4<sup>th</sup> revision, Raven etc.).
- 11.4.8 There are no effective procedures in place either to challenge such placements or to review the placement of children in separate, substandard classes or schools. As a result, the educational attainment of Romani children is markedly lower than their non-Romani counterparts, and most leave school fundamentally ill-equipped for adult life in contemporary society, having experienced systemic degradation at the hands of the state school system for the better part of their first two decades of life. As a result of the substandard education, these children will again have a difficult to finding employment, become socially excluded, have problems with housing, and their children will attend special classes, etc., again perpetuating the cycle of oppression. Proper education for Romani children is the essential condition for breaking this cycle, and fighting social exclusion and racial discrimination. This also includes a special program for affirmative action, aimed at encouraging Roma to pursue secondary education.
- 11.4.9 One way in which the government tries to combat this phenomenon is by establishing preparatory classes for children with a socio-cultural handicap. There were 137 of these classes in 2004 with a total of 1779 children, the majority of them Romani. Many Romani families are not aware of this possible opportunity, and in a number of instances they have not

yet been informed of the value of enrolling their children in such classes. This demonstrates the inefficiency of Education Counselling Centres, and terrain social work with Roma families. Approximately 1/3 of the preliminary schools were established in special schools. Due to the fact that special schools are often situated in areas with a high number of Roma, Romani families on a number of occasions have sent their children to the preparatory classes in special schools. For the reasons noted above, Romani parents frequently consent to the enrolment of their children directly from these preparatory classes into remedial special schools or classes.

11.4.10 The new School Act has introduced a new category of a socially disadvantaged pupil. This could potentially help many Romani pupils to better integrate them in the mainstream educational process by giving them a right to special educational care. Despite the positive aspect of this new approach, the financing system of schools does not provide extra financial resources for these children. On the other hand, a school gets extra financial resources for pupils labeled as health disadvantaged, which includes mentally handicapped. This motivates the school directors to strive to label Romani pupils as mentally handicapped rather than socially disadvantaged, which would be much more appropriate in many cases. Also, even though socially disadvantaged children should no longer be placed in schools or classes with substandard curriculum, the Act does not place any obligation on anyone to find these children and transfer them.

11.4.11 A revised (4<sup>th</sup>) Strategy of Roma Integration, which was adopted by the Czech Government by Resolution No. 532 from 4 May 2005, mentions the importance of positive actions in combating long-term handicap in basic education. The strategy refuses the system of quotas for Roma in certain occupations or education and favors targeted assistance services. The primary sources for assistance are expected to increase the number of Roma children that attend kindergarten, introduce preparatory classes, and increase the number of assistant teachers in kindergartens and basic schools that are attended by Roma children. The assistant should help the children to adjust in the school and to facilitate the communication of teachers with these pupils and their parents. However, in 2004, the number of pedagogical assistants decreased to 332 from 366 in year 2003. Moreover, no concrete measures are mentioned with regard to secondary and tertiary education of Roma children.

**For the very last official position see the Czech government response no 17. on the QUESTIONS PUT BY THE RAPPOREUR IN CONNECTION WITH THE CONSIDERATION OF THE 6<sup>th</sup> AND 7<sup>th</sup> PERIODIC REPORTS OF THE CZECH REPUBLIC at the session of CERD 1.-2. March, 2007. “To what extent has the Education Act (2004) proved effective in promoting the enjoyment of the right to education of children belonging to minorities, in particular Romani children? Please provide disaggregated data by ethnicity on children enrolled in mainstream School and special schools. Please also provide further information on measures taken to improve the educational situation of the Roma through, inter alia, enrolment in mainstream schools, recruitment of school personnel from among members of Roma communities, and sensitization of teachers and other education professionals to the social fabric and world views of Roma children (previous concluding observations, para. 14 and State report, para. 136).”**

The School Act guarantees the universal right to education without any form of discrimination, the application of the principle of individualization and differentiation in education - in keeping with Section 2 of the School Act (the obligation of the school to take the individual’s educational needs into account), and the use of a wide range of support services from the advisory system in the educational sector to address the educational and behavioural problems of pupils.

The School Act guarantees an education for pupils with special educational needs, including socially disadvantaged pupils; numerous Roma pupils belong to this category. The law defines social

disadvantage as follows: a family environment with a low socio-cultural status, the risk of socio-pathological phenomena, specific consideration for educational needs.

Pupils with special educational needs have the right to an education, the content, form and method of which shall correspond to their educational needs and capacity, to the creation of the necessary conditions that will facilitate this education, and to counselling from the school and an educational counselling establishment. The nature of a handicap and disadvantage is taken into consideration when assessing and classifying pupils with special educational needs. (Section 16(6) of the School Act). In the School Act, the necessary educational support for Roma pupils is also addressed systematically. This law does not separate primary and special needs schools, 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. In Section 16 (of the above-mentioned Act No 561/2004), the education of children, pupils and students with special educational needs is specified in the part on the social handicaps of pupils, which contains provisions on how to adapt content, form and methods and how to create conditions conducive to the education of socially disadvantaged pupils. Children in the final year before the start of compulsory full-time schooling are given preferential treatment in the preschool admissions procedure. Under Section 123(2) of the above-mentioned Act, education in the final grade of a nursery school funded by the State, a region, a municipality, or an association of local authorities and education in the preparatory class of a primary school is provided free of charge.

Section 6(1) of Decree No 48/2005 on primary education and certain particulars of compulsory full-time schooling also stipulates that pupils are provided with free textbooks, learning texts and school equipment of up to CZK 200 per pupil per school year.

Head teachers make decisions on whether to reduce or waive fees for education and school services, especially in cases of socially disadvantaged children, pupils or students.

There is also a methodological guideline of the Ministry of Education, Youth and Sport concerning the establishment of preparatory classes for socially disadvantaged children and concerning the establishment of the position of educator – teaching assistant (Guideline No 25 484/2000-22). However, priority here is given to assistants from the Roma community, with the aim of preventing communication and adaptation difficulties and other educational problems, especially among Roma children.

The Ministry of Education has also issued Decree No 73/2005 on the education of children, pupils, and students with special educational needs, and of extraordinarily gifted children, pupils, and students.

Relevant informative statistics concerning Roma are not available. It is up to the parents alone whether to claim Roma nationality.

The law significantly changed the situation regarding the admission to ordinary School of pupils with various types of learning disadvantages. Under Act No 561/2004, the catchments school, i.e. the normal primary school determined by the place where a pupil lives, is the first choice when enrolling pupils at school. The head teacher is required to give preference to the admission of pupils living permanently in the school's catchments area.

A systemic change, resulting in a significant shift towards inclusive education, is curricular reform and the commencement of teaching in accordance with school educational programs drawn up to respect the educational needs of the whole range of pupils taught at normal primary School (compulsory as of September 2007 in the first and sixth grades, but already in pilot operation at most schools).

Schools may also use the option of setting up the position of teaching assistance, which means two teaching staff work together in a class where there are pupils with special educational needs (this category includes socio-culturally disadvantaged pupils, i.e. some of which are Roma pupils) to support the effectiveness of the education given to the pupils in the class.

Diagnostic instruments to determine the special educational needs of pupils are being systematically refined. This task takes place as part of the methodological and research activities of the Educational and Psychological Counselling Institute. The idea is for professional assessments of pupils' educational needs to systematically include a differential diagnosis; among pupils with learning problems in particular, problems caused by the genuine mental handicap of pupils would be rigorously separated from pupils' learning difficulties caused by the generally low social status of a family. Based on the results of such investigations by educational counselling institutions, proposals are submitted for the education of pupils with proven mental disability in a special education regime applying modified educational programmes.

The placement of a pupil with special educational needs (a disability) in a special education regime involving the use of modified educational programmes is possible only with the consent of a legal guardian.

Specific measures to improve the education of Roma pupils include a project for the timely care of socio-culturally disadvantaged children. Early care in the field of education is provided to children from socially and socio-culturally disadvantaged environments and their families, primarily in the period from the child's third year of life until the commencement of school attendance. An appropriate means of support in this period is to involve the child in preschool education at nursery schools, or at least in preparatory classes from the age of five. Part of the aim is to increase the number of socio-culturally disadvantaged children who attend pre-primary education in nursery School or in preparatory classes for socio-culturally disadvantaged children.

Under the School Act, preparatory classes are set up for children from a socio-culturally disadvantaged environment. Under Section 47 of this law, municipalities, associations of municipalities, or regions, subject to permission from the regional authority, may open preparatory classes of primary school for children in the final year before the start of compulsory full-time schooling who are socially disadvantaged and where it is expected that their placement in a preparatory class will level out their development. These classes may be set up for a minimum of seven children and a maximum of 15 children. The head teacher makes decisions on the placement of pupils in preparatory classes at the request of the children's parents and based on a written recommendation from an educational and counselling facility. The education provided in a preparatory class is part of the overall curriculum of a school.

The Ministry of Education runs a grant-based development programme for the appointment of teaching assistants for socio-culturally disadvantaged pupils. The aim is to promote educational success in classes at mainstream schools, promote cooperation with the community the pupil comes from, etc. The position of 'teaching assistant' has been established under the School Act, replacing the original term of 'educator – teaching assistant', which was applied from 2000 to 2004.

2.13. For the reaction of CERD on this government response see recommendation no 17. of March 13, 2007 (CERD/C/CZE/CO/7). *“The Committee is deeply concerned by consistent information according to which the Roma suffer from racial segregation on the State party’s territory in the field of education, a situation that the State party does not seem to fully acknowledge. It notes with particular concern that a disproportionately large number of Roma children attend “special schools”. While noting the views of the State party that this results from the vulnerable situation of the Roma and the need to adopt special measures to respond to their needs, and having taken note of the new Education Act, the Committee remains concerned that this situation also seems to result from discriminatory practices and lack of sensitivity on the part of the authorities to the cultural identity and specific difficulties faced by the Roma. Special measures for the advancement of certain groups are legitimate provided that they do not lead, in purpose or in practice, to the segregation of communities. The Committee is also deeply concerned that a disproportionately large number of Roma children are being removed from their families and placed in State institutions or foster care. (articles 2, 3 and 5 (e) (iii) and (v)).*

*The State party should increase its efforts to assess the situation of the Roma in the field of education. It should develop effective programmes specifically aimed at putting an end to the segregation of*

*Roma in this area, and ensure that Roma children are not deprived of their right to family life and to education of any type or any level. The Committee, in particular, recommends that the State party review the methodological tools used to determine the cases in which children are to be enrolled in special schools so as to avoid indirect discrimination against Roma children on the basis of their cultural identity.”*

### **11.5. Discrimination in Housing and Forced Resettlement**

- 11.5.1 The issue of housing is complex. The problems that Roma face in housing often arise from a mix of problems in other areas, such as the right to work, but it also is derived from racial discrimination and segregation. Two issues will be discussed in this Report: the spatial exclusion of Roma, and the forced resettlement of Roma. A study conducted by a private company, GAC, for the Ministry of Labor and Social Affairs, identified 310 socially excluded Roma localities. From this number, 35% emerged in the last 10 years. These localities are a considerably substandard quality for housing in the Czech Republic (flats of lower quality, unsatisfactory hygienic conditions, bad transport services, often on the outskirts of towns etc.). These “ghettos” are created in places where people who are evicted are typically relocated. A common cause for their eviction is the inability to pay rent for their original housing. Ghettos are also created for other reasons, including the greater degree of certainty provided by living “with their own kin,” escape from manifestations of racism by the majority, as well as the desire to maintain the close links between individual related families. Often, however, the establishment of predominantly Roma ghettos are the result of deliberate policy decisions within some municipalities.
- 11.5.2 Families and individuals with the lowest incomes, or those dependent on social benefits, inhabit the poorer ghettos; these people are characterized by a high unemployment rate and a low level of education. The inhabitants are not capable to escape their situation or social exclusion without outside help, and they often do not have the means to leave these places. People living in ghettos are often poorly integrated in terms of neighborhood relations, lack a broader social environment, and generally have poor access to services and health care.
- 11.5.3 The apartments in which they reside are of poor quality, overcrowded, and characterized by unhealthy hygienic conditions; they may even lack warm running water, gas, or electricity. No one maintains the commonly used surroundings of these apartments. If there is a common characteristic uniting the inhabitants of these ghettos – besides the frequency of their membership of the Romani ethnicity – it is that they are mistakenly perceived by outsiders as forming a uniform community. This results in the authorities ignoring the needs of individuals in the ghettos. However, the authorities do not even attempt to address the living conditions and problems faced by the citizens of these ghettos as a whole. Having one’s residential address in a ghetto can also be another reason for discrimination.
- 11.5.4 A discriminatory approach in the housing area also manifests itself in the accommodation of people in their “bare walled” apartments, otherwise known as, “apartments of the lowest quality,” into which people with outstanding rent are relocated. The percentage of Roma inhabitants of bare walled apartments is over 50%, but in some cities this amount reaches as much as 90%.<sup>10</sup>
- 11.5.5 The system of providing housing owned by municipalities is not transparent, and the criteria are often indirectly discriminatory. This results in Roma being unable to obtain adequate housing. The typical criteria for approval includes: confirmation that the applicant has a

completely clean criminal record, and evidence that the applicant and members of his/her immediate family do not have any debts.

- 11.5.6 Roma families are also often subjected to practice of forced resettlement from their original place of residence to other parts of the country. This practice has been known in the past. For example, in the city of Mladá Boleslav, there used to be approximately 3,000 Roma. After a resettlement programme for Roma outside of town, the number of Roma in the city is now around 300. However, the best documented example of this practice is the recent resettlement of Romani families from the town of Vsetín.

#### **Case Study:**

##### *Forced Resettlement in the Town of Vsetín:*

*In 2006, before the municipal and Senate elections, the local government in the eastern town of Vsetín, was busy “solving” the problem of inhabitants in a big house in the centre of the town. The house was inhabited by 42 (mostly Romani) families. The house was in a critical condition, many of the inhabitants did not pay the rent, and there were many complaints on the disorderly behavior of some of its inhabitants and bad hygienic conditions in and around the house, especially from doctors and patients of the hospital which was located across the street. The mayor decided to demolish the house and resettle the inhabitants. New flats on the outskirts of town were built, and some of the families were resettled to the new location. Even though this might not have been the best solution, as a new Romani “ghetto” was established, the flats are at least of good quality and the place is within the boundaries of the town. Some families (altogether about 100 persons), however, were forced to resettle in various parts of the Czech Republic and often to completely unsuitable houses.*

*One evening, three families were resettled to a little village called Stará Červená Voda, almost 200 km away from Vsetín, without prior knowledge into which conditions they were moving. There they were given an old house to live in, which was described simply as “a ruin.” An expert called to view the house, described it as, “uninhabitable” due to the fact there is no potable water, the roof is full of holes, rafters are rotting, the chimney is damaged and the electricity distribution in the house is unsuitable and according to a local public official life threatening. Another family, the 11 member Tulejov family, which had been paying its rent regularly, was resettled to a different village (Čechy pod Kosířem) to a house in a similar condition.*

*The way in which the problem of one house in Vsetín was “solved” is particularly deplorable. Most of the resettlements were done at late evening/night. The people did not have an idea before into which conditions they are being moved. Many families allege that they were forbidden to look at the places before the move because the local inhabitants of the villages would find out about it, and oppose their coming into the village. The Tulejova family claims that they were told either to move far away from Vsetín, or they would simply be evicted onto a street, and the children will be taken from them and placed into institutional care.*

*The mayor of Vsetín, Jiří Čunek, who planned all these resettlements shortly before elections, apparently does not perceive there is any problem. On the contrary, it is due to the “success” of the resettlements that he became popular; he was not only elected to the Senate, but also elected to be the leader of a traditional and mainstream Parliament party in the Czech Republic, the Christian and Democratic Union, and he also became the first Deputy Prime Minister and the Minister for Regional Development. His actions sadly demonstrate the prevailing attitude of the majority population against Roma. The majority population in fact applauded his forced resettlement programmes, and due his unethical actions, his political career has clearly profited. The popularity of his Christian party increased from 7% to 11% after his election to a chairman, according to opinion polls. On the other hand, numerous criminal complaints were filed on Mr. Čunek. The police have not so far concluded any investigation of them.*

*The Vsetín resettlement clearly indicates that it was a non-voluntary programme. It is a fact which was more or less acknowledged by Mr. Čunek himself, who reportedly said that there were not places for all the inhabitants of the old house (to be demolished) in Vsetín, so they had to move these people*

*to other parts of the country. Non-voluntary resettlement is a violation of the right of everyone to freedom of movement and residence, which is guaranteed also by article 5(d)(i) of the ICERD.*

*Many Romani families claim that they are forced to move from their houses and flats because they are threatened that their children will be taken from them and placed into institutional care. Although it is often not possible to substantiate these allegations for obvious reasons, the truth is that there is a disproportionately high number of Romani children in institutional care. This situation is also appalling, especially considering the fact that the Czech Republic has the highest amount of children in institutional care in Europe.*

*Again, exact numbers on account for Roma children in institutional care are not available, solely because it is forbidden by law to officially collect such data. There are many reasons for taking children away from a family and putting them into institutional care. Inadequate housing is one of the main reasons. Unfortunately, all too often the system prefers placing children into institutional care rather than helping the family to improve its social situation.*

### **Recommendations for Governmental Action**

- To take **effective measures to avoid segregation of Roma communities in housing.**
- Ensure that **any deliberate policies of municipalities to house Roma together in one locality be stopped without delay.**
- Thoroughly **investigate all cases of resettlement of Roma families in order to determine if it was a forced situation.**
- Ensure that any resettled Roma families act **voluntarily, and furthermore that they have the possibility to view their new place of residence in advance.**

## **11.6. Discrimination in Access to Employment**

11.6.1 According to most estimates, the level of unemployment among Roma is about 70%, compared to 8% of the current official unemployment rate in the Czech Republic. According to data collected by the European Roma Rights Center (ERRC) in 2005, “Roma are 8 times more likely to be unemployed than non Roma; 61% of working age Roma are unemployed, and of those number, 35% have experienced long term unemployment; 78% of working age Roma have experienced continuous unemployment for one year or more; and a shocking 1 in 3 have suffered continuous unemployment for five years or more.”

11.6.2 Compared to the majority of the population, only a small percentage of Roma have experienced long term employment. However, even in the event that individuals of Roma ethnicity are employed, as a rule they are employed to perform work of an unqualified or manual nature, regardless of the level of education attained by the given individual.

11.6.3 The reasons for such a low level of unemployment among Roma are numerous. Typical reasons provided include a low level of education, lack of necessary qualifications, lack of work habits or a negative approach to work, and lingering discrimination on the labor market against Roma applicants. Job applicants frequently face manifestations of prejudice on the part of employers. According to the NGO, Counseling Centre for Citizenship, Civil and Human

Rights, which conducted research on discrimination in access to employment in March 2003 to January 2004, this last reason is also acknowledged by State Employment Offices. The Offices report that they see a persistent reluctance on part of employers to employ ethnic Roma.

### **Case Study**

#### **No jobs for Roma:**

*A drugstore in a town of Cheb, which is a part of a multinational chain, advertised a vacancy in the store's window. When a Roma woman came to apply for the vacancy, the store manager informed her that the job had already been filled. When a non-Romani employee of the civic association, Poradna pro občanství (Counselling Centre for Citizenship, Civil and Human Rights) then entered the store and pretended interest in the same job, the store manager did not turn her away and proceeded to interview her for the position. The Romani woman filed a lawsuit against the company. The court acknowledged that the woman was discriminated against on the basis of her ethnic origin, and they ordered the store manager to pay her a compensation of CZK 25,000 (EUR 870), and to send the plaintiff a written apology by registered post.*

### **Recommendations for Governmental Action**

- To devise and implement more **effective strategies in combating racial discrimination in employment and all discriminatory practices in the labor market.**

## **11.7. Campaigns Aimed at Reducing Discriminatory Practices against Roma**

Since the beginning of this century, there has been a government campaign titled, "United Against Racism." One of the aims of the campaign is to reduce prejudices held by the majority community towards ethnic minorities, as well as promote the integration of minorities. The campaign's resources were directed towards projects such as the creation of postage stamps, displaying posters at public transport stops, and announcements in the press. The campaign also included information courses for public servants and judges. However, the campaign has overall been rather low-key, and there has been minimal publicity and visibility. Moreover, given the figures gathered from public opinion polls, general racial prejudices are not a mainstream problem in the Czech society, rather it are the prejudices against certain communities, especially Roma, which are the main problem. Therefore, what is needed is a campaign focused on fighting prejudices against the Roma.

### **Recommendations for Governmental Action**

To conduct a **national campaign with the objective to combat prejudices against the Roma**

To **encourage awareness among professionals, including the media, of their responsibility not to disseminate prejudices.**



### **11.8. Collection of Anonymous Data as Necessary Tool for Combating Discrimination**

According to the Czech law it is prohibited, with few exceptions, to collect and store data on ethnic origin of individuals. Accordingly no official data exists on the number of Roma children in child-care institutions or the number of Roma children in segregated classes and schools and other spheres. This provision is warranted by the danger of misuse of such data. Yet, on the other hand, an effective fight against racial discrimination is hindered if there is no reliable statistical data on the discrimination. **The Czech law does not prohibit statistical studies and monitoring of the conditions of national minorities and other groups. Consequently collecting such statistical data (without labeling identifiable individuals as belonging to a certain minority or ethnic group) might be an effective way how to collect the needed data and at the same time not to compromise the need to ensure that such data are not misused.** A good example is the Analysis of Socially Excluded Roma Localities and Communities and the Absorption Capacity of Subjects Operating in the Field. The Czech Government has to explain its position and future activities in this area.

**For the very last official position see the Czech government response no 1. on the QUESTIONS PUT BY THE RAPPOREUR IN CONNECTION WITH THE CONSIDERATION OF THE 6<sup>th</sup> AND 7<sup>th</sup> PERIODIC REPORTS OF THE CZECH REPUBLIC at the session of CERD 1.-2. March, 2007. “Please provide detailed updated statistical data, if any, regarding the ethnic characteristics of the population and the socio-economic status of members of the various national or ethnic minorities in the State party.”**

Data about the economic activity of various national minorities are enclosed (Table No 1). The data come from the last census held in 2001. The census, which takes place in the Czech Republic regularly once every ten years, is the only statistical source of information about the national or ethnic origin of the population. It is possible to claim membership of a specific national or ethnic minority voluntarily.

The census held in 2001 has shown the long term problem of Roma identification. According to a recent opinion poll conducted in the beginning of January 2007, 76% of people consider persons of Romani origin as “very unsympathetic.” This is by far the worst figure for any ethnic group, compared with citizens of the Balkan countries, and citizens from states of the former Soviet Union where 45% of people consider members of these two groups as “unsympathetic“. The picture of Roma is also not very well portrayed by some of the media, which only perpetuates certain prejudices. For example, the overwhelming majority of articles mentioning Roma in the highest-selling daily tabloid from the Czech Republic, *Blesk*, described them as: “people who steal, do not pay rent, are violent, or refuse to work.” In this regard, the recent recommendation of CERD could not be seen by LIGA as particularly practical example for obtaining data on Roma.<sup>27</sup>

<sup>27</sup> For the CERD recommendation of March 13 see: 7. The Committee appreciates that data collected by the State party on the ethnic composition of its population are based upon self-identification by the individual concerned, in compliance with general recommendation 8 (1990) of the Committee. It also welcomes the efforts made by the State party to provide a qualitative assessment of the numbers of the Roma who consider themselves part of this community. It notes, however, the significant discrepancies between statistical data and qualitative estimates, suggesting the limitations of purely statistical data to assess the economic and social situation of groups, in particular the Roma.

The State party should enhance its efforts to qualitatively assess the situation of minority groups within the meaning of article 1 of the Convention, in particular the situation of persons who consider themselves part of the Roma community. It should also review its methods of data collection so as to more fully reflect the principle of self-identification. Any such steps should be taken in consultation with the Roma community.

### Recommendations for Governmental Action

- The government should **systematically collect ethnically disaggregated data** regarding education, health care, employment, institutional placement of children, housing and other areas of social life in order to be able to identify structural and systematic ethnic and racial discrimination and adopt effective measures to combat it.



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