



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**by Thomas Hammarberg**  
**Commissioner for Human Rights of the Council of Europe**

Following his visit to the Czech Republic  
from 17 to 19 November 2010

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## **Summary**

Commissioner Thomas Hammarberg and his delegation visited the Czech Republic from 17 to 19 November 2010. In the course of this visit the Commissioner held discussions with representatives of the Czech authorities and institutions as well as with members of the civil society. The present report focuses on the following selected human rights issues:

### **I. Action against discrimination, racism and extremism**

#### The need to fight extremist groups

The Commissioner welcomes the actions taken by the Czech authorities against extremist groups in recent years, including the heavy sentences imposed in October 2010 on those responsible for a violent anti-Roma arson attack in Vitkov, and the closure of the Workers Party in February 2010. This approach should be sustained and built upon to deal seriously and effectively with all hate crimes committed by extremist groups, especially when violence has been used. The Commissioner considers that both resolute action against racist activities of extremist groups and their official public condemnation are particularly important in times of economic strife, as is currently the case. He also finds that there is a need for confidence-building measures to be taken in communities affected by particularly intense manifestations of racism and extreme right-wing activities in recent years.

#### The legal and institutional framework against discrimination, racism and extremism

The Czech legal and institutional framework against discrimination, racism and extremism has recently been strengthened. Albeit adopted with considerable delay, an Anti-Discrimination Act provides equal protection against discrimination on the basis of gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation since September 2009. The implementation of the Act is assisted by the Ombudsman. The Commissioner calls on the authorities to keep this legislation and its implementation under review, making full use of Council of Europe standards. In the criminal law sphere, the Commissioner recommends extending protection against hate crimes by ensuring that all grounds on which these crimes are committed are equally covered. A number of international instruments, including Protocol No. 12 to the European Convention on Human Rights, which establishes a general prohibition of discrimination, should also be ratified by the Czech Republic.

### **II. Protection of the human rights of Roma**

#### General policy and action for promoting and protecting the human rights of Roma

In line with the commitments expressed in the 2010 *Strasbourg Declaration on Roma*, policies aimed at Roma inclusion must constitute political priorities. It is important that the Czech authorities present them to the public as such and thus ensure the general public's ownership of the inclusion agenda, which must strongly focus on combating discrimination and eliminating anti-Gypsyism. The Commissioner welcomes the Czech government's Roma Integration Concept for 2010-2013, and stresses the need to monitor outcomes through the collection of adequate statistical data, in accordance with the relevant Council of Europe standards. He also stresses the need to ensure the implementation of national Roma inclusion policies by local authorities, a task for which the Agency for Social Inclusion of Roma localities should be strengthened. The Commissioner also underlines that the protection of the human rights of Roma can only be ensured in the framework of an overarching effort to systematically protect human rights at national and local level.

### The need to combat anti-Gypsyism in political and public discourse

The Commissioner stresses that no measure can achieve full inclusion of Roma in society without a genuine commitment to putting an end to anti-Gypsyism. However, racist and notably anti-Roma discourse is still common among mainstream politicians at both the national and local level. Extremist political parties have resorted to particularly aggressive manifestations of this type. The media, both broadcasting and print, and especially the Internet, continue to provide a platform for anti-Gypsyism. The Commissioner invites the Czech authorities to take measures, including by promoting self-regulation, to effectively address and eliminate racist and stigmatising speech against Roma in politics and the media. To this end, a vigorous implementation of the relevant criminal provisions must be ensured. The removal of the pig farm from the Lety concentration camp, where many Roma perished during World War II, and a systematic use of the Council of Europe's *Fact Sheets on Roma History* would be important contributions to fighting anti-Gypsyism and promoting tolerance and social cohesion in the Czech Republic.

### Violent hate crimes targeting Roma

The Commissioner welcomes the action taken by the Czech authorities in recent years to counter hate crimes, of which Roma are still one of the main targets. It is, however, important to ensure that efforts to counter hate crimes are not limited to crimes committed by members of extremist groups. The Commissioner invites the Czech authorities to address the apparent under-reporting of hate crimes through the establishment of a more flexible and victim-friendly system of reporting such incidents. Police work against hate crimes, and particularly violent crime, should be improved taking into account the relevant Council of Europe standards and the case law of the Strasbourg Court. The Commissioner also calls for training and other measures to raise awareness among those involved in the criminal justice system, from the police to prosecutors and judges, of the need to ensure that all instances of these crimes are taken seriously and effectively investigated.

### Segregation of Roma children in the education system

Many Roma children in the Czech Republic continue to receive low quality education, because they are disproportionately represented in schools for children with mental disabilities or find themselves segregated in Roma-only schools or classes, where teaching standards are lower. Three years after a landmark judgment of the European Court of Human Rights which found that the Czech Republic had discriminated against Roma with respect to their right to education, the Commissioner finds that little has changed on the ground. While the National Action Plan of Inclusive Education of the Czech authorities is welcome, the Commissioner calls on them to demonstrate commitment to its implementation by fixing clear and measurable targets for transfers of children from special to ordinary education and for overall desegregation of the school system. Such progress should materialise already in the 2011-2012 school year. In accordance with the *Strasbourg Declaration on Roma*, the Commissioner invites the Czech authorities to promote Roma children's attendance of mainstream preschool education and the presence of teaching assistants in all schools where they are needed.

### Sterilisation of Roma women without full and informed consent

The Commissioner welcomes the Czech government's expression of regrets in November 2009 for unlawful sterilisations of women, a phenomenon that affected Roma women in particular. He notes however, that most of the recommendations made by the Czech Ombudsman in 2005, when he investigated the issue, remain to be implemented. The Commissioner finds it particularly unfair that women affected by this practice are presently without an effective remedy to obtain reparation, including compensation, a situation that should be urgently remedied in line with international law standards. In order to prevent the re-occurrence of coercive sterilisations, the Commissioner also calls on the Czech authorities to ensure that healthcare legislation clearly

defining the requirements of free, prior and informed consent with regard to sterilisation is in place by mid-2011, as currently planned.

#### Segregation of Roma in housing

Approximately one third of the Czech Roma population lives in some 300 segregated localities with substandard living conditions around the country. Direct and indirect racial discrimination, particularly in policy and practice at the municipal level, and poverty play a crucial role in this context. The Commissioner recommends that the Czech authorities put in place a coherent system of social housing and strengthen their efforts to promote local partnerships aimed at desegregating Roma localities and improving living conditions. The authorities are also called upon to ratify the Revised European Social Charter and the Protocol providing for a system of collective complaints under the Charter.

#### Placement of Roma children in institutional care

Lastly, the Commissioner is concerned at the high numbers of children placed in institutional care in the Czech Republic and at the disproportionate representation of Roma children among them. In order to address this problem, the practice of placing children in institutional care solely on grounds related to the poor housing conditions or financial situation of their family should be ended, as indicated by two judgments delivered by the Strasbourg Court against the Czech Republic on this matter. In line with international standards, priority should be given to supporting and fostering the development of the child within the family, while institutionalisation of children should be avoided and remain the exception.

The Czech authorities' comments on the Report are appended.

## Introduction

1. The present Report is based on a visit to the Czech Republic by the Council of Europe Commissioner for Human Rights (the Commissioner) from 17 to 19 November 2010.<sup>1</sup> The aim of the visit was to review certain human rights issues in the Czech Republic, focusing in particular on the fight against discrimination, racism and extremism and the protection of the human rights of Roma.
2. In the course of the visit, the Commissioner held constructive talks in Prague with representatives of the national authorities, including the Minister of Interior, Mr Radek John, the Minister of Foreign Affairs, Mr Karel Schwarzenberg, the Deputy Minister of Justice, Mr Marek Ženišek, the Deputy Minister of Education, Mr Ladislav Němec and the Deputy Minister of Health, Mr Martin Plišek. He also met with representatives of the Section for Human Rights of the Office of the Government, and the Deputy Ombudsperson, Mrs Jitka Seitlová. The Commissioner also had fruitful discussions with representatives of a number of civil society organisations active in the field of human rights, combating racism and extremism, and Roma protection, and visited Roma communities in two different localities in Kladno, near Prague.
3. The Commissioner wishes to thank the Czech authorities, and in particular the Ministry of Foreign Affairs in Prague and the Permanent Representation of the Czech Republic to the Council of Europe in Strasbourg, for their valuable assistance in organising the visit and facilitating its independent and smooth execution. The Commissioner appreciated the Czech authorities' openness to dialogue. He wishes to thank all of his interlocutors, from both the national authorities and institutions and civil society, for their availability and willingness to share their knowledge and insights with him.
4. The Commissioner considers the treatment afforded by member states to minority groups to be a litmus test for their effective observance and respect of fundamental human rights principles.
5. In the present Report, the Commissioner focuses on the following major issues: the need to fight extremist groups (Section I a); the legal and institutional framework against discrimination, racism and extremism (Section I b); general policy and action for promoting and protecting the human rights of Roma (Section II a); the need to combat anti-Gypsyism in political and public discourse (Section II b); violent hate crimes targeting Roma (Section II c); segregation of Roma children in the education system (Section II d); sterilisation of Roma women without full and informed consent (Section II e); segregation of Roma in housing (Section II f); and lastly, placement of Roma children in institutional care (Section II g).

## I. Action against discrimination, racism and extremism

### I a. The need to fight extremist groups

6. In 2009, the European Commission against Racism and Intolerance (ECRI) expressed concern at the disturbing intensification in the activities of extreme right wing movements in the Czech Republic. Apart from the continuing holding of hate music concerts and an increasing sophistication in the organisation of the activities of these movements through the internet – two phenomena also confirmed in the most recent monitoring reports of the Security Policy Department of the Ministry of Interior – ECRI's concerns stemmed from the apparently growing interest among such movements for the organisation or participation in

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<sup>1</sup> During his visit, the Commissioner was accompanied by his Adviser, Mr Giancarlo Cardinale.

public events of a political nature. This included marches organised with increasing frequency and publicity around the country.

7. In a particularly disturbing illustration of this phenomenon, from October 2008 to January 2009, the Workers' Party and neo-Nazi groups repeatedly attempted to march on the Roma-inhabited Janov housing estate in Litvinov. The marches led to violent clashes with the police, whose physical intervention was required to prevent demonstrators from reaching the Janov neighbourhood. The marches were often supported by local non-Roma residents, a circumstance which contributed to stirring up fear amongst members of the local Roma community.
8. Since then, a number of developments have taken place in the Czech Republic. Firstly, at the request of the Czech government, the Czech Supreme Administrative Court dissolved the extremist Workers Party in February 2010, on the grounds that its programme posed a threat to democracy. Secondly, as described in more detail below (see Section II c), in October 2010 four exponents of extreme right-wing movements were found responsible for a particularly violent anti-Roma arson attack carried out in Vitkov in April 2009 and served with heavy sentences. Thirdly, following a series of raids and intensive investigations conducted in recent years, at least some of the alleged heads of the neo-Nazi movement in the Czech Republic are currently standing trial.
9. The Commissioner welcomes these developments. He stresses however that vigilance is required and that it is now necessary to sustain the efforts undertaken. It is hoped for instance that the achievements of the trial concerning the Vitkov arson attack can be built upon to investigate other violent attacks, which reportedly show connections with it but have so far remain unresolved. On the front of awareness raising and education, efforts are also reported to continue to be necessary, as indicated for instance by the results of a survey carried out by a non-governmental organisation in 2008 and 2009, in which 8% of the 16-18 year olds questioned about political preference declared that they would vote for an extreme right-wing party.<sup>2</sup>
10. It is also important to continue to monitor closely the activities of the extremist right-wing groups and the extent to which government action impacts on their ability or willingness to commit crimes. As mentioned below (see Section II c, where the violent activities of extreme, including neo-Nazi movements are reviewed), after registering a steady decline in the years up to 2007, the Ministry of Interior's monitoring of extremism has recorded increasing numbers of extremist crimes in 2008 and 2009. Figures for 2010 were not yet available at the time of writing.

#### *Conclusions and recommendations*

11. The Commissioner has noted with satisfaction the Czech authorities' activities against extremism in 2009 and 2010. He strongly encourages them to ensure that the fight against extremist groups remain a priority across government departments, under the leadership of the Ministry of Interior.
12. The Commissioner recommends that the Czech authorities build on their achievements in this field and sustain the efforts undertaken. This includes a vigorous implementation of the criminal law provisions against hate crimes, racist expressions and racist organisations, which are reviewed below in more detail. Particularly important is the authorities' public support for successful investigations into and prosecutions of extremist crimes, and prompt, clear condemnation of all public anti-Roma stances.

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<sup>2</sup> Information on the survey carried out by People in Need in collaboration with Millward Brown is available at <http://www.jedensvetnaskolach.cz/index2.php?id=424>

13. The Commissioner would like to underline that it is particularly important to react to racist messages and other activities of extreme right-wing groups in times of economic strife, when such messages and activities may succeed in garnering support beyond the existing supporters of these groups.
14. The Commissioner recommends confidence-building measures in communities affected by particularly intense manifestations of racism and extreme political activities in recent years, and similar preventive measures in other communities around the country, where tensions may also be high.

#### **I b. The legal and institutional framework against discrimination, racism and extremism**

15. The legal and institutional framework against discrimination, racism and extremism in place in the Czech Republic has experienced a number of advances in recent years. With the adoption of the *Equal Treatment and Legal Measures of Protection from Discrimination and Amendments to Some Laws Act* (hereafter "Anti-Discrimination Act") in May 2009,<sup>3</sup> the Czech Republic transposed the European Union (EU)'s Directives on equal treatment<sup>4</sup> in its domestic legislation and equipped itself with a comprehensive body of civil provisions against discrimination. The Commissioner welcomes this development, even though the adoption of the Anti-Discrimination Act came after long delays and many unsuccessful attempts to legislate in the field, making the Czech Republic the last EU country to comply with binding antidiscrimination legal standards.
16. The Anti-Discrimination Act provides protection against discrimination on grounds of gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation in a number of areas, including: employment relations, access to employment, self employment and occupation, health care and education, social security and social protection, social advantages and services including housing. The Commissioner welcomes the fact that the Act provides equal levels of protection against discrimination on all grounds of discrimination mentioned above.
17. The Anti-Discrimination Act designates the Defender of Rights (Czech Ombudsman) as the Czech Republic's anti-discrimination body. As such, the Ombudsman has been tasked with a number of new functions, including: offering methodological assistance to victims of discrimination; advising them on the most appropriate steps to address their claims; offering co-operation in obtaining evidence; making legal assessments of cases of discrimination; conducting research and publishing reports and recommendations on discrimination. The Ombudsman has established an Equal Treatment Department, currently staffed with ten lawyers, to perform these tasks.
18. Detailed information on the implementation of the new provisions is not yet available, in part due to the recent entry into force of both the Act itself (1 September 2009) and the new equal treatment functions of the Ombudsman (1 December 2009). The Commissioner understands however, that by the end of May 2010 the Ombudsman had dealt with 115 cases of discrimination, an estimated 20% of which were filed by Roma applicants. The Ombudsman has also issued useful opinions on discrimination, including in the field of education and housing.

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<sup>3</sup> Act 198/2009 Coll. of 23 April 2008

<sup>4</sup> These Directives include : Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ; Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ; and Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in access to and supply of goods and services.

19. While welcoming the adoption of the Act, civil society organisations have highlighted continuing difficulties in a number of areas. For instance, although the Act provides for a shared burden of proof in cases of discrimination, establishing discrimination remains reportedly difficult. The extent to which positive measures aimed at preventing or compensating for the disadvantage suffered by members of certain groups may be required in order to bring about effective equality is reportedly not yet fully clear. Furthermore, there is no adequate mechanism to address instances of discrimination affecting large number of victims or unidentified victims (such as discriminatory advertisements).
20. As regards criminal law provisions aimed at combating racism, the arsenal of provisions contained in the new Criminal Code, adopted by the Czech Parliament in 2008 and which entered into force on 1 January 2010, appears relatively complete. It includes Section 42(b), which establishes that when offences are motivated by certain grounds (i.e. national, racial, ethnic, religious, class or other similar grounds) judges are required to take this motivation into account as an aggravating circumstance when sentencing. In addition, specific aggravating circumstances apply when a certain number of offences (including murder, bodily injury, torture, kidnapping and blackmail) are committed on a closed list of grounds: real or perceived race, ethnic affiliation, nationality, political persuasion, and religion or real or perceived lack of religious belief. However, certain grounds on which hate crimes are sometimes committed, such as sexual orientation and disability, are neither covered by these specific aggravating circumstances nor included in an explicit manner in the general aggravating circumstance provided for by Section 42(b) of the Criminal Code.
21. The Czech Republic has not yet ratified Protocol No. 12 to the European Convention on Human Rights (ECHR) and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. As regards the first instrument, the Czech authorities have advanced *inter alia* their concerns about the potential increase to the already heavy workload of the Court that its ratification could entail. Concerning the second instrument, the authorities have reported that the non-recognition of corporate criminal liability in Czech domestic legislation prevents ratification of the Cybercrime Convention.

#### *Conclusions and recommendations*

22. The Commissioner welcomes the enactment of the Anti-Discrimination Act in 2009 and believes that this important development, albeit delayed, translates a commitment to ensuring high standards of legal protection against discrimination in the Czech Republic. He encourages the Czech authorities to keep the Act and its implementation under close review, and to this end to make full use of the forthcoming Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality and the General Policy Recommendation No 7 on National Legislation to Combat Racism and Racial Discrimination by the European Commission against Racism and Intolerance (ECRI).<sup>5</sup>
23. In particular, the Commissioner draws the attention of the Czech authorities to the guidance provided by these documents on the burden of proof, on special temporary measures and on the entitlement for organisations representing the interests of victims of discrimination to bring cases where a specific victim is not referred to. The Commissioner furthermore draws the attention of the Czech authorities to the guidance provided by these documents on the functions that the institution designated as the national anti-discrimination body could be given (which include for instance legal representation) and on the need to place public authorities under an enforceable duty to promote equality and eliminate discrimination.

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<sup>5</sup> See CommDH(2011)2 Opinion on National Structures for Promoting Equality (forthcoming) and CRI(2003)8 ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, Strasbourg, February 2003.



24. The Commissioner encourages the Czech authorities to consider extending protection against hate crimes by ensuring that all grounds on which hate crimes are committed, including sexual orientation and disability, are equally covered by provisions establishing general and specific aggravating circumstances.
25. The Commissioner recommends that the Czech Republic ratify Protocol No. 12 to the ECHR. He notes that while concerns about the Court's workload are legitimate, these have to be addressed through other means. The Commissioner also recommends that the Czech Republic ratify the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems.

## **II. Protection of the human rights of Roma**

### **II a. General policy and action for promoting and protecting the human rights of Roma**

26. Country monitoring by the Commissioner's Office indicates that in the Czech Republic Roma continue to be particularly vulnerable to discrimination and racism and at risk of falling victim to the activities of extremist groups. As noted by Commissioner Gil Robles in his 2006 report, many members of this community – estimated as a whole between 150 000 and 250 000 persons -- remain caught in a spiral of exclusion and marginalisation affecting practically all areas of life, from employment to housing, education and personal safety to name just a few.<sup>6</sup>
27. In the subsections below the Commissioner focuses on specific aspects of discrimination and disadvantages that he considers particularly urgent for the Czech Republic to tackle. Here, he wishes to address some more general issues concerning the inclusion of Roma in Czech society.
28. The Commissioner welcomes the fact that for many years now, the Czech authorities have implemented strategies for Roma inclusion. The most recent Roma Integration Concept for 2010-2013, which he was happy to receive from the Czech authorities together with the progress reports 2008 and 2009 of a previous strategy, set out important priorities in key areas (such as support for Roma culture and language, education, over indebtedness, housing, social protection and personal safety) and identifies specific tasks for each government administration to perform. The Commissioner considers this strategy as an important tool.
29. However, as is the case in many countries which have adopted strategies in this field, it is difficult to assess impact on the ground. The Czech authorities do strive to monitor impact through different methods, such as assessments by Roma co-ordinators in the different regions and surveys. However, the Commissioner believes that the lack of statistical data broken down by relevant grounds, such as ethnic origin, limits the possibility of having a solid foundation for monitoring concrete outcomes brought about by Roma inclusion initiatives.
30. The Commissioner wishes to underline that discrimination and anti-Gypsyism are a major aspect of the exclusion of Roma in all countries in Europe. It is the Commissioner's opinion that without a clear public recognition of this at the highest level trickling down into a corresponding awareness among the majority society of the need to share the responsibility for Roma inclusion, no strategies aimed at the inclusion of Roma can be fully successful.
31. All interlocutors have stressed the urgent need to ensure that local authorities share and implement the central government's Roma inclusion policies. This need is also reflected as

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<sup>6</sup> CommDH(2006)15 Follow-up report on the Czech Republic (2003 – 2005) Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights Strasbourg, 29 March 2006.

priority in the current Roma Integration Concept, which also envisages legal changes to facilitate this process. Furthermore, since its establishment in 2008, the Agency for Social Inclusion of Roma Localities has been working to promote partnerships between stakeholders at local level for the implementation of social inclusion projects. The Agency is currently working in 23 localities and plans to start working in ten more localities in 2011. The Commissioner is encouraged by reports indicating that very good work for Roma inclusion is carried out by certain local authorities. At the same time, it is also clear that many local authorities are at the origin of the worst practices (in the field of housing, for instance) that keep Roma in a vicious circle of poverty, discrimination and exclusion in the Czech Republic.

32. The Commissioner also believes that in order for Roma inclusion policies to be effective, they must enjoy genuine and regular public backing by the highest decision makers. Thus, the Commissioner considers it a positive development that the Government Council for Roma Minority Affairs is now chaired by the Prime Minister and that the governmental members of it are Ministers and Deputy Ministers. He also hopes that the participation in the Council of the Association of Regional Administrations and the Union of Municipalities and Villages will facilitate greater participation by local and regional governments in the development and implementation of national-level Roma integration policy.

#### *Conclusions and recommendations*

33. In line with the commitment expressed by the member states of the Council of Europe in the *Strasbourg Declaration on Roma* in October 2010, it is crucial that Roma inclusion policies be placed and remain as high priority in the Czech human rights agenda.<sup>7</sup> The public recognition at the highest political level of Roma inclusion policies -- and of the need to combat discrimination and anti-Gypsyism as an integral part of them -- as priority is a particularly important tool towards ensuring the general public's ownership of the inclusion agenda.
34. The Commissioner welcomes the pursuit by the Czech authorities of Roma inclusion objectives through regular strategies and encourages them to make full use of the guidance provided on these strategies by the Council of Europe Committee of Ministers' Recommendation on policies for Roma and/or Travellers in Europe.<sup>8</sup> In order to ensure that they can assess progress achieved on the ground, the Commissioner recommends that the Czech authorities consider introducing a system for collecting statistical information broken down according to categories such as ethnic origin. This should of course be done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group, and in close consultation with the groups concerned and all relevant actors. In this endeavour, the Czech authorities can find guidance in the study *'Ethnic' statistics and data protection in the Council of Europe countries* published by ECRI in 2007.<sup>9</sup>
35. Involving the local government in the development and effective implementation of the central government's Roma inclusion policy remains a crucial task to perform. To this end, the Commissioner encourages the Czech authorities to ensure that the role of the Agency for Social Inclusion of Roma Localities is strengthened and extended to cover inclusion work in all localities where there is a need.
36. Finally, the Commissioner cannot overemphasise that the protection of the human rights of Roma can only be ensured in the framework of an overarching effort by member states to *systematically* protect human rights at national and local level. When the system for

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<sup>7</sup> CM(2010)133 final "The Strasbourg Declaration on Roma" 20 October 2010

<sup>8</sup> CM/Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe (Adopted by the Committee of Ministers on 20 February 2008 at the 1018th meeting of the Ministers' Deputies).

<sup>9</sup> Available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic\\_statistics\\_and\\_data\\_protection.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic_statistics_and_data_protection.pdf)

protection and promotion of human rights presents weaknesses, disadvantaged minority groups such as the Roma are often the first to fall into the cracks. In this connection, the Commissioner draws the attention of the Czech authorities to his *Recommendation on systematic work for implementing human rights at the national level*.<sup>10</sup>

## **II b. The need to combat anti-Gypsyism in political and public discourse**

37. In 2009 ECRI was deeply concerned that racist, and notably anti-Roma discourse appeared to have become an increasingly everyday feature in the Czech political arena.<sup>11</sup> High-ranking politicians, including government ministers and elected local officials had made widely publicised anti-Roma statements. Anti-Roma speech and slogans had been used particularly in local election campaigns and had been followed by appointments to higher office. Anti-Gypsyism was rarely objected to by non-Roma, and mainstream politicians suggested with impunity that the Roma themselves were entirely to blame for the hatred expressed toward them by right-wing extremists.
38. Unfortunately, there are many examples indicating that the situation has not changed. For instance, during the campaign for the October 2010 municipal elections, anti-Roma slogans have been widely used. In a particularly regrettable instance, as part of former senator Liana Janáčková's campaign, match boxes were disseminated on the day of the announcement of the verdict in the anti-Roma Vitkov arson attack (see Section II c below). While this expression of anti-Gypsyism was not rewarded with an election, this has unfortunately been the case in other instances.
39. Even more aggressive and intolerant anti-Roma speech can be found in the statements and literature originating from extreme right-wing parties. While the list of examples of this is long, the August 2008 publication by the National Party (see Section I a above) of *The Final Solution to the Gypsy Question in the Czech Lands*, which proposed relocating the Roma to India and presented parallels with Nazi plans to murder European Jews, has attracted particular attention. The Commissioner has noted that in October 2010 the author of this publication was sentenced to a prison term for inciting racial hatred.
40. Anti-Gypsyism continues to be common in the broadcasting and print media, with newspapers being reported to regularly stereotype Roma as people who by definition refuse to work or pay rent, steal and are violent, and to regularly and unnecessarily disclose the ethnic origin of criminal suspects of Roma origin. In 2009 ECRI found that little progress appeared to have been made towards the adoption of a code of ethics that is effectively adhered to by the media.<sup>12</sup>
41. The internet has been used extensively by organised groups, including political parties, not only to perpetuate anti-Gypsy rhetoric but also to organise events such as the 2008 attempted pogroms on the Roma in Litvinov (see Section I a above). Anonymous disinformation campaigns about the Roma are reportedly also waged through the Internet. Anti-Gypsyism is also a feature of the content of Internet social networking sites, the Czech users of which have recently established groups in aid of various anti-Roma causes.
42. The issue of the Lety (South Bohemia) concentration camp, where Roma families perished during the World War II has also been tainted by anti-Gypsyism ever since it was occupied by an industrial pig farm in the 1970s. The first official memorial was unveiled there in 1995. In 1998 the Czech government resolved to remove the pig farm from the site but this remains to

<sup>10</sup> CommDH(2009)3 Recommendation on systematic work for implementing human rights at the national level by Thomas Hammarberg, Commissioner for Human Rights, Strasbourg, 18 February 2009.

<sup>11</sup> CRI(2009)30 ECRI Report on the Czech Republic (fourth monitoring cycle), Strasbourg, September 2009, para. 45.

<sup>12</sup> *Ibidem*, para. 55.

be done today. The need to remove the pig farm from the site was specifically mentioned in a 2008 European Parliament resolution.<sup>13</sup> Extremist groups have at times disrupted commemorations and staged various publicity stunts at Lety to lobby against moving the pig farm. Mainstream political figures have also sometimes downplayed the significance of Lety. The Commissioner noted with satisfaction that in 2010, the Czech government invested in improvements to the existing memorial at Lety to make it more accessible, dignified and educational. However, in October 2010 the Czech Prime Minister Petr Nečas announced that due to the costs involved, the purchase or removal of the pig farm was unrealistic under his administration.

#### *Conclusions and recommendations*

43. All Council of Europe member states determined to protect the human rights of Roma must place the fight against anti-Gypsyism at the centre of this endeavour. Without meaningful efforts in this field, no initiative or programme can achieve full inclusion in society for the Roma.
44. Politicians have a particularly crucial role to play in putting an end to anti-Gypsyism by adopting a discourse that accepts social pluralism, favours inclusion and firmly rejects stigmatisation and prejudice. The Commissioner draws the attention of the Czech authorities to the study and declaration on the use of racist, antisemitic and xenophobic elements in political discourse, published by ECRI in 2005.<sup>14</sup> The study contains a number of practical measures including: self-regulatory measures which can be taken by political parties or national parliaments; and the signature and implementation by political parties of the Charter of European Political Parties for a Non-Racist Society, which encourages a responsible attitude towards problems of racism, whether in the context of the actual organisation of the parties, or their activities in the political arena.
45. The Commissioner invites the Czech authorities to promote dialogue among the media professions and other relevant civil society groups on how to ensure that the material they publish does not promote anti-Gypsyism. It is also important that the Czech authorities remain vigilant in identifying and reacting promptly and clearly against cases where the media breaches the law prohibiting incitement to hatred.
46. The removal of the pig farm from the Lety concentration camp would be, in the Commissioner's opinion, an important gesture. It would symbolise society's acknowledgment of the human dignity of the Roma, and thereby contribute to countering anti-Gypsism, which feeds precisely on denial of or carelessness towards equal human dignity for this part of the Czech population. In this connection, the Commissioner also strongly encourages the Czech authorities to translate the *Factsheets on Roma History* prepared by the Council of Europe into the Czech language and actively promote their systematic use in schools throughout the country.<sup>15</sup>

#### **II c. Violent hate crimes targeting Roma**

47. Violent hate crimes, including racially motivated violence, against individuals and property, continue to be widely reported in the Czech Republic and Roma are one of the main targets of this phenomenon.

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<sup>13</sup> P6\_TA(2008)0035 European Parliament resolution of 31 January 2008 on a European strategy on the Roma, para. 25.

<sup>14</sup> ECRI, The use of racist, antisemitic and xenophobic arguments in political discourse, Strasbourg, March 2005.

<sup>15</sup> The factsheets are available at <http://romafacts.uni-graz.at/>

48. Official statistics provide information on violent hate crimes. More precisely, the Security Policy Department of the Ministry of Interior collects statistics on *extremist crimes*. These are defined essentially as crimes “reasonably judged to have been motivated or influenced by extremist attitudes”, or “crimes motivated by racial, national or other social hate”. These statistics cover a wide range of crimes, which can involve violence or not (typical of this last group are crimes such as support for or propagation of extremist movements and incitement to hatred). In 2008, the Ministry of Interior statistics indicated that the overall number of extremist crimes had steadily been declining in previous years. Thus, the 196 crimes of this type recorded in 2007 represented less than half of those recorded in 2002. However, in September 2010 official statistics indicated a rise in 2008 and 2009, respectively with 217 and 265 crimes committed. The proportion of crimes involving violence as part of the total is reported to be constantly around 10-15 %.
49. The Commissioner welcomes the efforts of the Czech authorities in monitoring violent hate crimes notably coming from extremist groups. He notes however, that according to civil society organisations working in the field of providing assistance to victims of hate crimes very often such crimes are committed by individuals not directly associated with extreme right-wing movements and that a broader approach to monitoring hate crimes reflecting this fact would therefore be desirable. The experience of these organisations also indicates that the vast majority of violent hate crimes continue to remain unreported, an aspect already highlighted in Commissioner Gil-Robles's report in 2006.<sup>16</sup> Reasons for this include fear of, or lack of trust in, the police -- an aspect particularly relevant for Roma -- and the absence of a flexible and victim-friendly system for reporting such crimes. Finally, civil society organisations providing assistance to victims of hate crime consider that, while monitoring and action against non-violent hate crimes continue to be important, more emphasis should be put on hate crimes that involve the use of violence.
50. In this respect, the Commissioner stresses the importance of the response made by the Czech authorities in the Vitkov case and strongly hopes that such a response will mark the policy direction that will be followed by the Czech authorities against hate crimes in the future. In this case, as a result of three Molotov cocktails thrown by neo-Nazis against a house inhabited by Roma in Vitkov in April 2009, three of the inhabitants suffered injuries. They included an infant who was not quite two years old when she suffered extensive second and third-degree burns over 80 % of her body, which have since resulted in the amputation of three of her fingers. On 20 October 2010, one and a half years after the events, the Regional Court in Ostrava sentenced three persons to 22-year prison sentences and one to 20 years (out of 12 people originally arrested in connection with the case). All four will serve their sentences in a maximum-security prison and will have to pay the victims millions of crowns in compensation. The Commissioner notes that the judgment, which is not yet final, has been publicly welcomed by most Czech authorities and institutions.
51. More generally, the Czech authorities are reported to have taken a somewhat more energetic approach to countering hate crimes (including crimes both involving violence and not) in recent years. Thus in 2009, the police cleared up 186 extremist crimes, i.e. 60 more than in 2008. A total of 293 people were prosecuted, which was about 100 more than in 2008, and courts convicted 103 people of racially motivated crimes.
52. In 2009 ECRI remained concerned that the criminal justice system did not always provide sufficient protection against racially motivated offences. One important concern was the excessively narrow approach reportedly followed by both the police and the judiciary to establishing whether an act was based on racist motivations, resulting in an excessively high standard of proof being required in order to establish the existence of a racist motivation.

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<sup>16</sup> CommDH(2006)15 Follow-up report on the Czech Republic (2003 – 2005) Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights Strasbourg, 29 March 2006, para. 46.

Thus, when the Brno mosque was vandalised in October 2008, the words “Stop Islam” having been sprayed on its walls and “No” on its door, the police were reported to consider that an extremist motive had not been clearly established.<sup>17</sup> Also, in relation to the crimes committed by extreme right-wing movements and their supporters as part of the anti-Roma attempted pogroms of late 2008 and early 2009 described above (see Section I a), the charges laid against individuals arrested were only for breaches of the peace and rioting, and did not reflect the racist motivations behind the events.

#### *Conclusions and recommendations*

53. The Commissioner welcomes the action taken by the Czech authorities in recent years to counter hate crimes, notably those committed by extreme right-wing groups. He encourages the Czech authorities to consider broadening their approach to hate crimes so as to take more fully into account the dimensions of this phenomenon, which are not related strictly to extreme right-wing groups, and to deepen their dialogue and action in synergy with civil society organisations on this matter. The Commissioner believes that effective prosecution of hate crimes that involve the use of violence should be given absolute priority by the authorities.
54. While welcoming the monitoring of extremist crimes carried out by the Security Policy Department of the Ministry of Interior, the Commissioner finds that such monitoring could be complemented with a more flexible and victim-friendly system of reporting relative incidents. The Commissioner draws the attention of the Czech authorities to the guidance provided by ECRI specifically on this subject matter in its General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing, a Czech language copy of which the Commissioner left with the Minister of Interior when he met him during the visit.<sup>18</sup>
55. This ECRI General Policy Recommendation also provides guidance in respect of a closely-related subject area that the Commissioner would like to highlight, i.e. the need for the police to improve their response to violent hate crimes. The case-law of the European Court of Human Rights on this matter should also be recalled. In the case of *Šečić v. Croatia*, concerning police investigations into a racist attack against a person of Roma origin by individuals suspected to belong to a skinhead group, the Court underlined that “[t]reating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights”. The Court considered it unacceptable that a violent act which was most probably racially-motivated had not been investigated seriously and expeditiously with a view to identifying and prosecuting the perpetrators.<sup>19</sup>
56. Finally, the Commissioner finds that further, systematic training would be beneficial for all those involved in the criminal justice system, including prosecutors and judges, on the investigation, prosecution and sentencing of hate crimes, including violent hate crimes. This should include measures to raise awareness of the need to take all instances of these crimes seriously and to be effectively investigated.

#### **II d. Segregation of Roma children in the education system**

57. Many Roma children in the Czech Republic still end up receiving lower quality education today, either because they are disproportionately represented in schools originally designed

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<sup>17</sup> CRI(2009)30 ECRI Report on the Czech Republic (fourth monitoring cycle), Strasbourg, September 2009, para. 65.

<sup>18</sup> CRI(2007)39, ECRI General Policy Recommendation N°11: Combating racism and racial discrimination in policing, Strasbourg, October 2007. The Czech language version of this Recommendation is available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N11/REC11-2007-39-CZE.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N11/REC11-2007-39-CZE.pdf)

<sup>19</sup> *Šečić v. Croatia*, Appl. No. 40116/02, judgment of 31 May 2007, see in particular §§ 67-69.

for children with mental disabilities where teaching framework requires lower standards than in mainstream schooling, or because they find themselves segregated in Roma-only schools or classes.

58. A milestone in the recognition of this long-standing problem and in providing guidance to governments for addressing it durably, is the 2007 judgment of the Grand Chamber of the Strasbourg Court in the case of *D.H. and Others*, where it was found that the Czech Republic had violated the European Convention on Human Rights by discriminating against Roma children with respect to their right to education. This judgment requires that the Czech Republic take general measures to put an end to the violation and redress so far as possible its effects.<sup>20</sup>
59. A number of measures have been taken since then. Among these, the Commissioner welcomes the adoption by the Czech government in March 2010 of a National Action Plan of Inclusive Education (NAPIE), which sets out measures aimed at creating the preconditions for educating Roma children in mainstream education.
60. For the moment, however, there appear to have been hardly any changes on the ground. Official statistics, for whose collection the Commissioner sincerely commends the Czech authorities, indicate that across the country Roma children are 12 times more likely than their non-Roma peers to attend 'practical schools' (which have since replaced the special schools which were at issue in the *D.H. and Others* judgment).<sup>21</sup> In certain areas, Roma children are up to 27 times more likely to attend these schools, i.e. the same proportion which served as basis for the findings of the Strasbourg Court in the same case.
61. Roma children continue to be assigned to schools for children with mild mental disabilities without justification, as a result of either mis-diagnosis or direct enrolment in these schools not preceded by tests. A report by the Czech School Inspection Authority dated March 2010, which reviewed the situation in over 40% of schools for children with mild mental disabilities around the country, concluded that Roma children made up over one quarter of the children that had been assigned to these schools without having been found to have a mental disability, and around one third of the children found to have a mental disability.<sup>22</sup> The Commissioner notes that in an Opinion rendered in April 2010 at the request of the School Inspection Authority, the Czech Ombudsman found that both situations constituted discrimination.<sup>23</sup>
62. However, there are measures in place assisting Roma children to attend and remain in integrated mainstream schools. A first set of measures of this kind are those aimed at promoting participation of Roma children in pre-school education. The Commissioner understands that research carried out in 2008 and 2009 in schools close to areas of social exclusion indicated that Roma children who had attended kindergartens were clearly more successful.
63. Another important measure is the appointment of teaching assistants in schools. This measure addresses some key obstacles, such as lack of confidence of Roma families in the school system, and the attitudes of other parents, children and teachers, towards having Roma children in mainstream classes. Unfortunately however, only some 250 such assistants are reported to be working at present in schools around the country. Reasons for this are

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<sup>20</sup> *D.H. and Others v. the Czech Republic* [GC] Appl. No. 57325/00, judgment of 13 November 2007.

<sup>21</sup> Czech School Inspection, "*Thematic Report – Compendium of results from the thematic control activity in practical elementary schools*", March 2010

<sup>22</sup> *Ibidem*

<sup>23</sup> "Opinion of the Public Defender of Rights on suspicions of discrimination against pupils and students of Romani origin - findings from a report on the inspection activities of the Czech School Inspectorate at practical primary schools".

connected with lack of funds, but also with the fact that the decision to request such assistants is entirely in the hands of school administrators, which results in these assistants being hired only in schools with progressive attitudes. In this respect, it was pointed out to the Commissioner that as many as 5 to 10 Roma assistants would be necessary in each school, at least in the most deprived areas of the country.

64. Prior and during the Commissioner's visit, concern had been expressed by many, including Czech and international civil society organisations, about developments that appeared to cast doubts on the Czech government's commitment towards the inclusive education agenda, notably as set out in the NAPIE. The Commissioner was informed in particular about the downsizing of the Department of Special Education and Equal Opportunities (which has crucial responsibilities in the implementation of the *D.H. and Others* judgment), the resignation tendered by key Ministry of Education officials, and plans to postpone the adoption of important legal changes that had been envisaged by the government. These included in particular: a decree regulating the provision of psychological evaluations at counselling facilities and schools (i.e. the testing procedures that were criticised by the Strasbourg Court in the *D.H. and Others* judgment), so that it could not be abused; and a decree regulating special needs education, in order to strictly limit the provision of this education to children who were in genuine need of it.<sup>24</sup>
65. The Commissioner is encouraged by the clear assurances provided by the Czech authorities he met that they are fully committed to inclusive education and the implementation of the NAPIE. As an illustration of this, the authorities have highlighted that they have revived the steering committee for the implementation of NAPIE and are determined to adopt the legal changes referred to above at the beginning of 2011. The Commissioner also hopes that as part of this commitment on the part of the authorities, efforts will be made to bring the special school administration and staff genuinely on board the inclusive education agenda. In this respect, the Commissioner notes that while inclusive education means that most children currently educated in special schools will be integrated in mainstream education, the expertise of the special education teachers will still be crucial to provide the necessary support to children who may need assistance in integrating into mainstream education.

#### *Conclusions and recommendations*

66. With thousands of Roma children effectively excluded from the mainstream education system in the Czech Republic and condemned to a future as second-class citizens every year, the Commissioner underlines that it is now time to speed up the implementation of the inclusive education agenda.
67. The Commissioner welcomes the recent declarations of the Czech Prime Minister in support of inclusive education and of the Minister of Education to the effect that measures to execute the European Court of Human Rights' judgment in the case of *D.H. and Others* are an urgent task to which his Ministry is committed. The Commissioner hopes that it will be possible to translate this commitment into practice by marking a clear change of direction already with the next intake of children in the 2011-2012 school year.
68. The Czech authorities should now set clear and measurable targets for transfers of children from special to ordinary education and for overall desegregation of the school system. They should ensure the adoption of special measures to facilitate and support Roma children and their parents during the transition process. This would be in line with the decision of the Council of Europe Ministers' Deputies adopted on 2 December 2010 by which the Czech authorities were encouraged "to follow the implementation of the NAPI[E] without delay

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<sup>24</sup> See respectively: Regulation no 72/2005 on the provision of counselling services at schools and school counselling facilities; and Regulation no 73/2005 on the education of children, pupils and students with special educational needs and of exceptionally talented children, pupils and students.



particularly concerning measures to address the situation of pupils improperly placed in practical schools [...] to ensure that they are able to transfer to the mainstream education system".<sup>25</sup>

69. Legislative changes that are necessary to underpin the inclusive education agenda must not be further delayed. This may include legislation explicitly mandating desegregation; setting out a clear prohibition on educating children without mental disabilities under programmes and at schools specifically intended for children with mental disabilities; highlighting individual integration in mainstream school as the preferred way of education; and introducing measures to enable socially disadvantaged children (including Roma children) to fully integrate into the mainstream national education.
70. The Commissioner strongly encourages the plans referred to by the Deputy Minister of Education during the visit to monitor school placements through the School Inspection Authority and stresses the need for updated, disaggregated data by ethnic origin to be available in order to monitor progress.
71. Lastly, the Commissioner recalls that on 20 October 2010, the member states of the Council of Europe, undertook in the *Strasbourg Declaration on Roma* to "ensure effective and equal access to the mainstream educational system, including pre-school education, for Roma children and methods to secure attendance, including, for instance, by making use of school assistants and mediators. Provide, where appropriate, in service training of teachers and educational staff".<sup>26</sup> In line with these commitments, the Commissioner strongly urges the Czech authorities to strengthen measures to secure participation of Roma children in mainstream pre-school education and the presence of teaching assistants in all schools where they are genuinely needed.

#### **II e. Sterilisation of Roma women without full and informed consent**

72. In his 2006 report, Commissioner Gil Robles welcomed the work of the Czech Ombudsman concerning allegations of sterilisation performed on women (and in particular, Roma women) without their full and informed consent. Following an investigation into the cases of around 80 women in 2004-2005, the Ombudsman found that in the vast majority of these cases legal and procedural safeguards had not been followed and that the sterilised women's consent lacked validity. He also noted that, although the sterilisation of Roma women had ceased to exist as an encouraged policy in 1991, a number of doctors appeared to have subsequently acted outside the law, continuing the practice. The Ombudsman therefore proposed a number of legal, awareness and reparation measures to be initiated by the Czech government.
73. In a very positive development, in November 2009, the Czech government expressed regret over "instances of error" found to have occurred in the performance of sterilisations. However, in concrete terms, many of the Ombudsman's recommendations are still awaiting implementation today, as also found by different human rights monitoring bodies including the UN Committee for the Elimination of Discrimination against Women in October 2010.<sup>27</sup>
74. The Commissioner is particularly concerned at the fact that women who have been sterilised without full and informed consent appear currently to be left without a remedy to obtain compensation. A particularly important obstacle is the three-year time limitation that currently applies to compensation claims for breach of personality rights. Although the domestic case

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<sup>25</sup> CM/Del/Dec(2010)1100 - 1100th meeting (DH), 30 November, 1-2 December 2010, Decisions adopted at the meeting.

<sup>26</sup> CM(2010)133 final "The Strasbourg Declaration on Roma" 20 October 2010, para. 33

<sup>27</sup> CEDAW/C/CZE/CO/5 Concluding observations of the Committee on the Elimination of Discrimination against Women - Czech Republic, 22 October 2010.

law in the matter has not been consistent – up to 2007 the Supreme Court had ruled in many cases that the time limitation did not apply to compensation claims for breach of personality rights -- following an overturn of the case law in 2008, these limitations do now apply to such cases. Furthermore, the three-year limit is applied so as to start from the time at which the sterilisation took place and not from the time at which the victim became aware of it.

75. In the Commissioner's view this framework is inadequate to accommodate reality, which is characterised by the fact that in some cases the women concerned have learnt that sterilisation had been performed on them, or realised its full implications, only at a later stage. Further realities with which these women are confronted include the fact that they often need to overcome shame, their lack of awareness about possible avenues for redress, and the non-availability of medical records, which were either never given to them or went lost in floods or fires.
76. As a result, to the Commissioner's knowledge, only one woman of Roma origin, unlawfully sterilised in 2003, has been able to obtain compensation to date, having managed to file a compensation claim before the three-year time limit after surgery had elapsed.
77. The Commissioner also notes that in spite of recommendations issued by the Ombudsman, the Council of the Government for Human Rights, and international human rights monitoring bodies, the establishment of an out-of-court compensation mechanism for victims of coercive or non-consensual sterilisation, has so far been ruled out by the Czech authorities.
78. On the front of the adoption of legal changes to health care legislation aimed at preventing re-occurrence of coercive or non-consensual sterilisation, the Czech authorities have informed the Commissioner that draft legislation complying with the requirements set out by the Ombudsman is ready. The government plans to submit it to Parliament at the beginning of 2011 and expects the Parliament to adopt it in the first semester 2011.
79. The Commissioner has taken note with interest of the initiatives described by the Ministry of Health aimed at increasing awareness among the medical profession of their obligations and among users of health services of their rights with respect to the issue of sterilisation.
80. He also notes, however, that there continue to be isolated reports of sterilisations having been performed without full and informed consent, well after the official discontinuation of this practice in 1991. Three of these cases, performed respectively in 1997, 2001 and 2003 are pending before the European Court of Human Rights on different accounts.<sup>28</sup> In addition, the European Roma Rights Centre has reported having documented twenty new cases where sterilisations without full and informed consent took place in the Czech Republic between 1989 and 2007.<sup>29</sup>
81. Finally, the Commissioner understands that in none of the cases where criminal proceedings were initiated against those responsible for performing sterilisations did these proceedings lead to charges being brought, although in some of these cases the civil courts had established that sterilisation had been performed unlawfully. He notes that two of the cases pending before the Strasbourg Court mentioned above contain grievances concerning the effectiveness of the relative investigations by the police.

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<sup>28</sup> *Ferenčíková v. the Czech Republic* (Application no 21826/10) communicated on 1 September 2010; *Červeňáková v. the Czech Republic* (Application no. 26852/09) communicated on 31 August 2010; *R.K v. the Czech Republic* (Application no. 7883/08) communicated on 15 December 2009.

<sup>29</sup> Parallel submission to the UN Committee on the Elimination of All Forms of Discrimination against Women for the Czech Republic 47th session (4-22 October 2010), para. 6

*Conclusions and recommendations*

82. The Commissioner wishes to note that the sterilization of women, without full or informed consent, as a state-backed policy until 1991, constitutes a type of gross or systematic human rights violations that needs to be carefully looked into by the Czech government and duly remedied. The 2005 UN 'Basic Principles and Guidelines' concerning reparation for victims of gross human rights violations may be usefully drawn upon and applied by the authorities.<sup>30</sup>
83. The Commissioner welcomes the Czech authorities' expression of regrets in 2009 for unlawful sterilisation as an important step in the right direction.
84. However, he considers it unfair that women who have been sterilised without full and informed consent are currently left without an effective domestic remedy to obtain compensation for the harm they have suffered. It is reminded that under the aforementioned 2005 UN 'Basic Principles and Guidelines' adequate, effective and prompt reparation, including compensation, should be made available to victims of gross human rights violations, and also be proportional to the gravity of the violations and the harm suffered. It is stressed that domestic statutes of limitations, including time limitations applicable to civil claims, should not be unduly restrictive.
85. In view of the above international law principles, the Czech authorities should address this situation by reviewing the time limits applying to compensation claims for unlawful sterilisations, in order to extend it and, as a minimum measure, ensure that any time limit starts from the time when the victim became aware of the sterilisation or its full implications and not the time when the sterilisation was performed.
86. Examples of *ex gratia* compensation mechanisms for victims of non-consensual sterilisation exist in other countries and the Commissioner hopes that the Czech authorities will review these examples and consider establishing a similar one in the Czech Republic.
87. In order to prevent the re-occurrence of coercive sterilisations, it is also important to ensure that the law and practice in this field are changed. The Commissioner hopes that by mid-2011 – as currently planned by the Czech authorities - healthcare legislation will be in place clearly defining the requirements of free, prior and informed consent with regard to sterilisations, in accordance with the relevant international standards.<sup>31</sup> This includes a doctor's obligation to inform the patient in writing and orally about the nature of the sterilisation, its permanent consequences, potential risks and available alternatives, and a period of at least seven days between the provision of such information by the doctor and the expression of consent by the patient.
88. The Commissioner also draws the Czech authorities' attention to the need, in the context of the satisfaction due to the victims, to ensure judicial and administrative sanctions against persons liable for the performance of women's sterilisations without the latter's full and informed consent. In particular, he stresses the need to ensure that the relevant police investigations meet the requirements of promptness, thoroughness and effectiveness flowing

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<sup>30</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Commission on Human Rights, Resolution 2005/35, 19 April 2005.

<sup>31</sup> See CEDAW/C/CZE/CO/5 Concluding observations of the UN Committee on the Elimination of Discrimination against Women - Czech Republic, 22 October 2010, para 35. See also the WHO guidelines on female sterilization, available at <https://apps.who.int/rht/documents/FPP94-2/FPP94-2.htm>.

notably from Article 3 of the European Convention on Human Rights and the Court's case law.

#### **II f. Segregation of Roma in housing**

89. The Commissioner has received reports indicating that around one third of the Czech Roma population continues to live in some 300 segregated localities (housing blocks, streets or whole town quarters) around the country, in substandard housing conditions and excluded from mainstream society. Unfortunately, it appears that the number of people living in these localities is growing, with a few dozen such localities reportedly turning into slums.
90. The Czech authorities are aware of the problem, as also reflected in the fact that it constitutes one of the areas addressed by the Roma Integration Concept (see Section II a above). They have started to address it, for instance through the work of the Agency for Social Inclusion of Roma Localities, which has promoted partnerships at local level aimed at improving living conditions in these localities that have in some cases produced results. However, with housing falling entirely within the competence of municipal authorities, many municipalities around the country regrettably continue to implement policies that perpetuate and compound Roma segregation in inadequate housing.
91. There are many interlinked factors determining this situation, including poverty and indebtedness. Particularly crucial among these factors however, are reported to be the virtually total lack of any form of social housing in the Czech Republic, which particularly affects Roma to the extent that they are heavily over-represented among the poor, and direct and indirect racial discrimination.
92. In this connection, the Commissioner notes that housing is the first area covered by discrimination complaints brought by Roma before the Ombudsman. Typically, Roma families end up being evicted from rental municipal housing on grounds of non-payment of rent or utilities and moved to Roma-only insalubrious housing. Faced with unemployment and discrimination, evicted families are unlikely to be granted leases elsewhere and often end up paying above market rates for temporary accommodation in hostels, which exposes them to exploitation by loan sharks and further indebtedness. Furthermore, as mentioned below (see Section II g), in these circumstances Roma parents are at risk of seeing their children being removed from them, since the municipal social services continue to regard inadequate housing conditions in practice as sufficient grounds to place children in institutional care.
93. During his visit to two localities in Kladno, the Commissioner spoke with a number of Roma families whose stories sadly exemplify this downward spiral of discrimination, poverty and exclusion. In some cases, families reported having been forcibly moved there from decent housing inhabited by ethnically mixed communities, although they had little or no outstanding debt. The Roma families so evicted were reportedly only offered alternative accommodation in segregated Roma localities. Indeed, in Kladno's Masokombinat housing block, where families are reportedly accommodated on different floors according to their perceived capacity to integrate and required to pay for utilities and services that are not, or not always, provided, the only common feature of families housed there appeared to be their ethnicity. The Commissioner hopes that the Anti-Discrimination Act, which covers housing, will provide an effective protection to all Roma who are victims of discriminatory practices.

#### *Conclusions and recommendations*

94. The Commissioner is deeply concerned at the reportedly increasing segregation of Roma in marginalized communities around the country and believes there is an urgent need to prevent the creation of segregated areas and reduce the number of existing ones.

95. To this end, in line with the Czech Republic's obligations under the European Social Charter, he urges the authorities to develop and put in place as a matter of priority a coherent system of social housing, including a clear definition both of the concept of social housing and of the social criteria to be applied in allocating it to persons in need. In this context the authorities are also called upon to proceed to the ratification of the 1996 Revised European Social Charter and the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.
96. The Commissioner emphasises that the municipal authorities' autonomy in housing matters should never result in discrimination in this field being tolerated. He therefore strongly encourages the Czech authorities to take all necessary steps to ensure the effectiveness of the Anti-Discrimination Act and its vigorous implementation, as highlighted above.
97. Local partnerships aimed at desegregating Roma localities and improving living conditions are particularly important. The Commissioner hopes that the role of the Agency for Social Inclusion of Roma Localities in promoting such partnerships will be strengthened.

### **II g. Placement of Roma children in institutional care**

98. The number of children in institutional care in the Czech Republic is high and reportedly growing. Roma children appear to be disproportionately represented among these children. In the regrettable absence of official disaggregated data, estimates put the percentage of Roma children in institutional care between 20 and 80% of the total.<sup>32</sup>
99. One issue that particularly affects the over-representation of Roma children in these institutions is the fact that children continue to be removed from their families on the sole ground that the latter do not have a suitable and stable home, or that their economic and social conditions are not satisfactory, all circumstances which are at present more common among Roma families.
100. However, this practice is at variance with two judgments delivered by the Strasbourg Court against the Czech Republic, which indicate that poor housing conditions or financial situation cannot be the only reasons for placing children into institutional care.<sup>33</sup> The Commissioner recalls in particular that in finding a violation of Article 8 of the ECHR (Right to respect for private and family life) in the case of *Wallová and Walla*, the Court indicated that it was not evident from the facts of the case that the social protection authorities had made serious efforts to help the applicants overcome their difficulties and get their children back as soon as possible.<sup>34</sup> In June 2010, it was announced that an action plan aimed at solving the specific problems identified by the Court in the abovementioned judgments would be submitted to the government. A national action plan for the transformation and unification of the care system of endangered children was also adopted in 2009. However, it is not clear the extent to which these plans have been implemented.
101. Once a child is placed in an institution, it also becomes comparatively more difficult for Roma families to get the child back, because poverty affects this possibility, too. For instance, although the law provides that the child should be placed close to the family, this is reported to often not be the case in practice. It then becomes impossible for poor parents to visit the children far away, and as a result the latter may lose their parental rights altogether.

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<sup>32</sup> CRI(2009)30 ECRI Report on the Czech Republic (fourth monitoring cycle), Strasbourg, September 2009, para. 144

<sup>33</sup> *Havelka and Others v. the Czech Republic*, no. 23499/06, judgment of 21/06/2007; *Wallová and Walla v. the Czech Republic*, no. 23848/04, judgment of 26/10/2006.

<sup>34</sup> Press release issued by the Registrar - Chamber judgment *Wallová and Walla v. the Czech Republic*

*Conclusions and recommendations*

102. The Commissioner is concerned at the high numbers of children placed in institutional care in the Czech Republic and at the disproportionate representation of Roma children among these.
103. In accordance with the judgments of the Strasbourg Court, the Czech authorities should ensure that no child is placed in institutional care solely on grounds relating to the poor housing conditions or financial situation of his or her family.
104. The Commissioner draws the attention of the Czech authorities to the Council of Europe Committee of Ministers' Recommendation (2005)<sup>5</sup> *on the rights of children living in residential institutions*, by which member states are invited to adopt legislation, guidelines and action plans inspired by a number of principles, including the following:
105. The placement of a child should remain the exception and have as the primary objective the best interests of the child; the parents should be supported as much as possible with a view to harmoniously reintegrating the child in the family and society; and when circumstances allow, a placement should be selected which is as close as possible to the child's environment and organised to allow parents to exercise their responsibilities and to maintain parent-child contact on a regular basis.
106. The above Recommendation further stresses that the decision taken about the placement of a child and the placement itself should not be subject to discrimination on the basis of gender, race, colour, social, ethnic or national origin, expressed opinions, language, property, religion, disability, birth or any other status of the child and/or his or her parents".
107. The Commissioner calls on the Czech authorities to draw upon this Recommendation and take all legal and awareness-raising measures (for instance for social workers or judges of guardian courts) that may be necessary to overcome differing policy and practice.

## Appendix

### Comments of the Czech Republic on the Report by the Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 17 to 19 November 2010

#### Action against racism and extremism

From a total of 313 387 offences detected on the territory of the Czech Republic in 2010, 252 had an extremist subtext, i.e. 0.08% of the total number of offences (0.08% in 2009). In comparison to the year 2009 there was a decrease in these crimes in the year 2010 by 4.9% (252 offences in 2010, 265 offences in 2009). The number of persons prosecuted rose by 24.2% (231 persons in 2010, 186 persons in 2009). 168 offences were solved, i.e. 83.2% (186 offences were solved in 2009, i.e. 70.2%).

The structure of the offences remained unchanged. Offences defined in § 403 (Founding, support, and propagation of movements suppressing human rights and freedoms), § 404 (Expression of sympathy to movements aiming at suppressing human rights and freedoms), and § 405 (Denial, questioning, approval, and justification of genocide) of the Penal Code prevailed. These offences constituted 44% (111 offences) of the total number of offences with an extremist subtext recorded in 2010; in 2009 they constituted 63.4% (168 offences).

#### *Increase of number of extremist crimes in 2008 and 2009*

| YEAR | Number of crimes recorded | Share of total crime (percent) | Number of crimes solved | Number of persons prosecuted |
|------|---------------------------|--------------------------------|-------------------------|------------------------------|
| 2006 | 248                       | 0.07                           | 196                     | 242                          |
| 2007 | 196                       | 0.05                           | 119                     | 181                          |
| 2008 | 217                       | 0.06                           | 126                     | 195                          |
| 2009 | 265                       | 0.07                           | 186                     | 293                          |

According to statistics, the difference in absolute values between 2006 -2009 is very small. The share of total crime varies from 0,05 to 0,07 percent. Most of the crimes committed in 2009 were verbal crimes. The registered increase is considered to have resulted from higher sensibility of the police to manifestations of extremism.

Strategy/Concept for Combating Extremism: The measures taken are evaluated and updated every year. The pillars remain the same. The main focus in 2011 will be on prevention and educational activities.

### **Strategy on policing minorities**

Since 2003, the “Strategy on Policing Minorities” is periodically updated (every 2 to 4 years) by the Government. The Strategy is fundamentally a document tackling comprehensive work of the Czech Police in relation to minorities. The key goals of the Strategy are to support the Police in its effort to adapt to an increasing social diversity, and to provide officers with the social competences they need. This should enable them to work effectively with minorities and foreigners. The Strategy is carried out through action plans set out for 1-2 years.

On the order of the district police director, a Liaison Officer for Minorities and his/her team are appointed. Liaison Officers are staff members specifically trained for minority policing tasks. They act as mediators between the police and minority communities, and provide members of minorities with help in solving issues that fall into the legal remit of the Police. Liaison Officers also act as consultants for all policing matters relating to minorities. They continuously monitor minority structures in the area and participate in the prevention/eradication of crime, they collaborate with NGOs, the government and local authorities.

At the same time the presence of social fieldworkers known as “Assistants in dealing with the police and other agencies” is reinforced. They focus mainly on crime prevention and help victims and witnesses of illegal activities in socially excluded areas. Assistants help them in exercising their rights and coping with their situation. They seek to establish trust and contacts between the inhabitants of socially excluded areas and the Police, official authorities and other institutions. Long-term operating fieldworkers significantly contribute to the stabilization of the security situation in the concerned regions. In the year 2010 there were assistants in Plzeň, Přerov, Karviná, Brno, Cheb and Ostrava.

The Police will continue recruiting people from ethnic minorities under the umbrella of the “Help and protect” recruitment campaign launched at the beginning of 2008.

The Ministry of Interior continues its efforts aimed at employing members of minorities by the Police, under the umbrella of the project of the Secondary Police School of the Ministry of Interior in Holešov “The Police for all”. The goal of this project, which was launched in the academic year 2008/2009, is to enable people with minority backgrounds to acquire a Secondary Police School diploma which would later enable them to apply to join the Police Forces. The Police School became involved in the process of increasing the competitiveness of minorities on the labour market.

### **Placement of Roma children in institutional care**

On 7 December 2010 the Government adopted Resolution No. 882 on General Measures of the Execution of the Judgments of the European Court of Human Rights – Prevention of the Removal of Children from Parents’ Care for Socio-economic Reasons.



Generally, these measures rely on the following key principles:

1. It is not permissible to remove children from family care solely on the ground of unsuitable housing or other social and economic reasons (the family's destitution, insufficient income, unemployment) unless the child's life, health or favourable development are at serious risk and at the same time it is not feasible to provide protection for the child by some other means.
2. If there are no doubts as to the parents' child-rearing abilities or their emotional ties to the children, the State has a positive obligation to provide the parents with adequate assistance in child rearing, including assistance to overcome the family's adverse housing and material situation which will make it possible for the children to stay in the family, with active cooperation of the parents or other persons responsible for the upbringing of the child. Parents who take care of children are entitled to assistance from the State (Article 32(5) of the Charter of Fundamental Rights and Freedoms). For the purpose of guaranteeing and promoting the rights of children, the States shall render appropriate assistance to parents in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children (Article 18(2) of the Convention on the Rights of the Child).
3. The responsibility for providing required assistance to a family at risk does not only rest on the organs vested with state authority (in particular, without limitation, courts and authorities for social and legal protection of children), but it shall be borne jointly by all organs vested with public authority, including self-governing bodies (of municipalities and regions). Additional assisting organizations (in particular, without limitation, non-governmental non-profit organizations, organisations set up by regions and municipalities, etc.) also need to be effectively involved in the tackling of cases of endangered families with children. Such assistance must be provided having regard to the rights and obligations of the parents who have the primary responsibility for the upbringing and development of their children (Article 18(1) of the Convention on the Rights of the Child).

### **Roma children in the education system**

The National Action Plan of Inclusive Education (NAPIE), adopted by the Government in March 2010, is being implemented, albeit with a short delay caused by the parliamentary elections last May. The past year saw the commencement of a series of steps taken in support of the inclusive education model.

On 60 and 61:

The Ministry of Education, Youth and Sports (MoE) has prepared a draft amendment to Regulation No. 72/2005 Coll., on the provision of advisory services at schools and educational advisory facilities, and Regulation No. 73/2005 Coll., on the education of children, pupils and students with special educational needs and of talented and gifted

children, pupils and students, both of which help to minimise the occurrence of this phenomenon and make the repetition of this situation almost impossible.

On 62:

Placing children in kindergartens in the Czech Republic is very difficult for all parents due to the insufficient capacity of pre-school facilities. In the case of Roma children socially excluded locations with difficult accessibility of a kindergarten or low socioeconomic status of Roma families also come into play. The MoE therefore supports also alternative forms of pre-school teaching such as low-threshold facilities and family centres by providing funding from subsidy programmes “Supporting Education in Minority Languages and Multicultural Education” and “MoE Programme for Supporting the Integration of Roma Community”.

On 63:

In the school year of 2010/2011 the MoE allocated a total of CZK 17.5 million to the work of 440 Roma teaching assistants in mainstream schools.

On 64:

It should be noted that all the governmental departments, not only MoE, have been affected by the austerity budget measures the Government had to adopt. The work on the implementation of NAPIE has continued nevertheless. A draft amendment to the Regulation No. 72/2005 Coll., on the provision of advisory services at schools and educational advisory facilities has been prepared, to be adopted shortly.

On 65:

The implementation of this task is one of the items on the new agenda with respect to NAPIE. One of the monitored objectives is the introduction of methodologies for inclusive schools and their pupils with special educational needs. Experts on teaching pupils with special educational needs have therefore been invited to work on NAPIE.

On 66:

The MoEYS is aware of this and has therefore made the implementation of the inclusive educational programme one of its priorities.

On 67:

The effects of the first measure, i.e. amended terms and conditions for placing children and pupils in an educational programme for pupils with mild mental disabilities (Framework Educational Programme for Basic Education – Annex Specifying the Education of Pupils with Mild Mental Disabilities) and terms and conditions for placing pupils at schools established solely for pupils with mental disabilities (practical primary schools, special primary schools) contained in an amendment to Regulation No. 73/2005 Coll., on the education of children, pupils and students with special educational needs and of talented and gifted children, pupils and students, will indeed become apparent already at the next intake of children in the 2011/2012 school year.

On 68:

In order to help implementing this task, the MoE works intensively on transfer between the individual parts of the educational programme for basic education (Framework Educational Programme for Basic Education, and Framework Educational Programme for Basic Education – Annex Specifying the Education of Pupils with Mild Mental Disabilities).

On 69:

The MoEYS has already prepared a draft amendment to Regulation No. 72/2005 Coll., on the provision of advisory services at schools and educational advisory facilities, and Regulation No. 73/2005 Coll., on the education of children, pupils and students with special educational needs and of talented and gifted children, pupils and students. Both of the draft amendments to the above Regulations are in line with the recommendation contained in this paragraph.

On 70:

The MoEYS supports the implementation of this task.

On 71:

As mentioned above, placing children in kindergartens may be difficult due to the insufficient capacity of these facilities. The envisaged support of “company kindergartens”, i.e. pre-school facilities established by companies for the children of their staff, could mark a positive shift in this field. At the same time the MoE will continue to provide support from the subsidy programmes to entities providing care and education to pre-school children. However, searching for further solutions is one of the core tasks within NAPIE for the nearest future. Besides, the number of Roma teaching assistances has again been increased this year.

### **Sterilization**

#### *Relevant domestic law before 2006*

According to the 1966 law on the care of health of the population, sterilisation could only be performed on the basis of consent or request of the person concerned (Section 27 of the law). This consent had to be free and informed and the person concerned had to be appropriately informed beforehand as to the purpose and nature of the intervention as well as on its consequences and risks.

The 1971 Directive of the Ministry of Health set out further details of the procedure for the execution of an intervention, in particular the requirement of an approval of the request for the intervention by the sterilisation committee after the examination by this committee of the person submitting the request, the necessity of subsequent written advice on the extent of the reparability of the intervention and the final written statement of the person concerned that he/she consents to the intervention.

Since 1 October 2001, the Convention on Human Rights and Biomedicine has been binding on the Czech Republic; it is directly applicable and prevails over the law. Article 5 stipulates that an intervention in the health field may only be carried out after the person concerned 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.

*Investigation of individual cases by the Ombudsman and Supreme Prosecutor Office*

While the legal provisions governing the performance of sterilisation were adequate *per se*, there were individual cases in which the correct procedure was not followed. Such cases were examined by the Ombudsman.

Until the end of 2005, when he delivered his final opinion, a total of 87 women approached the Ombudsman as regards illegal sterilisation. The ombudsman closed his inquiry after the examination of the first fifty cases, when he published his interim report. Of these fifty women, less than thirty underwent the intervention after 1990. A total of 101 women approached the Ombudsman until February 2010. Their cases related to a period of approximately 40 years.

The Ombudsman referred a total of 59 cases to the Supreme Prosecutor's Office for the purpose of investigating the circumstances of the cases in question. In 16 of these cases the matter was set aside. The Ombudsman referred a total of 60 cases to the Supreme Prosecutor's Office for the purpose of investigating the circumstances of the cases in question. The Supreme Prosecutor's Office evaluated this referral as a criminal complaint about an unknown perpetrator and referred these cases to prosecutor's offices having the relevant local jurisdiction and jurisdiction *in rem*. The Supreme Prosecutor's Office monitored the progress of the investigation on a regular basis by requesting information from the High Prosecutor's Offices in Prague and Olomouc. In all notified cases, the competent police authorities started to take steps of criminal proceedings under Section 158 (3) of the Rules of Criminal Procedure, and carried out inquiries. Inquiries have been concluded with finality in all 60 notified cases. Most of the cases were set aside, as the authorities responsible for criminal proceedings concluded that there was no suspicion of a criminal offence and that it was not appropriate to handle the matter in any other way. In four cases, the matter was set aside because of the time limitation.

It should be noted that in his final opinion, the Ombudsman stated the following:

“First of all it is necessary to draw attention to the fact that it is not possible, as the general public often thinks, to draw a direct line from a failure to meet the requirements of a free, solemn and error-free expression of will, i.e. consent to sterilisation, to criminal accountability and to deduce that the doctors perhaps committed an offence in every case. Conversely, it also applies that if authorities involved in criminal proceedings hold that no offence was committed, this by far does not mean that these are cases in which no mistake occurred and which are ‘in accordance with law’. Criminal-law assessment, if any, does not change anything about the fact that the way in which the sterilisations were performed in cases corresponding to the above description was illegal, contrary to law.”

### *Inquiry by the Ministry of Health*

In December 2004 the Minister of Health set up an advisory board<sup>35</sup> to examine the cases referred by the Ombudsman; this board was meeting until the end of 2006. Having examined the cases, the advisory board found that 12 women had not been sterilized, 14 cases had been in conformity with the directives on sterilization of the Ministry of Health and 41 had been in violation of those directives. In eight other cases, the authenticity of the signature of the act of consent had been questionable.

After its inquiries the board concluded that in individual cases there were individual mistakes made by health care institutions, but there was no nationwide policy or a policy based on race or ethnicity. The advisory board found that the mistakes found in the performance of sterilisation were not planned, systematic or intentional.

In the conclusion, the advisory board proposed to the Minister of Health to adopt certain remedial measures to prevent similar cases from recurring in the future. The proposed measures concerned, in particular, education of doctors, information to be provided to patients on their rights, and the preparation of a more detailed model form of an informed consent to an intervention.

### *Legislative measures*

Following up on the Ombudsman's findings, the State authorities undertook a number of measures intended to ensure that similar cases do not occur in the future.

### *Regulation no. 385/2006, on medical records*

In April 2007 the regulation on medical records came into force, detailing the contents of a written consent to the performance of a medical service.

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<sup>35</sup> The advisory board was composed of: Dr Wolfgang Wodarg, member of the German Bundestag and the Parliamentary Assembly of the Council of Europe; Dr Pavel Březovský, director of the Health Care Department of the Ministry of Health; Dr Jolana Těšínová, director of the Legal Department of the Ministry of Health; Dr Dagmar Pohunková, chairwoman of the Ministry's Ethics Commission; Sylva Stodůlková, director of the Inspection Department of the Ministry of Health; Assistant Professor Dr Jaroslav Feyereisl, director of the Institute for the Care of Mother and Child; Assistant Professor Dr Zdeněk Rokyta, Gynaecological and Obstetric Clinic, the Plzeň University Hospital; Professor Dr Antonín Doležal, Gynaecological and Obstetric Clinic, First Faculty of Medicine of Charles University; Professor Dr Jaroslav Živný, Gynaecological and Obstetric Clinic of the First Faculty of Medicine; Assistant Professor Dr Vít Unzeitig, First Gynaecological and Obstetrics Clinic of Masaryk University in Brno; Professor Dr Bedřich Šrp, Gynaecological and Obstetric Clinic, First Faculty of Medicine of Charles University; Czesław Walek, director of the Office of the Council of the Government of the Czech Republic for Roma Community Affairs; Viktor Sekyt, Office of the Council of the Government of the Czech Republic for Roma Community Affairs; Kateřina Jacques, head of the secretariat of the Commissioner for Human Rights; Petra Škopová, Department for Human Rights of the Ministry of Foreign Affairs; Lydie Poláčková, Ostrava City Authority; Dr Lenka Arnoštová, the Legal Department of the Ministry of Health; Lucie Rybová, Secretariat of the Council of the Government for Human Rights.

The regulation stipulated that a written consent to the performance of a medical service constitutes a separate part of the medical records, and provided for its mandatory content in detail. The relevant part of the regulation reads as follows:

“5. Written consent to the performance of a medical service

A. A written consent shall contain:

1. Information about the purpose, nature, expected benefit, consequences and possible risks of the medical service;
2. Advice as to whether there exists any alternative to the planned medical intervention and the patient has an opportunity to choose one of the alternatives, unless separate legal regulations exclude that right;
3. Information about the possible loss of amenities of life and limitation of the capacity for work after the performance of the respective medical service if such loss/limitation can be anticipated; in the case of a possible or expected change of the state of health, also information about the changes in competence in terms of health;
4. Information about the therapy and preventive measures that are appropriate, and about the performance of checking medical services;
5. Record of the patient’s statement that the health professional explained and notified the patient of the information and advice under points 1 to 4, that the patient understood them and that had an opportunity to ask supplementary questions, which the health professional answered;
6. Date and signatures of the patient and the health professional who provided the patient with the information and advice; if the patient is unable to sign, the record shall include the first name(s), surname and signature of a witness who witnessed the expression of consent, and it shall also include the reasons why the patient was unable to sign the record, and it shall also include the way in which the patient expressed his/her will.”

*Act no. 111/2007, amending Act no. 20/1966, on the care of health of the population*

In May 2007 the amendment of the law on the care of health of the population came into force; this amendment elaborated on the principle, which had existed before, that each medical service can only be performed with the patient’s consent unless the law stipulates otherwise, and that before the performance of the medical service the patient must be appropriately informed about the proposed service, its risks, benefits of the treatment and consequences of nontreatment.

Section 23(1) of the law on the care of health of the population was clarified concerning advice to and consent of the patient. It was explicitly stipulated that a health professional who is qualified to perform the relevant health profession shall inform the patient or, as the case may be, other persons about the purpose and nature of the provided health care and each of the examinations and/or treatments, as well as the consequences, alternatives and risks thereof.

*Model form of informed consent to the sterilisation of fallopian tubes*

In December 2007, a model form of informed consent to the sterilisation of fallopian tubes was published in Journal no. 8 of the Ministry of Health. This model form includes not only the description of the intervention and consequences of the sterilisation but also the doctor's statement that the patient was informed about the intervention as well as its consequences and possible complications. Informed consent drawn up in this way should be a part of the woman's medical records.

*Informational and educational campaign*

In 2007, the Czech Medical Chamber, the various health institutions and the Institute for Postgraduate Education in Health Care were informed about the conclusions of the inquiries of the Ministry of Health advisory board and the need to ensure strict compliance with the applicable legal provisions governing the performance of sterilisation.

A portal on quality and security was set up on the website of the Ministry of Health; the portal offers information about patients' rights, including the right to information about a medical service, its risks and consequences, and about the possibility to reject the service. In April 2010, the Guide for Patients was published; it is an information brochure in which patients will also find information about their rights, including the right to information about the medical service, its risks and consequences, and about the right to reject the service.

At present, Master's and Bachelor's programmes at faculties of medicine teach ethics for at least 17 hours and medical law in relation to human rights for at least 15 hours. In postgraduate education for doctors, the programme includes 16 hours of medical ethics and law.

*Government Resolution no. 1424 of 23 November 2009*

On 23 November 2009, the Government expressed their regrets over the individual irregularities found in the performance of sterilisations contrary to 1971 Directive, and enjoined the Minister of Health to take certain steps to prevent such conduct from occurring in the future. The following steps were taken:

The issue of sterilisation was included in the agenda of the Expert Forum for the Development of Health Care Standards and Concentration of Selected Highly Specialised Care in December 2009.

In December 2009 the Ministry of Health also enquired with its directly managed health organisations and with regional authorities, which manage the hospitals established by the regions, whether in the health care institutions, when performing sterilisation, Section 27 of the law on the care of health of the population was observed, the model form of informed consent published in the Ministry of Health Journal no. 8/2007 was used, and sterilisation committees were set up in accordance with the 1971 Directive. It was found that all health care institutions were aware of the importance of observing the legal

provisions in this area, they observed them in practice, and in a number of cases they even used more detailed informed consent than the one published in the journal.

*Planned legislative changes*

The Ministry of Health has drawn up a bill on specific health care services, which also contains new regulation of sterilisations. This bill is expected to be submitted to the Government in June 2011. The bill lays down, *inter alia*, that in the case of sterilisation other than for health reasons, a reasonable period of time not shorter than 14 days must elapse between the provision of information and the expression of consent.

*Compensation*

Given the fact that the patients' rights were interfered with by negligent conduct of the health professionals, a civil action constituted a sufficient remedy for the claimed violation of their rights; no special compensation mechanism was established. Nevertheless, the issue of compensations for unlawful sterilizations is presently being discussed in one of the committees of the Government Human Rights Council, an advisory body. Depending on the outcome of the discussion, the Government may be seized with the matter again.