

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in the Czech Republic

ECRI wishes to point out that the analysis contained in its third report on the Czech Republic, is dated 5 December 2003, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on the Czech Republic was subject to a confidential dialogue with the Czech authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Czech authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

Addendum to the Draft Third Report on the Czech Republic adopted by the European Commission against Racism and Intolerance on 5 December 2003

Due to difficulties arising from time constraints, the Czech Government was not in a position to have the comments by individual ministries discussed and edited in terms of a Government Resolution, or even at the level of the Government Council for Human Rights as the key advisory body to the Government. Thus, the addendum represents views of three ministries, of Interior, Labour and Social Affairs and of Justice.

Comment of a general nature:

In view of the Ministry of the Interior and the Police, the Draft Third report on the Czech Republic issued by ECRI in December 2003 cannot be considered as a fair and balanced source of information about the situation of Roma minority, asylum seekers, refugees and illegal migrants because it uses a large number of ill-founded, incomplete and misleading statements. The sources for such information are vaguely designated like „various sources“, „civil society organisations“, „nongovernmental observers“ etc. Some of these statements then create a biased picture about the extent of discrimination and mistreatment by law enforcement bodies.

Paragraphs 10 and 12

Provision of Section 18a of Act No. 40/1993 Coll., as amended, concerning the acquisition and loss of citizenship of the Czech Republic which the given report is relating to, enables natural persons who were the CSFR nationals at the time of the split of the Czechoslovak federation and since then continue to live in the territory of the Czech Republic, to acquire Czech citizenship in an accelerated procedure, namely by way of declaration. The Interior Ministry refuses to connect problems related to the application of the said provision to ethnic identity of the applicants. The conditions set out in this provision apply equally to all individuals, regardless of their ethnic identity. It is clear that it is difficult for persons without permanent employment or residence in the territory of the Czech Republic to prove their continual residence on the territory of the CR; but according to law, the burden of proof is up to him/her. Nonetheless, the relevant authorities make checks concerning actual residence of the declaring person even in cases when the declaring person refuses to co-operate with the authority. There does not seem to be a need for the adoption of any particular measures concerning this matter.

Paragraph 41

The Interior Ministry states, concerning ECRI's recommendation to train officials dealing with asylum seekers, that all new staff members of the Interior Ministry are subject to an extensive entrance training including, as a significant part, the human rights issue.

Furthermore, it should be emphasized that the purpose of protection in the form of asylum is not to secure employment but to provide protection for reasons stipulated by law. So it is allowed, naturally, to work only until the application for the protection in the form of asylum has been decided about. Otherwise, the institute of asylum as such might be abused.

Concerning the average length of the time period necessary for the administrative authority to issue its decision within the administrative proceedings, we can generally state that in the recent period, it has been considerably shortened, which is mainly due to legislative measures adopted for this purpose. The “restrictive measures” mentioned in the report were adopted not to aggravate the position of asylum seekers, but on the contrary, to distinguish “unqualified” asylum seekers from those who really comply with the criteria for granting the refugee status within the intention of the Geneva Convention.

This distinction then substantially contributes to the improvement of conditions of protection provided for “qualified” asylum seekers as well as to the effectiveness of the whole system.

Paragraphs 49 and 52

Act No. 222/2003 Coll., by which Act No. 326/1999 Coll. was amended, concerning residence of aliens in the territory of the Czech Republic and the alteration of certain laws, has changed the relevant legislative provisions addressing the issue of placing illegal migrants in strict detention regime in a detention centre. As from 1 January 2004, in connection with the said amendment, aliens are not placed in strict regime any more only due to the fact that their identity cannot be proven. Another alteration to this legal provision is under preparation in another prepared amendment.

Paragraphs 50 and 53

Illegal migrants are placed in the detention centre following the decision of the competent Alien Police Authority after their administrative deportation proceedings are over. If there are asylum seekers in the detention centre, it is only because they made an asylum application in the course of detention for the purpose of administrative deportation. The fact that the Czech asylum law enables aliens detained for the purpose of administrative deportation to make asylum applications in the detention centre goes far beyond the framework of the 1951 Convention on legal status of refugees and the Protocol to the 1967 Convention. The assertion that non-governmental organisations do not have easy access to detention centres is inaccurate. The only factor which limits their possibility to visit a detention centre is the capacity of visiting rooms of that centre.

The assertion that the deported aliens usually receive the exit visa for 5 days is misleading. What matters is whether the diplomatic mission of the alien concerned is based or is not based on the territory of the Czech Republic. The exit visa is, as a rule, issued for 15 to 30 days.

Paragraph 75

The Interior Ministry expresses its deep concern about the accusation of racially motivated police „mistreatment and violence against members of the Roma minority, including incidents of death in custody“. There has been only one case of death in custody investigated by the Inspection of Interior Ministry (case of Mr Vladimír Pecha, 19 June 2002, Kralovo Pole Police station in Brno). Mr Pecha jumped out of a bathroom window. It is not true that „perpetrators have not been identified and brought to justice“; the conclusion of the investigation was in this case there was neither an intentional crime against the person, nor a case of negligence. This decision was appealed, but the state prosecutor rejected this complaint as unfounded.

Paragraph 89

Various kinds of discrimination by municipal authorities in the allocation of local council housing may be practiced, but the claim about „using knowledge of Roma family names“ to distinguish Roma applicants from others seems to be totally unfounded. As a matter of fact, it would be often very difficult to tell Roma family names from non-Roma family names.

The Ministry of Justice cannot accept the implication that Roma are convicted of criminal offences on discriminatory grounds or in any connection with the administration of justice.

Paragraph 122

The paragraph brings views of some NGOs (without giving their names) that “the number of Roma children placed in institutional care makes up at least one fourth of the total

number of children in institutional care” and that “it is estimated that almost one half of such cases are placed in institutional care for welfare reason, that is reasons of poor living conditions and poverty”. However, these appear to be mere guesses without real evidence - there are no statistical data about the percentage of Roma children in institutional care. Only the Ministry of Health keeps records - within the framework of its statistical surveys - on the number of Roma children aged up to 3 years placed in institutional care. From these data it is obvious that since 1990 the number of Roma children placed in these institutions has been decreasing (in 1990 around 900 children were placed in these institutions, and in 2002 some 500 children were placed in institutional care).

Paragraph 123

This paragraph is also based on the statement by unnamed NGOs that social workers have a different approach to Roma children as compared with non-Roma children. According to this statement ...” when faced with Roma families without means, social workers often conclude that it would be better for children to be taken away from parents. On the other hand, when faced with non-Roma families in similar situations, social workers more often operate on the presumption that the interests of the child are better served through remaining with his or her natural parents”... Activities of social workers in protection of children are regulated by Act No. 359/1999 Coll., on social-legal protection of children, which lays down the interests of the child as a primary point of view in practice of social workers. The Ministry of Labour and Social Affairs has no information which would support the given statement, and it has not dealt with any complaint about discriminatory conduct of social workers. Therefore, the statement must be taken only as a personal view of representatives of some NGO who, however, have not expressed it in public; if they had done so, the issue would have been dealt with.

Paragraph 126

The Interior Ministry strongly rejects the allegation that any children are being placed in detention and coerced into confessing to minor crimes, which then results in a criminal record. According to Czech law, no child under 15 is criminally liable, so they cannot be sentenced or get a criminal record, and for juvenile offenders aged 15-18 a special law was adopted in June 2003 which prioritizes educational measures over punitive ones..

Paragraph 127

The conditions in detention centres came under detailed scrutiny following the April 2002 inspection visit of the CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). The final report by the CPT did not allege human rights abuses or racial motivated violence in the various types of detention centres.

At the Bělá-Jezová facility, where families with children have been placed in a single establishment, the children go to school. At the Bělá-Jezová asylum centre, in whose building the detention facility for foreigners is located, preschool children can attend a children’s centre; toys and children’s games are available for all the children. The detention facility for foreigners in Bělá-Jezová is designed for mothers with children, or for large families with small children, and was set up as an establishment to house families with children on 10 June 2002. The facility can house 56 persons, providing a lenient regime and offering the inhabitants the opportunity of movement throughout the area of the facility. For children who are at an age requiring compulsory school attendance, regular attendance at the school in the neighbouring municipality is arranged. In cases where foreigners’ clothes do not meet appropriate hygiene and aesthetic conditions, the facility management provides them with civil clothing. In this respect, the facility management cooperates with the social services of the Bělá-Jezová asylum centre and the Czech Catholic Charity. Detained foreigners can use a laundry room with an automatic washing machine. If the facility’s capacity is exceeded, foreigners with children

may exceptionally be placed in another facility, but only for a maximum period of two or three days.

The planned amendment to the Aliens Act will create conditions for a wider range of leisure activities. Issues of children's residence in detention centres will also be addressed by the upcoming amendment of the Aliens Act.