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**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**

**For the attention of the Committee of Ministers  
and the Parliamentary Assembly**

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## Introduction

1. The Commissioner for Human Rights, Mr. Alvaro Gil-Robles, visited the Czech Republic in February 2003 on the invitation of the Czech Government. In the resulting Report<sup>1</sup>, the Commissioner identified a number of concerns and made a series of recommendations to improve the country's effective respect for Human Rights. The issues addressed by the Commissioner included anti-discrimination measures, the situation of the Roma/Gypsy community, asylum, the functioning of the judicial system, the situation of certain vulnerable groups (notably victims of trafficking in human beings, victims of domestic violence and persons suffering from mental disorders) and social rights and freedoms to form and join trade unions, the resources of the Public Defender of Rights (ombudsman) and of the National Human Rights' Commissioner. The Commissioner reiterates his gratitude to the Government of the Czech Republic for their co-operation at the time of the visit, and again, on the occasion of the follow-up visit conducted by members of his Office<sup>2</sup> from 10-12 January 2006.
2. The purpose of this report is to examine the manner in which the Czech authorities have implemented the recommendations made by the Commissioner in his 2003 report. This report follows the order of the main recommendations and does not, as a matter of principle, aim to address any issues other than those included in the recommendations of the first report.
3. This report is based on information gathered during the follow-up visit<sup>3</sup>, reports provided by human rights experts, local and international NGOs, inter-governmental organisations and other public sources. The Commissioner would like to stress, once again, his satisfaction at the complete co-operation obtained from the Czech authorities at all stages of the procedure.

### 1. Racism, Xenophobia and Anti-discrimination

4. In his 2003 report the Commissioner recommended the adoption of a general anti-discrimination law and the allocation of the necessary resources to the body in charge of supervising its enforcement. He also suggested that the Czech Government look into the possibility of ratifying Protocol No. 12 to the European Convention on Human Rights prohibiting all forms of discrimination.

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<sup>1</sup> Report by Mr Alvaro Gil-Robles Commissioner for Human Rights, on his visit to the Czech Republic from 24 to 26 February 2003, for the Committee of Minister and the Parliamentary Assembly, CommDH(2003)10, 15 October 2003 . The report was presented to the Committee of Ministers on 15 October 2003, and can be found on the Commissioner's website at [www.commissioner.coe.int](http://www.commissioner.coe.int) .

<sup>2</sup> Mr. Manuel Lezertua and Mr. Markus Jaeger.

<sup>3</sup> Contacts were made with the Ministry of Justice, Ministry of the Interior, Ministry of Labour and Social Affairs, the Public Defender of Rights, the Judges of the Constitutional Court, the Government Commissioner for Human Rights, the Senate Committee on Education, Science, Culture, Human Rights and Petitions. An on site visit was paid to the Aliens' reception and detention centres at Bělá-Jezova.

### ***Development of the situation and measures taken***

5. In December 2004, the Czech Government approved an anti-discrimination Bill,<sup>4</sup> which *inter alia*, harmonises legislative provisions in this area and brings Czech law in line with EU Directives on equal treatment and protection against discrimination.<sup>5</sup> It further empowers the Public Defender of Rights to deal with anti-discrimination issues and provide assistance to victims of discrimination. The Bill, submitted to the Chamber of Deputies in January 2005, was adopted, by a narrow majority, in the Lower Chamber in December 2005.<sup>6</sup> However, on 26 January 2006, shortly after the follow-up visit, the Senate rejected the Bill, allegedly because it would lead to unwanted cases of positive discrimination.
6. While Protocol No. 12 to the European Convention on Human Rights (“ECHR”) was signed by the Czech Republic on 4 November 2000, it has not yet been ratified. In September 2004 the Prime Minister, at the request of the Minister for Foreign Affairs, decided to postpone ratification to 30 July 2007. This cautious approach follows the filing of several applications against the Czech Republic before the European Court of Human Rights (and the UN Committee for Human Rights) in which the Czech Republic’s approach to property matters has been deemed to be discriminatory.<sup>7</sup>

### ***Conclusions***

7. The Commissioner welcomes the Government’s recognition of the need to strengthen the prevention of racism and to change attitudes towards minorities and persons of foreign origin.
8. The Commissioner regrets, however, that the long-awaited anti-discrimination legislation, approved by the Government and by the Chamber of Deputies, has not yet been enacted. He recalls that affirmative action can be, under certain circumstances, an effective tool for addressing long-standing discrimination. Indeed, the European Convention on Human Rights and EU anti-discrimination Directives are widely interpreted as allowing special measures, as long as they are proportional and are not prolonged beyond the time necessary for their targets have been reached.
9. Moreover, the adoption of the legislation recommended by the Commissioner, would have established a comprehensive framework for combating all forms of discrimination, creating procedural tools for filing complaints in case of treatment prohibited by law empowering the Public Defender of Rights to deal with such cases and obtain redress for the victims.

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<sup>4</sup> Bill on the equal treatment and legal tools for the protection against discrimination – Anti-discrimination Bill Protocols N° 866 & 867.

<sup>5</sup> The bill implements Council Directive No. 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Directive No. 76/207/EC, on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation.

<sup>6</sup> A very slim majority of one vote.

<sup>7</sup> Cf. the report of the Czech Republic to the UN Committee on the Elimination of Racial Discrimination dated 11 January 2006.

10. Finally, the Commissioner can only note with regret that the Czech authorities have not taken the necessary steps to ratify Protocol No. 12 to the ECHR, which in the meantime has entered into force in those member States which are Parties to it. In view of the above, the Commissioner continues to urge the Czech Government to pursue its efforts to obtain the enactment of the anti-discrimination legislation and the speedy ratification of Protocol No. 12 to the European Convention on Human Rights.

## **2. The situation of the Roma/Gypsy Community**

### **2.1 The general situation of the Roma/Gypsy community**

11. In his 2003 report, the Commissioner expressed concern that the Roma/Gypsy community was caught in a spiral of exclusion, beset with problems of poverty, difficulties in entering the labour market and proper housing. He further observed that there were continuing problems with access to good quality education and that acts of violence with racist and xenophobic overtones were increasing at an alarming rate.

12. Thus, the Commissioner recommended that additional co-ordinated efforts be made by the Czech authorities under a comprehensive plan for access to employment, education and housing. Furthermore, the Commissioner recommended that conscientious enquiries be initiated by the prosecuting authorities against the perpetrators of acts of violence with racial connotations, whether public officials or individuals and, where appropriate, such enquiries should lead to appropriate sanctions.

#### ***Development of the situation and measures taken***

13. The Roma/Gypsy community finds itself more at risk of social exclusion than any other ethnic minority group in the Czech Republic. Although it officially comprises less than 12,000 citizens<sup>8</sup>, the actual number of Roma/Gypsy is estimated at around 200,000 by academics<sup>9</sup> and at around 300,000-350,000 by representatives of some Roma organisations.<sup>10</sup> Social exclusion of this community is prompted by unemployment, dependence on social benefits and allowances, poor housing situation and educational barriers.

14. Following the Commissioner's visit, the Government of the Czech Republic approved the 3<sup>rd</sup> – on 16 June 2004 - and 4<sup>th</sup> – on 4 May 2005 - updated versions of the "Concept of Government Policy Concerning Members of the Roma Community, Aiding their Integration in Society" (the Roma Integration Policy Concept). According to the last update – which takes into account relevant developments, such as the National Action Plan on Social Inclusion 2004-2006 - the primary goal of this Concept is to improve the status of the members of the Roma/Gypsy community in all spheres of life in society and to achieve their peaceful co-existence with the rest of the society. The Concept has set six priorities: removing external obstacles to integration, assisting in removal of internal obstacles, promoting social elevation, halting "ghettoisation", developing specific culture and language, creating a tolerant environment, ensuring the safety of members of that community.

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<sup>8</sup> 11,716 persons, according to the 2001 Population and Housing Census.

<sup>9</sup> Department of Demography of the Faculty of Natural Sciences, Charles University.

<sup>10</sup> Report 2004 on the state of the Roma communities in the Czech Republic, page 33.

15. Significant amounts are spent on Roma/Gypsy integration programmes.<sup>11</sup> However, these funds have not provided systemic solutions to the integration of socially excluded Roma communities. According to the Roma Integration Policy Concept, governmental spending in this area lacks effectiveness as it places too much emphasis on ethnic rather than on social approaches, on ad-hoc and short-term interventions rather than on long-term priorities. The Government Council for Roma Community, the sole central interdepartmental authority, deals with institutional aspects of Roma/Gypsy integration. However, as an advisory body, the Council is *de facto* unable to co-ordinate effectively the policy of the different ministries. As a governmental body, it is powerless to supervise the performance of regional and local authorities. Finally, the multiple sources of financial support are not always clearly accessible for applicants.
16. There have, however, been many individual successes. One example of the way in which the issue of social exclusion has been addressed is a project entitled “Field Social Work Programmes in Neighbourhoods threatened by Social Exclusion” carried out by People in Need, an NGO. It targeted people – often Roma - living in socially excluded localities, where access to quality education is impaired, chances of employment limited, housing of low quality, infrastructures in a poor condition. The project, in operation since 1999, employs 25-30 social workers (8 of whom are Roma), in 16 localities and is included into the 2004-2006 National Action Plan for Social Inclusion as good practice relating to the social integration of Roma.
17. In May 2005, a peer review<sup>12</sup> voiced strong criticism of the local authorities’ failure to confront social exclusion, emphasised the lack of tools to force local authorities to take action in this area and observed that support for Roma/Gypsy communities is regarded as politically disadvantageous. Special attention was paid to the impact of privatisation of municipal housing on the living conditions of Roma.<sup>13</sup> The participants pointed out the restricted impact of the project, given the gravity of the problems in the Czech Republic and the limited resources available.<sup>14</sup>

## **Conclusions**

18. The Commissioner welcomes the priorities proposed by the Czech authorities in their 4<sup>th</sup> updated (latest) version of the “Roma Integration Policy Concept”, approved in May 2005 as well as in the National Action Plan on Social Inclusion 2004-2006. He views positively the focus on integration of Roma/Gypsy communities, the efforts to close the gap between socially excluded Roma and mainstream Czech society and the support offered to Roma culture and language. The Commissioner notes an increased awareness among the authorities and society about the difficulties and needs of Roma/Gypsies. However, in

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<sup>11</sup> 92,945,000 CZK (approx. 3,230,000 Euros) in 2004; 110,885,000 CZK (approx. 3,854,000 Euros) in the draft Budget for 2005 (Figures of the Ministry of Finance of the Czech Republic quoted in “Report on the State of Roma Communities in the Czech Republic”, 2004, page 7. These figures only include funds spent through subsidising procedures).

<sup>12</sup> The European Commission’s Peer Review Programme in the field of Social Inclusion has the goal of contributing to a better understanding of and mutual learning about the European Union Member States’ key policies and institutional arrangements to combat poverty and exclusion, as described in their National Action Plans on Social Inclusion.

<sup>13</sup> See paragraphs 31-36 below.

<sup>14</sup> The “Field Social Work Programmes in Neighbourhoods threatened by Social Exclusion” in the Czech Republic, A Synthesis Report on the Peer Review Meeting held in Prague, 19-20 May 2005, written by Douhomir Minev.

spite of a number of achievements, the initiatives taken have had so far a limited effect in reducing social exclusion of large sectors of the Roma/Gypsy population.

19. Furthermore, increased funding has had little impact in reducing negative trends in the social and economic sphere. The Commissioner urges the Czech authorities to increase efforts in this area, support successful programmes and initiatives, particularly those actively involving members of the Roma/Gypsy communities, ensure effective co-ordination and simplify access to funding. The Commissioner considers that regional and local authorities should be closely associated to the implementation of policies against social exclusion and invites the Government to establish effective instruments of co-operation, co-ordination and supervision to that end.

## **2.2 Access to education**

20. In his 2003 report, the Commissioner drew attention to the large presence of young members of the Roma/Gypsy community in “special” schools and classes for children suffering from slight mental disability. This was partly attributed<sup>15</sup> to their under-representation in nursery classes.
21. The Commissioner urged the authorities to grant the requisite resources for the training and recruiting of Roma/Gypsy assistant teachers, and to provide preparatory classes (zero-grade classes) in all primary schools. The Commissioner expressed the hope that the draft bill for education reform, which had not been passed at the time of the initial visit in 2003, would embody all the above reforms in a legislative text.

### ***Development of the situation and measures taken***

22. According to the Czech authorities, the education of Roma children is slowly, but steadily improving.<sup>16</sup> In addition to the system of preparatory classes and teacher’s assistants, the authorities have developed special educational plans and teaching materials with a view to improving the educational results of Roma pupils. In the school year 2003/2004 the number of children attending these preparatory classes increased by 355 compared with the previous year. The number of these classes also increased, particularly those included in the system in primary schools.
23. In 2005, the Ministry of Education prepared a “*Concept on Timely Care for Children from a Socio-Culturally Disadvantaged Environment*”<sup>17</sup>, according to which care relating to education must be provided to such children from the age of 3 to compulsory school attendance.
24. Between December 2002 and February 2004 a Phare project entitled ‘*Promoting Integration of the Roma*’ was implemented aiming at enhancing respect for Roma/Gypsy and improve their status, specifically by providing adequate education for their children. The project was implemented in three areas: mapping the current situation of Roma in the

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<sup>15</sup> By the Public Defender of Rights and Government Commissioner for Human Rights.

<sup>16</sup> National Action Plan on Social Inclusion 2004-2006.

<sup>17</sup> Authorised by Government Resolution No. 564/2005 of 11 May 2005.

areas of basic education, development of education materials and plans aimed at improved education of Roma pupils, and training of teachers and pedagogic workers, who are in charge of education of Roma pupils.<sup>18</sup>

25. Since 2002, a “Programme to Promote Integration of the Roma Community” was launched every year. In 2004 its emphasis was placed on pre-school education, promotion of education, improvement of effectiveness and development of incentives for good educational results. The form of special schools was changed by the new Act on Schools, which has established that education must be provided by schools and classes with adjusted curricula.
26. In the case of *D.H and others v The Czech Republic* the European Court of Human Rights recently<sup>19</sup> found that there had been no violation of Article 14 (prohibition against discrimination) of the European Convention on Human Rights, taken in conjunction with Article 2 of Protocol No. 1 (right to education). The case concerned 18 Roma children who had been placed in special schools for children with learning difficulties unable to follow the ordinary school curriculum. Despite finding no violation, the Court noted existing concerns about the placement of Roma children in special schools, their difficulties in gaining access to ordinary schools, the worrying statistics on the number of Roma children in special schools and the shortcomings of Roma education in the Czech Republic.

### ***Conclusions***

27. In spite of the efforts made to increase the number of preparatory classes and assistant teachers for Roma pupils, the situation still remains of concern. As the Commissioner recommended in his final report on the situation of the Roma, Sinti, and Travellers in Europe<sup>20</sup>, where segregated education still exists in one form or another, it must be replaced by regular integrated education and, where appropriate, prohibited through legislation. The Commissioner calls upon the Czech authorities, therefore, to pursue their efforts in this direction and make greater resources available for the provision of pre-school education, language training and school assistant training in order to ensure the success of efforts to fully integrate Roma pupils into the regular school system.

### **2.3 Access to housing**

28. In his 2003 report, the Commissioner recommended to overhaul the procedures for the allocation of local council housing, establishing criteria which would not have the effect of unjustifiably excluding a specific group from this type of housing. The difficulties faced by the Roma/Gypsy communities to find adequate accommodation were partly a consequence of the absence of a statutory instrument affording protection against discrimination in housing matters, and, more generally, of the absence of general anti-discrimination legislation.
29. The Commissioner also noted that members of the Roma/Gypsy community were frequently placed in basic and often sub-standard social housing units (“*holobyty*”), for

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<sup>18</sup> The budget for this project was EUR 950,000, of which EUR 450,000 came from the Phare programme and EUR 500,000 in co-funding from the Ministry of Education.

<sup>19</sup> 7 February 2006.

<sup>20</sup> Strasbourg, 15 February 2006, CommDH (2006)1.

which a disproportionate rent was demanded. The Commissioner urged the authorities to ensure that the occupants of these social housing units, often no more than one dilapidated room, should enjoy decent living conditions and that special vigilance should be exercised to ensure that these “*holobyty*” did not become the exclusive preserve of the Roma/Gypsy community segregated in them.

30. The Commissioner expressed the hope that a new regulation on rental prices and a new programme for accommodation benefits and other social aid for those with a low income, which were being considered at the time of the visit in 2003, would improve the housing situation in general and in turn facilitate access to housing for disadvantaged Roma/Gypsy families in the Czech Republic.

### ***Development of the situation and measures taken***

31. There have been no changes in legislation concerning protection against discrimination in respect of housing. Legal relations concerning housing still do not contain any anti-discrimination provisions, including provisions of a declaratory character. Neither is a prohibition on discrimination explicitly stated in regulations concerning the lease, privatisation or sale of council flats.
32. Following the transfer of state-owned property to municipalities, the administration of real state property falls, in accordance with Act N° 128/2000, within the competence of municipalities. Some of them have formed a functional system of “ousting” mechanisms, enabling them to get rid of inadapted and troublesome persons, often including Roma.<sup>21</sup> There have been cases where municipalities have not accepted applications to rent council housing despite the applicant being entitled by law to have the matter considered. This attitude of certain cities and municipalities, often bordering illegality, further complicates the solution to the housing problems of socially excluded citizen.<sup>22</sup> The Czech Government has recognised that the behaviour of municipalities has, in certain cases, been very problematic and that it would be desirable to create effective mechanisms to prevent socially insensitive procedures on the part of towns and municipalities when handling housing needs.<sup>23</sup>
33. In 2004, the Ministry for Regional Development ordered research on the “Legal aspects of the status of municipalities in respect of housing” with a view to assessing the possibilities for the implementation of housing policy at a local level, particularly in relation to socially vulnerable households.
34. One of the most alarming problems in this area is the establishment, growth and spreading of poor enclaves inhabited mostly by Roma/Gypsy populations. These “excluded Roma localities/communities”,<sup>24</sup> should be described, rather, by the more accurate terms of “ghettoes” or “slums”. Living conditions in these ethnically segregated ghettoes are qualified as inhuman<sup>25</sup>: 80-95 % unemployment, black market work, social isolation, high

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<sup>21</sup> Report on the state of Roma communities in the Czech Republic, 2004, page 26.

<sup>22</sup> Findings of the Public Defender of Rights in the housing sphere, 14 November 2004.

<sup>23</sup> Report of the Czech Republic to the UN Committee on the Elimination of Racial Discrimination dated 11 January 2006.

<sup>24</sup> K.A. Novák, “The Roma, Nationalism and Development Programmes” – The Roma and Studies in Culturology, Plzeň, 2004.

<sup>25</sup> Report on the State of Roma communities in the Czech Republic, 2004.

criminality rates, social pathologies like child prostitution, spreading of diseases. Although not an entirely new phenomenon, this “ghettoisation” has been aggravated in the last years to become what an official report qualifies as the “most urgent social problem of the Czech society in the first decade of the 21<sup>st</sup> century”.<sup>26</sup>

### ***Conclusions***

35. The Commissioner shares the view that the ghettoisation of certain Roma communities represents a serious social challenge. Effective mechanisms must be created to prevent socially insensitive procedures on the part of towns and municipalities when handling housing needs. In particular, the Czech authorities should intervene more actively in situations where implementation of housing projects for the Roma is hampered by local authorities.<sup>27</sup>
36. Moreover, anti-discrimination legislation in the field of private and public housing must be enacted or strengthened, while special measures must be taken to ensure that seemingly neutral allocation criteria do not negatively affect Roma populations.

### **2.4 Access to employment**

37. Lack of skills and discriminatory recruitment practices were two of the reasons cited by the Commissioner in his 2003 report for the very low unemployment of Roma/Gypsy people in the Czech Republic.<sup>28</sup> While commending the legal framework concerning racial discrimination in employment, the Commissioner noted its limited effectiveness in practice and expressed the hope that the reversal of the burden of proof in ethnic discrimination cases would contribute to solving these difficulties.
38. Moreover, the Commissioner recommended more incentives for employers to recruit preferably Roma/Gypsy workers and more training programmes for members of these communities, as prescribed by the National Plan of Action for Employment.

### ***Development of the situation and measures taken***

39. At present, unemployment rates of the Roma are a matter of estimate because there are no official statistics available on ethnic grounds. A study prepared for the Government in 2004<sup>29</sup> indicates that the total unemployment rate of the Roma population was 46.3%, with a peak rate of 75.7% for those without basic education. 39% suffer from long-term unemployment (75 % of all unemployed). Unemployment rates among Roma/Gypsy in corresponding education categories are five times higher than those of the mainstream Czech population. On the whole, the Roma form a labour market group with poor employment prospects, the least prepared for a market economy environment.
40. There are many reasons for this situation: low skills, poor health conditions, black economy, concentration of Roma population in regions affected by industrial decay. Most

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<sup>26</sup> Report on the state of Roma communities in the Czech Republic, 2004, Conclusions, page 57.

<sup>27</sup> The Commissioner’s Final Report on the Situation of the Roma, Sinti, and Travellers in Europe, Strasbourg, 15 February 2006, CommDH (2006)1.

<sup>28</sup> At the time of the Commissioner’s visit in 2003, 50% of all Roma/Gypsy were unemployed.

<sup>29</sup> “Analysis of the requirements of Roma integration in the Czech Labour Market” J. Winkler, T. Sirovátka, M. Rakoczyová, I. Simiková, M. Horáková, 2004.

of the Roma consider, however, that ethnic discrimination is the main obstacle preventing them from having access to employment.

41. In July 2004, the Government approved the National Employment Action Plan for the years 2004-2006, which contains a number of measures designed to integrate disadvantaged persons into the labour market, support the fight against discrimination and improve the social integration, the employment rate and the sustainability of the social protection system. The Plan establishes a close link between long term unemployment - problematic in the country as a whole - and low educational levels of those concerned.<sup>30</sup> As indicated above, members of the Roma/Gypsy community are over-represented among the long-term unemployed.
42. The new Employment Act<sup>31</sup> prohibits discrimination in the field of employment and forbids offers of employment that are discriminatory in character or contrary to good morals. Victims of unequal treatment can demand that this behaviour be retracted, that its consequences be remedied as well as just satisfaction or financial compensation for non-material loss. A fine of up to one million CZK (approx. 35,000 Euros) may be imposed in certain cases.
43. NGOs play an important role in promoting equal opportunities irrespective of racial or ethnic origins. From 1 February to 31 March 2004, a Czech NGO<sup>32</sup> monitored job advertisements to determine if they contained disguised/hidden discriminatory elements. They found that offers for unqualified workers – often applied to by members of the Roma/Gypsy communities - most commonly contain requirements, which are unjustified for the type of job offered (“a clean criminal record”).

### ***Conclusions***

44. The Commissioner welcomes the National Employment Action Plan for 2004-2006, and in particular, the variety of measures designed to integrate Roma, and other disadvantaged groups, into the labour market. Deficiencies in educational levels, caused by unequal access to education, must be remedied through training and retraining programmes. However, in light of the continuing high unemployment of Roma, the Commissioner urges an effective practical implementation of the new legislation providing for protection against discrimination in employment.

### **2.5 Violence towards the Roma/Gypsy community**

45. In his 2003 report, the Commissioner noted that offences with racial connotations were on the increase and expressed concern at unjustified police inaction against racially motivated offences. The Commissioner urged the authorities to initiate conscientious enquiries against acts of violence with racial connotations (whether they were committed by public officials or by individuals) leading, where necessary, to appropriate sanctions.

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<sup>30</sup> National Action Plan on Social Inclusion 2004 – 2006.

<sup>31</sup> No. 435/2004 Coll., which came into force on 1 October 2004.

<sup>32</sup> *Poradna pro občanství, občanstvá a lidská práva* (Counselling Centre for Citizenship, Civic and Human Rights).

### *Development of the situation and measures taken*

46. Reports of violence against the Roma, including violence perpetrated by the police, continue. However, according to senior officials of the Ministry of the Interior met by the Commissioner's team during the follow-up visit, the number of hate crimes is considered to be low. In 2004, the Police conducted 366 investigations on hate crimes, in 2005 there were 253 investigations. According to NGOs, some crimes committed against the Roma/Gypsy remain unreported, for fear of, or lack of trust in, the Police.
47. No information has been made available on the number of prosecutions for hate crimes. In 2005, the courts sentenced 159 persons for racially motivated crimes. Certain convictions to suspended sentences in cases of racist aggressions, provoked an outcry by Roma NGOs.
48. Violence against the Roma is being addressed through police training. Since 2003, issues like minorities, racial equality and human rights have formed part of the training for students of the middle police school and the regular refresher courses for teachers of these schools. In Spring 2004, the Ministry of the Interior's Central Police School in Prague launched a 'Centre for Human Rights and Professional Ethics'. A project entitled 'Including Human Rights, Respect for Minorities and their Protection and Professional Ethics in the Training of Czech Police and the Work of the Czech Police' is currently being implemented by the Ministry of the Interior.
49. Since January 2003, the Ministry of the Interior has co-ordinated the implementation of the National Strategy for Police Work in relation to national and ethnic minorities. The Government adopted the first report on the procedure and ongoing results of the Strategy's introduction on 25 August 2004.<sup>33</sup> The Strategy introduces three basic preventive instruments for police work with minorities: an operations plan in relation to national and ethnic minorities, a contact officer for minorities and a Police assistant for work in socially excluded Roma/Gypsy communities. An effort is being made, in this context, to recruit members of these communities as police officers or police assistants. Tested first as pilot projects in 2003 and 2004, these projects were introduced in 2005 in all regional administrations of the Police.

### *Conclusions*

50. The Commissioner is confident that the measures taken by the Czech authorities will facilitate increased reporting of hate crimes, notably by members of the Roma/Gypsy communities. There is increased recognition among police and prosecutors of the racial or ethnical motivations of certain criminal deeds and it is to be hoped that the relatively large number of police investigations in this area leads to additional prosecutions and to the imposition of sanctions which are proportionate to the gravity of this type of crime and sufficiently dissuasive for the future.

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<sup>33</sup> Report on the advancement of the continuing results in the introduction of the National Strategy for the work of the police of the Czech Republic in relation to national and ethnic minorities, Prague, 2004, Ministry of the Interior of the Czech Republic, Security Policy Department.

## **2.6 Allegations of forced sterilization of Roma women**

51. In September 2004, the Office of the Public Defender of Rights began investigating allegations that some 87 women in the Czech Republic may have been subjected to sterilisation procedures without their full and informed consent. In December 2005, the Public Defender of Rights issued a report concluding that “The Public Defender of Rights is convinced that in the Czech Republic, the problem of sexual sterilisation – carried out either with unacceptable motivation or illegally – exists, and that Czech society stands before the task of coming to grips with this reality.” The Public Defender of Rights recommends three areas of change: changes to the Czech domestic law to better anchor the principle of informed consent, supplementary measures to ensure a change of culture with regard to informed consent in the medical community and a simplified procedure for compensation to victims.<sup>34</sup>
52. In December 2004, the Ministry of Health set up an advisory body to analyse the medical documentation, give an opinion on the medical aspects of the sterilisation operations and their compatibility with the law. The advisory body is preparing proposals for reviewing the current indications for sterilisation, updating the directive on sterilisation and rewording the rules on informed consent for sterilisation. In November 2005 the District Court in Ostrava found – in a landmark judicial decision - that the coercive sterilisation of Ms. Helena Ferencikova, a woman of Roma origin, by Czech medical practitioners in 2001 was in breach of the law.

### ***Conclusions***

53. The Commissioner welcomes the investigation and the report issued by the Czech Public Defender of Rights on forced sterilization, containing his findings and proposals for change. He notes that the Public Defender of Rights confirmed the existence of this practice and that a Court has declared it illegal in a recent case. The Commissioner draws attention to the recommendations he made in October 2003,<sup>35</sup> which deal with legislation, access to medical files, improvement of health care and setting up mechanisms to offer redress to victims. These recommendations may be of use to the Czech Government when reviewing their own legislation and directives on the subject.

## **3. The detention of irregular migrants and asylum seekers**

54. In his 2003 report, the Commissioner urged the Government to consider seriously the possibility of entirely dispensing with the “strict” regime under which aliens were kept in detention centres, as most of the foreigners who were held under this regime were simply there because of the difficulties encountered in identifying them, and not because of any dangerousness or aggressiveness on their part.
55. The Commissioner also referred to the practice of detaining children in detention centres, and urged the Czech authorities to transfer all such children and their parents to reception centres.

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<sup>34</sup> Summary prepared by the European Roma Rights Centre. The report of the Public Defender of Rights is now available in English.

<sup>35</sup> Recommendation of the Commissioner for Human Rights Concerning Certain Aspects of Law and Practice Relating to Sterilization of Women in the Slovak Republic, Strasbourg, 17 October 2003, CommDH(2003)12.

### *Development of the situation and measures taken*

56. The Balkova detention centre, which was visited by the Commissioner in February 2003, was closed down by the authorities on 1 January 2006. On that date, all detention centres for irregular immigrants were transferred from the authority of the Police to that of an administrative entity of the Ministry of the Interior, the Administration for Refugee Facilities (SUZ), which now runs a network of two Reception Centres, ten Residential Centres and four Detention Centres. In addition six Integration Asylum Centres - also managed by the SUZ - have been created for persons with recognised refugee status. A new Centre for foreign unaccompanied minors was opened and new detention centres were in preparation.
57. The Act No. 326/1999 on the Residence of Foreigners on the Territory of the Czech Republic, was amended<sup>36</sup>, with a view to improving detention facilities for foreigners. According to this amendment, which entered into force in November 2005, unaccompanied minors between 15 and 18 years of age can be detained in detention centres for a maximum period of 90 days, unlike adults, who can be detained for up to 180 days. There is a regular review of the need to maintain in detention those aged 15-18.
58. The Commissioner's delegation visited Bělá-Jezová in the Central Bohemian region – which included both a Residential Centre for 187 persons (accommodating 157 in January 2006), with some apartments for families, as well as a Detention Centre for families (accommodating 33 persons). The premises were clean, well kept and provided accommodation, food (including special diet requirements), health care and education possibilities, in addition to numerous possibilities for activities.<sup>37</sup> The police guarded the entrance and the outside perimeter of the Detention Centre. Information on asylum procedures was publicly available in several foreign languages. NGOs – who have unrestricted access to centres, including detention centres upon request – have reported that overall conditions in other centres had also significantly improved and were now of satisfactory standards.
59. The two regimes applicable to foreigners in detention at the time of the 2003 report are still in place: the Low-Security Detention Regime and the High-Security Detention Regime. Those held under the first regime benefit from accommodation areas, common sanitary facilities, as well as cultural facilities. There is also another area where aliens may move around freely at a specified time and may socialise with other aliens. Those held under the High-Security Regime are separated from those under the Low-Security Regime, although an area for walking is also provided. The High-Security Regime can only be imposed in cases laid down by law but no information has been made available about their number. The Police remains in charge of the security of persons submitted to the strict regime and expulsion procedures. NGO access to persons in strict detention is unhindered.
60. There were 11,400 asylum requests in 2003 but this figure was reduced by half (5,459) in 2004. The average asylum procedure lasts around six months. Amendments to Act 325/1999 on Asylum, have accelerated the examination of appeals and deprived appeals

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<sup>36</sup> Annual Report on the Activities of the Public Defender of Rights in 2004, Summary, Masaryk University, Brno 2005, p. 70.

<sup>37</sup> Kindergarten, playgrounds, sport hall, theatre, musical laboratory.

of automatic suspensive effect in certain cases only, but the court can still grant such effect on request. There is a voluntary repatriation scheme, which concerned 1,016 persons in 2003 and 550 in 2004. However, there is also an undetermined number (a figure of 200,000 was quoted several times<sup>38</sup>) of foreigners entering or staying illegally in the country, who have no access to social benefits, educational facility and to health care only in cases of acute threat to their life or irreversible damage to the health.

61. Based on the report entitled 'Integration of Asylum Seekers in 2004'<sup>39</sup> the Government's housing programme has been enlarged by provision of a new housing opportunity for asylum seekers. The new alternative enables the Ministry of the Interior to utilise available housing and thus broaden the fixed-term housing possibilities for asylum seekers. The possibility of payment of an allowance to asylum seekers towards payment of rent has also been newly regulated and specified.

### ***Conclusions***

62. The Commissioner welcomes the efforts made by the Czech authorities to improve the material situation in centres hosting asylum seekers and the creation of new centres for unaccompanied minors, refugees and families. He notes with satisfaction that the running of detention centres has been transferred from the Police to a specialised agency and that children below 15 are not sent to detention centres and attend ordinary school. The Commissioner continues to urge the Czech authorities to abolish the strict detention regime and to further reduce the maximum detention period of irregular migrants, particularly for those between 15 and 18 years of age.

## **4. The Judicial System**

### **4.1 Access to the Constitutional Court**

63. In his 2003 visit report, the Commissioner noted that the judicial system was subject to significant problems of procedural delays. At the time of that report, it was still unclear whether Czech law provided an effective remedy against undue length of proceedings within the meaning of the *Kudła v Poland* precedent. A ruling on the issue was expected by the European Court of Human Rights.<sup>40</sup>
64. A further issue raised by the Commissioner related to appeals to the Constitutional Court, i.e. the fact that appeals on a point of law to the Supreme Court did not suspend the sixty-day time-limit available for introducing a constitutional appeal. The Commissioner recommended that the authorities amend the Constitutional Court Act so that there was no arbitrary obstruction of access to court.

### ***Development of the situation and measures taken***

65. In spite of some improvements, delays in court proceedings remain a problem. In July 2003 the European Court of Human Rights found, in *Hartman v the Czech Republic*, that there had been a violation of the right to a hearing within a reasonable time and a violation of the right to an effective remedy. Moreover, the judgment pointed out that the

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<sup>38</sup> This figure is challenged as "misleading" by the Government who indicates that there is no official estimate.

<sup>39</sup> Approved by Government Resolution No. 89 of 28 January 2004.

<sup>40</sup> *Hartman v the Czech Republic*, 10 July 2003.

administrative appeal procedure did not afford an effective legal remedy in length-of-proceedings cases. The constitutional appeal and action in damages under Law no. 82/1998 could not be regarded as effective remedies in such cases either.

66. At the time of the follow-up visit, most of the 346 complaints before the European Court of Human Rights against the Czech Republic concerned the alleged excessive length of judicial proceedings. The *Hartman* judgement prompted the insertion of section 174a in Act 6/2002 on Courts and Judges, which introduced a new remedy before the relevant court against the excessive length of proceedings. This new remedy was used in 130 cases in 2004 and 95 cases in 2005. The Constitutional Court considers it an effective remedy, to be exhausted prior to introducing a constitutional complaint.
67. Long judicial procedures are not the result of an insufficient number of judges. Thanks to significant salary increases the number of judges is now satisfactory, according to several sources. The problem seems to lie, rather, in the amount of time judges devote to administrative and organisational questions. The Government is thus considering strengthening the registries with a view to relieving judges from non-judicial tasks.
68. According to amendment 83/2004 to the Constitutional Court Act, which came into force on 1 April 2004, the sixty-day deadline for introducing a constitutional appeal will begin from the date of the decision by the Supreme Court on the appeal on points of law. Moreover, Article 119 of this Act has also been amended to establish a remedy before the Constitutional Court in those cases where an International Court has found a violation of an international Human Rights treaty.
69. The Constitutional Court has also actively reacted against the excessive length of judicial proceedings. In two recent rulings<sup>41</sup> it has raised *ex officio* the complaint of the violation of the right to a fair trial within a reasonable time and has considered that a sanction of 7 years imprisonment was without purpose if imposed in proceedings lasting over 12 years.

### **Conclusions**

70. The Commissioner commends the amendment to the Constitutional Court Act, thereby removing the arbitrary obstruction of access to this Court and the active stance taken by this Court to remedy the excessive length of judicial proceedings. He notes that legislative measures now provide for effective remedies to accelerate judicial proceedings. The Commissioner invites the Czech Government to pursue its efforts to reduce judicial delays, a problem affecting many member States of the Council of Europe. In particular, consideration could be given to the possibility of re-organising and reinforcing the Court's registries with a view to allowing judges to concentrate on the exercise of their judicial functions.

### **4.2 Prisons**

71. In his 2003 report, the Commissioner called upon the Czech authorities to reconsider the arrangement whereby prisoners were required to defray the expenses attaching to their prison sentence.

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<sup>41</sup> Constitutional Court Decisions 4. US 628/03 of 14 September 2004 and 1. US 554/04 of 31 March 2005.

### *Development of the situation and measures taken*

72. According to the Regime on Serving a Sentence Act, now only those prisoners who have an income while in prison (those who work, or receive social security or other benefits) need to pay the expenses attached to their prison sentence, save for those who refuse to work in prison without a valid reason.

### *Conclusions*

73. The Commissioner welcomes the changes to the legislation which no longer require prisoners, in ordinary circumstances, to defray the expenses of their prison term.

## **5. The situation of certain vulnerable groups**

### **5.1 Victims of trafficking in human beings**

74. In his 2003 report, the Commissioner recommended that the Czech Penal Code be amended to widen the definition of trafficking to include not simply trafficking for the purposes of sexual exploitation, but also trafficking for the purposes of forced labour, slavery or all types of like practices. The Commissioner also encouraged the authorities to harmonise the Penal Code with the requirements of the Additional Protocol to the United Nations Convention against transnational organised crime to prevent, suppress and punish trafficking in persons, especially women and children, so that the ratification of the protocol may take place as soon as possible.

75. It was also recommended that the authorities adopt a national strategy to fight trafficking in human beings, comprising measures for the protection of victims regardless of nationality (testimony, right to social assistance, and rehabilitation), specific training courses for the police and security forces, and closer collaboration with NGOs specialising in this field.

### *Development of the situation and measures taken*

76. The most significant change at the national level has been the passing of new legislative provisions on trafficking in human beings.<sup>42</sup> With effect from 22 October 2004, a new Section 232 (a) on trafficking in human beings has been included into the Penal Code and has significantly widened the definition of trafficking, in accordance with the United Nations Convention Against Transnational Organised Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children.

77. This new provision extends the scope of the offence to cover additional forms of sexual exploitation, slavery, servitude and forced labour. It deems punishable trafficking in children even if the offender did not resort to violence, threat and/or deception and introduces a punishment for domestic trafficking. Trafficking in human beings is now a so-called extremely serious crime, a qualification which has important procedural consequences, such as the duration of custody, the interception and recording of telecommunications operations etc.

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<sup>42</sup> Implemented by the amendment of the Penal Code, by Act 537/2004 Coll.

78. The broadening of the human trafficking offence has entailed some practical difficulties in its application: its alleged ambiguity has created difficulties for prosecution, insufficient resources have been made available to relevant law enforcement agencies to cope with the increased work load, available assistance is designed almost exclusively for victims of sex trafficking.
79. On 12 December 2000 the Czech Republic signed the United Nations Convention Against Transnational Organised Crime and the two Protocols supplementing this Convention<sup>43</sup> were signed on 10 December 2002. However, ratification of the Protocols would require the introduction of liability of ‘legal entities’ for organised crime offences, something which, for the time being, raises difficulties in the domestic legal order.
80. The National Strategy to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation in the Czech Republic was adopted in September 2003.<sup>44</sup> It consists of three major components: the action plan, the report on human trafficking for the purpose of sexual exploitation in the Czech Republic, and the programme to support and protect victims of human trafficking for the purpose of sexual exploitation (“the protection programme”). The 2003 Strategy was the first document which attempted to set out a comprehensive government policy that would tackle human trafficking. As a result, first surveys into the subject have been conducted, relevant government agencies were brought together to discuss forward action, and a government-funded protection programme was instituted.
81. The 2003 Strategy has been updated with a new National Strategy to Combat Trafficking in Human Beings for 2005-2007, adopted in July 2005.<sup>45</sup> An Interdisciplinary Working Group for the Support and Protection of Victims of Human Trafficking has been set up by an Instruction of the Ministry of the Interior in September 2005. Methodological Guidelines on the operation of the protection programme were adopted in August 2005, and agreements between the Ministry of the Interior and NGOs providing services within the programme, were signed in July 2005. The IOM mission in Prague is in charge of voluntary returns.

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<sup>43</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea.

<sup>44</sup> As Government Resolution No. 849.

<sup>45</sup> As Government Resolution No. 957.

82. The protection programme provides a 30-day reflection period so that persons may decide whether they wish to co-operate with the Police. According to NGOs, the police enjoy disproportionate influence over the acceptance of a person into the programme and, in practice, nullify the reflection period, as in most cases it shows preference to those persons who are willing to co-operate, when determining the eligibility for the programme.
83. Overall, however, the protection programme has undoubtedly brought positive changes. For the first time it has introduced options to legalise trafficked persons' residence in the Czech Republic. A recent legislative change has enabled persons granted the tolerance visa (the type of visa granted under the programme to those who are willing to co-operate with law enforcement agencies) to enter the labour market. Furthermore, it has ensured funding for NGOs providing services within the programme.<sup>46</sup>
84. In addition, some educational initiatives, primarily focusing on the police, have been conducted since the Commissioner's visit in 2003. The "*Police Performance Manual for Trafficking in Human Beings*", provides guidance to ordinary policemen in the identification of victims. According to NGOs, co-operation with the police has improved and can, at times, be excellent.

### ***Conclusions***

85. The Czech Republic has taken strong steps to combat trafficking in human beings. The Commissioner welcomes the changes introduced in the Criminal Code to broaden the definition of trafficking and the efforts to overcome initial difficulties in its application. The setting up of a clear structure to deal consistently with issues relating to human trafficking, and the establishment of a protection programme, are significant steps forward. Co-operation with NGOs is also to be praised. The Commissioner encourages the regular evaluation of the results obtained through the measures taken.

### **5.2 Victims of domestic violence**

86. In his 2003 report, the Commissioner noted the absence of a legislative framework concerning domestic violence, and in particular, the fact that there was no provision for ordering the attacker's removal from the family home. A further cause for concern was the limited number of shelters existing in the country. It was recommended that awareness-raising programmes and training sessions be introduced for public authorities.

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<sup>46</sup> The amount available does not, however, allow for systematic long-term assistance to be provided. NGOs also expressed appreciation of the two surveys, commissioned by the Ministry of the Interior, on motivational factors that contribute to, or inhibit a trafficked person's decision to apply for participation in the programme, and on indicators to measure the success of the programme.

### *Development of the situation and measures taken*

87. An Interdepartmental Working Group was set up to improve the response of the public administration towards domestic violence.<sup>47</sup> Several round-tables were organised with the participation of all sectors involved in the fight against domestic violence: police, judiciary, medical profession, social workers and NGOs. A legislative proposal was prepared and approved by the Government and the Lower Chamber. At the time of the follow-up visit (January 2006), it was still under discussion in the Senate but its adoption was expected before the end of the current year. It includes measures for removing the aggressor from the family home and provides for psychological and social help for victims. Special intervention centres are to be established under the proposal. The consent of the victim will no longer be required for prosecution, which will become mandatory. Besides, the judge will be empowered to adopt emergency orders of removal of the aggressor from the home for 10 days.<sup>48</sup>
88. Already in 2004, the Government amended the Criminal Code to establish domestic violence as a distinct criminal offence. According to the new law, those who commit violence against relatives or domestic partners may receive up to 3 years in prison; if the extent of the domestic violence is severe, prolonged, or involves multiple victims, the prison sentence is two to eight years. From 2004 to 2005, 409 people were indicted under section 215a of the Criminal Code, which deals with maltreatment of a person living in a common flat or a common house.
89. A Model Interdisciplinary Project aims at establishing the legal framework and methodological procedures for the introduction of interdisciplinary teams in the detection and prosecution of domestic violence. The project, prepared in 2003-2004 and currently being implemented, provides a basis for measures and strategies to reduce domestic violence and give assistance to families.<sup>49</sup> Training on domestic violence for judges and public prosecutors has been offered by the Academy of Justice.
90. The Police have formed two special groups for domestic violence in Ostrava and Brno to deliver more effective help to victims of domestic violence. This experience could be expanded to other regions. NGOs reported that the police were working in a more co-ordinated way with the welfare and medical services to tackle questions of domestic violence.
91. While there are 107 state supported shelters located in most major cities in the Czech Republic, the space available was still not sufficient, according to NGOs.

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<sup>47</sup> The Police Act no. 283/1991 Coll., The Misdemeanour Act no. 200/1990 Coll., the Code of Civil Procedure no. 40/1964 Coll., The Civil Code no. 40/1964 Coll., Criminal Code no. 140/1961 Coll., Code of Criminal Procedure no. 141/1961 Coll. etc.

<sup>48</sup> Subsequently and at the request of the victim the judge will be able to impose a longer or even indefinite expulsion from the home. He/She could also order the aggressor not to approach the victim either physically or in any other way (mail, e-mail, telephone...).

<sup>49</sup> Materials of the Ministry of the Interior of the Czech Republic regarding the domestic violence.

## *Conclusions*

92. The Commissioner notes that the Czech Criminal Code now provides for a specific criminal offence of domestic violence and for severe sanctions against perpetrators of this offence. The introduction of interdisciplinary teams in the detection and prosecution of domestic violence is a positive development. The creation of special police units constitutes also a positive step. It is very much to be hoped that the legislative measures elaborated by the interdepartmental working group on domestic violence will soon be in force and that the Czech authorities should continue to strive to meet the demand for additional space in shelter homes.

### **5.3 Persons suffering from mental disorders**

93. In his 2003 report the Commissioner expressed concern regarding the imprecise legislative framework for forced treatment of those suffering from mental disorders, in particular, the worrying use of cage beds, and placement in guardianship. The Commissioner urged the authorities to ensure that adequate material and human resources were allocated to the Public Defender of Rights, who was due to take over the authority to supervise psychiatric institutions upon the forthcoming extension of his mandate.

#### *Development of the situation and measures taken*

94. The Czech Government has itself acknowledged that there is insufficient sheltered and supported housing for people with mental diseases and an insufficient spectrum of services for this group of people.<sup>50</sup>

95. According to information provided by the Czech authorities, in healthcare facilities managed by the Ministry of Health, the use of cage beds was prohibited by an instruction of the Minister for Health of 13 July 2004. No cage-beds are currently in use in healthcare facilities in the Czech Republic. On 6 January 2005, the Ministry of Health issued a methodological measure on the use of restrictive measures for patients in psychiatric facilities in the Czech Republic, which lays down the conditions and the procedure for the application of means of restraint. In the future, the use of restrictive means at healthcare facilities should be regulated by the Health Care Act, which is currently being discussed by the Chamber of Deputies in Parliament.

96. Cage-beds are currently being removed from social welfare facilities managed by the Ministry of Labour and Social Affairs; net-beds remain in some facilities and are used in accordance with indications issued by a doctor. An amendment to the Social Security Act (with effect as of 1 October 2005) lays down binding rules for the application of restraining measures in social welfare facilities. In the Social Services Act, adopted by Parliament on 14 March 2006 with the aim to provide comprehensive regulation of the provision of social services, the use of means of restraint is regulated in a similar manner, with an emphasis placed on preventing situations which could lead to risky behaviour on the part of the client and subsequent restraint.

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<sup>50</sup> National Action Plan on Social Inclusion 2004-2006.

97. The Law on the Public Defender of Rights was amended<sup>51</sup> to extend the institution's competences. Henceforth the Public Defender of Rights is empowered to visit places where persons are held in custody or have otherwise their freedom restricted, imprisonment, protective therapy, medical or social care facilities.
98. In the exercise of these new powers the Public Defender of Rights has established a special unit of 7 persons dealing with the so-called "detention agenda", which provides for visits to be made to different places where persons are or could be deprived of their liberty. The first annual report containing the results of the implementation agenda in 2005 was under preparation at the time of the follow-up visit.
99. The Office of the Public Defender of Rights has been provided with additional staff, material resources and buildings. According to the Public Defender of Rights himself the means allocated to his institution are now sufficient to exercise properly its numerous functions, including the new ones.

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<sup>51</sup> The amendment came into effect in January 2005.

## *Conclusions*

100. The promotion of the rights of persons suffering from disabilities, whether physical or mental, must remain a continuous goal and long-term policy in all member states of the Council of Europe. The Commissioner welcomes the new powers given to the Public Defender of Rights to strengthen the protection of persons deprived of their liberty – including the mentally disabled and ill – against torture or inhuman or degrading treatment or punishment. He takes note with satisfaction that the Public Defender of Rights is already active in this area and that additional means have been allocated to his Office for the proper exercise of these new functions. The Commissioner urges the authorities to consider setting up community-based alternatives to residential care in psychiatric and social care institutions. Regulations clearly banning the use of cage-beds should be introduced.

## **6. Social rights and the freedom to form and join trade unions**

101. In his 2003 report, the Commissioner drew attention to the difficulties encountered by workers seeking to assert their rights before the courts, particularly in respect of length of proceedings. The Commissioner recommended the introduction of a special procedure before a specialised chamber for labour litigation.

102. The Commissioner recommended that the Czech Republic should ratify the third protocol to the European Social Charter providing for a system of collective complaints, and the Revised European Social Charter.

## *Development of the situation and measures taken*

103. Consideration has been given to the possibility of introducing a specialised labour jurisdiction. However, the Czech Constitution specifies already the subdivisions of the Czech judiciary. Furthermore, the Government considers that employment-related conflicts are better tackled through the civil or administrative branches of the law. Thus, a Special Senate to deal with Labour disputes within the Civil Courts was considered a preferable option.

104. The Czech Republic signed the revised European Social Charter on 4 November 2000, and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints on 26 February 2002. The Government gave its consent for ratification in 2003. Both Chambers of Parliament have approved ratification but, for a number of reasons specified in a letter sent to the Government, the President decided not to proceed, for the time being, with the ratification of this Protocol.

## *Conclusions*

105. The Commissioner reiterates his recommendation that the Czech Republic ratify the third protocol to the European Social Charter on collective complaints, as approved by the Czech Government and authorised by Parliament.

## **7. The Public Defender of Rights and Government Commissioner for Human Rights**

106. The 2003 Report of the Commissioner ended with the recommendation to “aid the work of the Government Commissioner for Human Rights by granting him more resources” and to “ensure that adequate material and human resources are allocated” to the Public Defender of Rights “upon the [then] forthcoming extension of his mandate giving him authority in the supervision of psychiatric institutions”.

### ***Development of the situation and measures taken***

107. The extension of the mandate of the Public Defender of Rights and the strengthening of the means of this institution have already been dealt with under section 5 above (paragraphs 97-99).

108. The Commissioner’s delegation met with the Government Commissioner for Human Rights and the heads of his two sub-units on human rights in general and on Roma issues.

109. While the Public Defender of Rights has competence to deal with individual cases, the Government Commissioner for Human Rights deals with structural issues. The present Government Commissioner for Human Rights is a member of Parliament and has been nominated by the Government for an undetermined length of time. The Government Commissioner is always consulted on new draft legislation or plans to amend the existing one, as soon as human rights issues arise. Via the Government Council for Human Rights and various Human Rights Working Groups held under the auspices of his Office, he can propose documents for discussion by the Government. For example, his Office has been at the origin of the draft Anti-discrimination law (which has been rejected by the Czech Senate) and has contributed to the New Law on Education, which entered into force in September 2005. He has easy access to other Government bodies and co-operated intensively with some of them like, for example, with the Ministry of Labour and Social Affairs, when it comes to questions affecting the Roma. He has also intensive working relations with the Public Defender of Rights, whose Deputy sits in the Government Council for Human Rights.

110. The Government Commissioner for Human Rights has offices in a Government building. He has a staff of 12.

### ***Conclusions***

111. The Commissioner welcomes the active role played by the Government Commissioner for Human Rights of the Czech Republic and the adequate staffing of his office.

# **ANNEX**

## **COMMENTS BY THE GOVERNMENT OF THE CZECH REPUBLIC ON THE FOLLOW-UP REPORT OF THE COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS**

### **Situation of the Roma/Gypsy community**

The Government is currently working on a long-term policy concept regarding Roma integration for the period ending 2015. The concept is based on respect for Roma traditions and culture and protection of fundamental rights and freedoms of persons belonging to Roma communities. Its guiding principle is to improve the social and economic situation of the Roma and to achieve their more even representation in all segments of the society. Another very important principle is to support continuous, active involvement of local governments and NGOs or associations of persons belonging to Roma communities in the process of implementing the Roma integration strategy. Activation of persons belonging to Roma communities is given preference over policies based on passive reception of aid.

The Government regularly and on a long-term basis monitors the situation of Roma communities and reviews the efficiency of measures as well as the cost-effectiveness of spending from the state budget and European Structural Funds. In developing Roma integration strategies and concepts, it works closely with international intergovernmental organizations and initiatives, especially the Council of Europe, OSCE and the bodies of and countries participating in the Decade of Roma Inclusion.

Beside the policies designed to improve the situation of the Roma community that are mentioned in the Report, reference should be made to the accompanying programmes on which the Ministry of Labour and Social Affairs, through its employment services, cooperates with NGOs, including Roma organizations. Within the framework of these programmes the Ministry of Labour and Social Affairs funds i.a. projects providing occupational training opportunities for persons belonging to the Roma community in order to improve their chances on the job market.

Paragraph 16 of the Report mentions, as one of the many individual successes, a project carried out by the NGO People in Need. Beside People in Need, which was among the first to start with field social work in the Czech Republic, there are many other NGOs, as well as municipal authorities, doing this type of work in excluded Roma communities. The Office of the Government Council for the Affairs of the Roma Community administers a programme of support for field work, which funds field social workers in municipalities. In 2005 there were 88 field workers in 56 municipalities. Since the beginning of 2006, support has been granted to 86 field workers in 53 municipalities.

## **Detention of irregular migrants**

The report correctly differentiates between aliens detention facilities and reception or accommodation centres for asylum seekers (see paragraph 56).

Aliens held in detention centres have been detained in the Czech Republic as irregular immigrants (i.e. people who violated laws applicable to the residence of aliens), not as asylum seekers (though some of them have lodged asylum applications while in detention). They are placed in the detention centre (in low security or high security detention regime) because they are subject to expulsion proceedings and there are reasons to believe that they would endanger national security, seriously disrupt public order or obstruct the execution of the expulsion order. The grounds must always be properly explained in the detention order.

The provision of the Aliens Residence Act (Act No. 326/1999 on Residence of Aliens in the Territory of the Czech Republic) that enabled aliens to be kept in the high-security part of the detention facility "because of the difficulties encountered in identifying them" was repealed on 1 January 2004. According to Section 135 of the Aliens Residence Act, an alien may be kept in the high-security part of the detention facility only

- (a) if he/she is aggressive or requires more intensive surveillance for another serious reason,
- (b) if he/she repeatedly and seriously violates the internal rules of the facility, or
- (b) if he/she repeatedly and seriously violates the duties and prohibitions imposed by the Aliens Residence Act.

Detainees under 18 years of age can be kept in the high-security part only on the grounds described in (a) or (c) above.

The detainee can be placed in the high-security part for a strictly necessary period that must not exceed 30 days. During this period the police reviews the grounds for such placement. If the alien commits any of the acts described in (a)-(c) or if the reason for increased surveillance continues to exist, his/her placement is prolonged by 30 days. Otherwise, he/she is immediately moved to the low-security part.

The police must immediately make out a formal record on the alien's placement in the high-security part, stating the grounds for such placement.

The above fact show that aliens may be placed in the high-security part only on the grounds laid down by law, and the placement is subject to regular review. Abolition of the high-security detention regime, as proposed by the Commissioner in paragraph 62, would deprive the management of the facility of a tool necessary for ensuring safety and protecting health, morals as well as the rights and freedoms of other inmates. As a result, the recommendation cannot be implemented.

Regarding paragraph 60 (amendments to Act 325/1999 on Asylum) it should be noted that introduction of the rules accelerating the examination of appeals has been one of the series of changes made in the process of transposition of the EU *acquis* in the field of asylum into Czech law.