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

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INTRODUCTION

In accordance with Article 3 e) of Resolution (99) 50 of the Committee of Ministers on the Commissioner for Human Rights of the Council of Europe, I accepted the invitation extended to me by the Foreign Affairs Minister of the Czech Republic, Mr Cyril Svoboda, to make an official visit from 24 to 26 February 2003 and travelled to Prague with the head of my Office, Mr Christos Giakoumopoulos, and Mr Nino Karamaoun. I must begin by thanking Mr Svoboda for all the exertions and resources devoted by his department to the success of my visit, together with the Permanent Delegation of the Czech Republic to the Council of Europe for its valuable co-operation in the preliminaries to the visit. I should also like to emphasise the vital support provided by the Council of Europe Office in Prague and by its manager Mrs Dana Bekova. Lastly, I would express my gratitude to the various government authorities I met for their great helpfulness, frankness and exemplary co-operation, at a time when crucial negotiations relating to the imminent appointment of a new President of the Republic was justifiably dominating the Czech political scene.

I was thus able to speak with the Deputy Prime Minister/Foreign Affairs Minister, the Deputy Prime Minister/Minister for Research, Development and Human Rights, the Deputy Prime Minister/Minister of Justice, the Deputy Prime Minister/Minister of the Interior, the Minister of Labour and Social Affairs, judges of the Constitutional Court, the Ombudsman, the Government Commissioner for Human Rights, members of the Senate Committee on Education, Science, Culture, Human Rights and Petitions, and with representatives of civil society. In addition, visits were made to the aliens' detention centre at Balkova (Tis u Blatna), the Pankrác prison in Prague, and the Roma/Gypsy districts of the Ostrava region.

GENERAL REMARKS

1. It is hard to believe that less than fourteen years have elapsed since the "Velvet Revolution" of November 1989 which overthrew communism in Czechoslovakia, so impressive is the progress accomplished. Within just a few years, impelled by the determination of its leaders and the democratic aspirations of its people, the Czech Republic has carried through a striking programme of reforms, in the economic as well as in the legislative and institutional spheres. Some landmark dates will suffice to illustrate the palpable onward march on the "road" of democracy: in 1992, Czechoslovakia became a member of the Council of Europe; in 1993 the Czech Republic came into being following a textbook partition that was free of strife; 1995 and 1999 mark its accession to the OECD and NATO respectively. Finally, it was on 16 April of the current year that the Czech Republic set the seal on its integration with the economic institutions of democratic Europe by its formal signature of the treaty assenting to the enlargement of the European Union.
2. However, the elation which attends every success ought not to obscure certain anxieties. Although the Czech Republic has resolutely put the dark years behind it, additional efforts are needed to combat social exclusion, intolerance, racism and xenophobia and to take up the new challenges raised by immigration and the market economy. In full awareness of the responsibility they bear, the Czech authorities have made it their business to establish two new institutions for the protection of human rights.
3. Firstly, through the creation of the office of Government Commissioner for Human Rights, they have acquired an important collaborator who, thanks to the accuracy of his diagnosis and the pertinence of the solutions put forward, has rapidly proved indispensable. In order

to support the Commissioner in his work, I urge the Government to grant him more resources. Furthermore, putting in place an Ombudsman institution incontrovertibly fulfilled a genuine societal need, as witness the 12 000 complaints lodged with it after a mere 2 years of existence. Having said that, it would be desirable to give more serious consideration to the recommendations formulated by these two institutions with their high-level, complementary functions.

4. If, as former President Vaclav Havel so fittingly wrote, democracy is never a completed task but an endless road, then this report is a stretch of that road dedicated to specific groups of human rights issues, particularly the situation of the Roma/Gypsy community (I), asylum (II), the judicial system (III), the situation of certain vulnerable groups (IV) and social rights and freedom to form and join trade unions (V).

I- SITUATION OF THE ROMA/GYPSY COMMUNITY

5. Despite the Government's praiseworthy intentions and the large number of measures applied in this respect, the fact remains that the Roma/Gypsy community in the Czech Republic is caught in a deadly spiral of exclusion, beset with growing problems of poverty and difficulties over labour market entry and proper housing. These problems are liable to be perpetuated and aggravated, in the light of the fact that the young members of these communities continue to have limited access to education of good quality. Concurrently, the steady and alarming progression of acts of violence with racist and xenophobic overtones against members of this community has had the effect of slowly but surely making their social segregation complete, not to say their marginalisation.

Access to education

6. The young members of the Roma/Gypsy community are drastically over-represented in "special" schools and classes for children suffering from slight mental disability. Some figures produced indicate that 70% of all Roma/Gypsy children present in Czech territory are placed in these schools; while children from this community make up less than 5% of primary age pupils; they reportedly form 50% of the special school enrolment¹. It is still more alarming to observe that the placement of a child in a school of this type very seriously prejudices his chances of carrying on secondary schooling in a normal establishment, let alone aspiring to a university education, so that he is even more inextricably caught in the vicious circle which afflicts the Roma/Gypsy community.
7. The Ombudsman and the Government Commissioner consider that the large presence of young Roma/Gypsies in the special schools is partly due to their under-representation in nursery classes. Nursery education is not compulsory in the Czech Republic and many Roma/Gypsy people deliberately elect not to enrol their children so that they can draw a government allowance², which is perfectly understandable in their state of evident poverty. Moreover, it is argued that the rigidity of the Czech school system with its Austro-Hungarian inspiration does not cater for these pupils' socio-cultural needs. Such being the

¹ See European Roma Rights Center, Concerns Relating to the Human Rights - Situation of Roma in the Czech Republic, 23 January 2003. See also Open Society Institute, *Minority protection in the Czech Republic*, 2001.

² An allowance is in fact available to all parents caring full-time for a child up to four years of age. If the child is attending any kind of nursery establishment for more than sixteen hours per week, the parents forfeit entitlement to the allowance. It is important to stress that in the past the ceiling was eight hours per week.

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case, it would be advisable for the Government to develop more flexible school syllabi that take account of the country's multicultural conditions. It would likewise be desirable to review the policy on the allowance so as not to penalise those parents who quite properly decide to send their children to nursery school.

8. The authorities have implemented a series of measures in order to remedy this unfortunate situation, in particular the introduction of Roma/Gypsies as assistant teachers in regular classes and the provision of preliminary classes. These initiatives have had promising results though only on a small scale, failing adequate resources. The municipal authorities responsible for the funding of schools evidently do not make a priority of this matter. It is also apparent that the pool of Roma/Gypsy assistant teachers available and qualified has been used up. The authorities concerned must grant the requisite resources for training and recruiting these teachers, and for establishing a system of preliminary classes in all Czech schools. The community centres managed by NGOs, which perform the function of such classes and offer their assistance to needy parents, like the community centre of the Privoz neighbourhood in Ostrava, represent alternatives that deserve to be supported.
9. Finally, it is indispensable that all the foregoing considerations should be accommodated in the educational reform, the bill for which has still not been passed.

Access to housing

10. In the Czech Republic, the patent absence of a statutory instrument affording protection against discrimination in housing matters, and of general anti-discrimination legislation, is most sorely felt by members of the Roma/Gypsy community looking for suitable accommodation. The interviews held with legal specialists, NGOs and Roma/Gypsy tenant families revealed the existence of reprehensible practices in the allocation of local council housing. Indeed, certain seemingly neutral allocation criteria, given prominence by the local authorities, in effect almost invariably obstruct access to these dwellings for members of the Roma/Gypsy community. Thus, in the Ostrava region, an adequate standard of education and a clean record of convictions for all members of a family represent absolute conditions for the allocation of a dwelling, and these criteria too frequently place Roma/Gypsy families at a disadvantage. The authorities should overhaul their procedures in the matter, putting forward allocation criteria that do not have the effect of unjustifiably excluding a specific group from this housing.
11. Paradoxically, Roma/Gypsy applicants refused a dwelling on the ground of presumed financial inability to bear its cost are frequently placed in basic and often sub-standard social housing units ("holobyty") for which a disproportionate rental is demanded. As seen, the flat visited consisted of one dilapidated room far too small to accommodate the four inmates (one woman and three infants) and was bereft of conveniences. The strict regulation of entry to and exit from these buildings, the regular police inspections, the very short leases (in certain cases, renewable fortnightly) and the threat of eviction for breaking one of the too plentiful and sometimes unjustified house rules result in a permanent state of doubt and insecurity for the occupants, privacy being virtually non-existent.

12. Some degree of coherence guiding the rental policy pursued by the local authorities is crucial, and it is indispensable that occupants of these basic standard dwellings enjoy decent living conditions and that special vigilance should be exercised to ensure that the “holobyty” do not become the exclusive preserve of the Roma/Gypsy community segregated in them.
13. The Roma access to housing problem must be seen in the more general context of the housing problem in the Czech Republic. It has to be noted in this regard that the Constitutional Court annulled in November 2001 the Decree 176/1993 of the Ministry of Finance regulating rents and that in 2002 two other Decrees concerning rents were also cancelled. As a result, rental prices are presently regulated by exclusively by law 526/1990 (general law on prices). A new regulation is currently under preparation providing *inter alia* rules on prices to be applied on upon renewing lease of a housing unit as well as rules on rental prices to be applied upon lease of state owned housing units. In addition, a programme for accommodation benefits and other social aid for people with low income facing a risk of social exclusion is under consideration. These measures that are expected to improve the housing situation in the Czech Republic in general will probably facilitate access to housing for disadvantaged Roma families

Access to employment

14. Active labour market participation is an essential vector for the fight against social exclusion. Yet in the Czech Republic practically one Roma/Gypsy in two is unemployed. The manpower provided by the community would not meet the demands of the modern-day market considering the obvious lack of skills, to be attributed in part to the earlier shortcomings in the educational system (especially placement in special schools). Also, even in the event that this difficulty was overcome or non-existent, a Roma/Gypsy remains vulnerable to discriminatory recruitment practices of which I was repeatedly told during my visit. A telling illustration of this is the termination by an employer of a work contract concluded through an agent or by telephone, once the employer realises that the person recruited is a Roma/Gypsy.
15. Mr Zdeněk Škromach, Minister of Labour and Social Affairs, with whom I raised this issue, emphasised the existence in Czech law of a binding legal framework, which I welcome, concerning racial discrimination in employment. In practice, though, its effective application remains limited, as no case of this type has yet been won. The recent legislative amendment introducing a reversal of the burden of proof in cases of discrimination founded on race or ethnic origin should allow these difficulties to be resolved.
16. It is of paramount concern that the authorities should develop more measures of incentive for employers giving preference to labour from the Roma/Gypsy community, like those now in existence in the building sector. It would furthermore be desirable, in collaboration with the Roma/Gypsy organisations, to intensify training programmes and job creation for the members of this community, both these measures being prescribed by the 2002 national plan of action for employment.

Indebtedness of the Roma/Gypsy community

17. The difficulties with access to employment encountered by the members of the Roma/Gypsy community result in a severe debt problem. Besides pushing them to the fringe, these problems expose them to exploitation by crime rings. In the Ostrava region, a large section of the community is at the mercy Roma/Gypsy usurers (“sharks”) who abuse and exploit its financial distress and rely on the most dastardly methods, consenting to deal only with women whom they threaten with the direst consequences for failure to repay.

Violence towards the Roma/Gypsy community

18. It is regrettable to note that offences with racial connotations, principally targeting members of the Roma/Gypsy community, are on the increase in the Czech Republic. Moreover, the number of allegations of police violence towards this community continues to cause concern, as do the cases of unjustified inaction by the police force. The bodies in charge of implementing the provisions outlawing acts of racism and intolerance would seem to take an sometimes inappropriate and deficient attitude at times, according to certain cases disclosed to me. It is therefore not surprising that part of the Roma/Gypsy community has lost confidence in the authorities.
19. Mr Stanislav Gross, Minister of the Interior, showed his appreciation of the problems and of the need to curb misconduct of this kind, whether perpetrated in a private or public capacity. Regarding the conduct of the police and security forces, while acknowledging the existence of unfortunate but isolated cases, he emphasised the introduction of training and awareness-raising programmes on human rights and rights of minorities aimed at police officers, and the creation of posts reserved for Roma/Gypsy police officers. It nevertheless appears that the above initiative is hampered by skill shortage among the members of the community. Here, close co-operation with the NGOs is advisable. It is moreover imperative that conscientious enquiries be undertaken by the prosecuting authorities against the culprits of such blameworthy acts, whether they are officials or individuals, and that the enquiries should result in appropriate penalties. Indulgence in this matter would tacitly condone intolerance. Lastly, following the lead of the European Commission³, I perceive the need for the adoption of a code of police ethics.

20. It is to be pointed out that numerous measures have gone ahead in support of the Roma/Gypsy community, many of them with encouraging results. They nevertheless have the shortcomings of being dispersed and disjointed. Only co-ordinated efforts carried out in the context of an overall plan and addressing first and foremost the multiple problems of access to employment, housing and education will make it possible to break out of the relentless spiral in which the Roma/Gypsy community of the Czech Republic has been trapped all too long. It is indispensable that the regional authorities realise the specificity of this community’s needs and cater for them by allocating the necessary resources.

³ Regular report 2002 on the progress achieved by the Czech Republic towards accession, SEC(2002)1402, p.30

21. Finally, to date there is no comprehensive anti-discrimination legislation, and the repeated appeals in the matter by the principal international agencies and the Government Commissioner for Human Rights have gone unanswered. During our meeting, the Government Commissioner told me there was a bill for creating a body responsible for the enforcement of such legislation, which would introduce a system of legal remedies providing for compensation and penalties in the event of discrimination. It seems necessary at the present stage to adopt this comprehensive anti-discrimination bill with all dispatch and to allocate the requisite resources for the proper functioning of the body which is to enforce it. I furthermore encourage the Government to look seriously into the possibility of the Czech Republic's ratifying Protocol No. 12 to the European Convention prohibiting all forms of discrimination. Though not a miraculous solution to the problems described above, such action would represent a clear message from the authorities, a token of their resolute determination to fight social exclusion and to promote tolerance and respect for difference. Democracy may be the empowerment of the majority, but its quality is commensurate with the amount of respect, which it grants to its minorities.

II- ASYLUM

22. The Czech Republic has not avoided the tendency, encountered in the vast majority of European states, towards wholesale and drastic stiffening of national legislation on asylum and immigration. The amendment to the law on the right to asylum that came into force in February 2002 (amendment no. 2/2002), considerably restricting the benefits for asylum seekers, is undeniably in line with this trend⁴. With the overt aim of preventing misuse of the system for granting asylum, particularly where abused for purposes of illegal migration to other countries, this amendment has amplified the grounds for rejecting an asylum request (e.g. as manifestly ill founded or on the basis of the fact that the applicant crossed a safe third country), has introduced possibilities for family reunification limited to cases that merit special care and withheld for a period of one year the possibility of working in the country for asylum seekers. During our encounter, the Minister for the Interior took care to point out that the amendment was not to be perceived as a security-related measure but rather as a measure of preservation designed to protect the Czech labour market from the proliferation of cheap labour originating principally from Ukraine. Never mind the underlying motives for the adoption of this amendment; its effects have not taken long to be felt: in 2002, the official figures show a decrease in numbers of applicants for asylum of 50%.

23. It is appropriate at this juncture to recall that only channelling of migration flows will make it possible to overcome the problem of abusive asylum requests and procedures. Moreover, the emphasis placed on consolidation of control measures and the penal aspect of immigration lead to stigmatisation of foreigners in the eyes of the public and most definitely contribute to the progression of racist and xenophobic extremist movements.

24. Irrespective of the foregoing, approval should be expressed regarding the right of appeal to the regional administrative court, available since 1 January 2003 to asylum seekers rejected by a decision of the Ministry of the Interior. Under the appeal procedure, the administrative

⁴ Note that in 2000 major amendments were made to the Law on aliens, considerably restricting possibilities of lawful entry into the Czech Republic. According to the Ombudsman, the reform was instrumental in causing the number of applicants for refugee status to increase in 2000 and 2001.

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court holds full jurisdiction, being competent to determine not only points of law but also questions of fact. Furthermore, subject to specified conditions, its ruling may be appealed before the Supreme Administrative Court.

Detention centres for aliens in the process of removal

25. Among the changes brought about by the amendments to the law on the right to asylum, none is of more dramatic intent than the one requiring persons in the process of removal to be held in aliens' detention centres for a period of 180 days. Persons affected by this measure are aliens having resided illegally in the territory of the Czech Republic and, after questioning by the police force, are placed in a centre of this kind, even though they might apply, at that time, for asylum. My discussions in the matter with the NGOs and the authorities, particularly with the Ombudsman and the Government Commissioner for Human Rights, confirmed anxieties over the physical conditions of detention and the possible presence of children in the centres. I therefore visited one of the five aliens' detention centres existing in Czech territory, the one at Balkova (Tis u Blatna) in the west of the country.
26. The establishment is certainly well kept and the staff are plainly dedicated and aware of the human aspects of their task. Nonetheless, owing to its complete isolation, the centre is rather reminiscent of a prison. Following the interview with the director of the centre and a tour of the facilities, I conclude that in many respects the living conditions of foreigners held in the Balkova centre are quite comparable to those that obtain in prisons. There are in fact two scales of detention, one called mild and the other strict. The foreigners detained according to the stipulations of the first are placed in groups of four in cells with the doors not bolted, enabling them to move about freely in the corridor and between cells. These scant possibilities are augmented by the brief daily exercise period in a cramped outdoor yard. As to the foreigners coming under the strict arrangements, they are shut up for twenty-three hours per day behind bars in locked cells. In either case, the evident absence of an interpreter hampers or precludes communication between the centre's staff and the aliens, from places of origin as diverse as China and Ukraine.
27. Having decided to make enquiries on the subject, it appears to me that a substantial majority, not to say all, of the foreigners under the strict regime are assigned to it not because of dangerousness or aggressiveness but quite simply because of difficulties encountered by the authorities in identifying them. Paragraph 132(2)e) of Law 326/1999 which provides for this possibility should be repealed. Moreover, the director of the establishment admitted he was embarrassed by his obligation under the terms of this provision. I also urge the Government to consider very seriously the possibility of entirely dispensing with this strict regime whose existence, I would emphasise, has never been warranted. These foreigners are not criminals; they are guilty only of having aspired to a better life, a job or, in the saddest and most distressing cases, protection from persecution.
28. Regarding those persons who request asylum upon being taken into police custody, they are placed in the Balkova centre for up to 180 days maximum. In the event that there has not yet been a ruling on their request within that time, they enter a normal asylum seekers' hostel. Now, by the authorities' own admission, it is uncommon for the consideration of asylum requests to be favourably concluded within that time. Thus, due to the usual length of the asylum procedure the stated purpose of the detention, namely securing the execution

of the deportation in due course, is rarely achieved and, consequently, the detention of these persons in an establishment that savours of prison like the Balkova centre does is perceived as a mere coercive measure intended to discourage asylum requests in the Czech Republic.

29. In the Balkova centre, I noted the presence of a small girl of Uzbek origin aged five and a half who had been held for 4 months with her mother, an asylum seeker. She was without access to any educative, much less recreational, activity, and her spiritual, mental and social development was without doubt gravely hampered. The director further informed me that during the year 2002, 54 children under fifteen years of age had transited through the centre.
30. I made an urgent request by letter of 4 March 2003 that the Minister of the Interior transfer the girl and her mother to a reception centre, as well as any other child and parent in a similar situation within the territory of the Czech Republic. According to information provided by Mr Svoboda, Minister of Foreign Affairs, and Mr Gross, Minister of Interior, the child and his mother have been released and the administration is about to adopt directives to prevent detention of children illegal immigrants in prison like centres in the future. The Deputy Minister of Foreign Affairs, Mr Vosalik, assured of his intention to personally follow progress in this matter.

III- THE JUDICIAL SYSTEM

31. The Czech judicial system is subject to significant problems of procedural delay. During our conversation, the Minister of Justice informed me that there were two bills intended to remedy numerous deficiencies, providing inter alia for the introduction of remedies on the Austrian model. Nevertheless, owing to the limited power of the Constitutional Court in this field, certain queries persist as to the existence in Czech law of an effective remedy against undue length of proceedings within the meaning of the *Kudla v. Poland* precedent. It was indeed decided in the case of *Kuchar and Stis v. Czech Republic*⁵ that the appeal to a higher authority introduced under the law on the courts and judges did not represent an effective remedy within the meaning of Article 35-1 of the European Convention. Be that as it may, I defer to the European Court, which should be ruling shortly on the whole question⁶.

Access to the Constitutional Court

32. By virtue of sections 72 and 75 of the Constitutional Court Act, the Court can be petitioned only within the 60 days following the final remedy offered by law for defending the plaintiff's rights. There used to be controversy over the fact that the introduction of an appeal on points of law did not suspend the sixty-day time limit available for introducing a constitutional appeal. Thus an applicant introducing an appeal on points of law, whose admissibility depends entirely on the discretionary decision of the Supreme Court, and had it declared inadmissible, inevitably ran the risk of exceeding the said time limit and being

⁵ Application no. 37527/97, declared admissible on 23 May 2000.

⁶ In fact the applicants in the case of *Hartman v. Czech Republic* (hearing held on 11 March 2003) invoke Article 13 and complain of the absence of an effective remedy against the length of the proceedings concerning them.

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denied access to the Constitutional Court. The European Court in its *Beles and others v. Czech R.* and *Zvolsky and Zvolska v. Czech R.* found a violation of Article 6-1 of the Convention, holding that *the time allowed introducing the constitutional appeal ought to have been reckoned only from the Supreme Court decision, or should at least have been suspended by the filing of the appeal on points of law*⁷.

33. The judges of the Czech Constitutional Court with whom I held a working session on this question disclosed to me a recent communication from their plenary assembly, which was included in the official gazette on 3 February 2003⁸. According to the communication, the sixty-day deadline set for introducing the constitutional appeal will begin to run as from the date of the decision on the extraordinary appeal (with the exception of review of procedure), without regard to the outcome of the said appeal. This measure is an illustration of the Czech Constitutional Court's deep attachment to the values proclaimed by the European Convention and to the construction placed upon it by the European Court of Human Rights. However, as the judges admit, this communication represents only a partial solution, which must be formalised and complemented by an amendment to the Constitutional Court Act. According to Mr Rychtycky, the Minister of Justice, a bill has been drawn up along these lines and its speedy adoption would be advisable.

Prisons

34. At the suggestion of the Czech Government, I went to the *Pankrác* prison in Prague. While it reflects the European prison system of today, it used to be confronted with a major problem of overcrowding⁹. Significant efforts have undeniably been made by the authorities to counter this, successfully moreover. Likewise, although by definition the conditions could not be described as easy in anybody's language, at *Pankrác* the prisoners enjoy decent living conditions, superior to those applying in many penal establishments which I have visited in recent years.
35. However, there is cause to question the validity of the rather peculiar system introduced in 2000 under which each prisoner is required to defray the expenses attaching to his prison sentence¹⁰. As a corollary to this obligation, the legislative text nevertheless fails to contemplate the right of every prisoner to work; the authorities even retain the possibility of using the financial resources in cash deposited by the prisoner on the day of committal to prison in order to cover the expenses. In practice, considering the glaring shortage of available jobs (according to the figures supplied, only 40% of the prison population have the opportunity to work), this system is the cause of serious problems of indebtedness for many prisoners. Moreover, the sole adjustment provided for, namely the power of the prison director to release the prisoner from this obligation under certain conditions¹¹, does

⁷ Cases nos. 46129/99 and 4723/99. It should be emphasised that a similar case was declared admissible by the European Court on 7 January 2003 in the case of *Vodarenska akciová společnost, a.s.*, no. 73577/01.

⁸ Sbírnka zákonů č. 32/2003

⁹ See in this connection the report of the Committee for the Prevention of Torture of 15 April 1999, CPT/Inf (99)7

¹⁰ Act no. 169/1999, Art. 35.

¹¹ *Id.*, art. 35(2), *The director of the prison may permanently refrain from recovery of the costs of the imprisonment when the convict's income after his or her release from imprisonment does not reach the minimum wage within a specified time.*

not suffice in that it is vague, discretionary, and does not seem to be used adequately. In these circumstances it is fair to ask whether the system in question complies with the European Prison Rules that emphasise the need to encourage the prisoner's social rehabilitation. It must be conceded that over-indebtedness often paves the way for social exclusion, the more so when it burdens a person carrying the stigma of the released prisoner.

IV- THE SITUATION OF CERTAIN VULNERABLE GROUPS

Victims of the traffic in human beings

36. In this respect, the Czech Republic remains at once a country of origin, destination and transit. In July 2002 the definition of trafficking set forth in Article 246 of the Penal Code was amended to include any victim irrespective of age or gender. Further amendments are necessary, however, in that the provision as worded at present only punishes trafficking for purposes of sexual exploitation. So, trafficking for purposes of forced labour, slavery or all types of like practices, however reprehensible, are missing from this definition. The emphasis is on the sexual exploitation aspect; in fact the one-dimensional perception of this phenomenon entertained at present within the Czech Republic might account for the confusion of some people who mistakenly equate trafficking in human beings with prostitution. It is imperative that the process of harmonising 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, should continue so that the ratification of this crucial protocol can take place as early as possible.

37. According to the Minister for the Interior, the Czech Republic is an active participant, notably under United Nations auspices, in a series of bilateral and multilateral co-operation programmes intended to halt this phenomenon. However, the lack of a plan or national strategy for fighting the traffic, one that would comprise measures to protect victims regardless of their nationality (testimony, right to social assistance, rehabilitation), specific forms of training for the police and security forces and closer collaboration with the NGOs specialising in this field, constitutes a significant gap. Lastly, additional efforts must be made to contradict the misconception that the persons subjected to trafficking are offenders rather than victims.

Victims of domestic violence

38. The Minister of the Interior is fully aware of the problem of domestic violence and has set in motion the solution-finding process. Mr Mareš, Minister for Research, Development, Human Rights and Human Resources expects that the recent introduction, in conjunction with the NGOs, of the round tables for consultation on the subject will allow a protection and prevention model resembling the present-day Austrian one to be devised.

39. For the time being, there is apparently no legal framework concerning domestic violence. The lack of provision for ordering the attacker's removal from the family home is particularly disturbing, further considering the limited number of shelters existing in the country. It is regrettable that in the present context victims' welfare is imperilled by their

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having to bear the consequences of the despicable acts committed by the attacker. It is moreover essential that programmes of awareness and training for the public authorities on protection of women and children be introduced. The Government could usefully refer to Recommendations (2002) 5 of the Committee of Ministers on the protection of women against violence and 1582 (2002) of the Parliamentary Assembly on domestic violence against women.

Persons suffering from mental disorders

40. Talks with specialised NGOs confirmed certain information on the living conditions that prevail in the Czech psychiatric institutions, and especially the use of cage beds. Anxieties in this connection struck a chord with the Government Commissioner for Human Rights who furthermore made a point of stressing the imprecise legislative framework for forced treatment and placement in guardianship. Here I would refer the Government to my conclusions on the protection and promotion of the human rights of persons with mental disabilities¹².
41. In this respect attention should be drawn to the forthcoming extension of the Ombudsman's mandate, giving him authority to supervise psychiatric institutions. Nonetheless, given the number of such clinics, the Government should devote sufficient material and human resources to the effective completion of this large-scale enterprise.

V- SOCIAL RIGHTS AND FREEDOM TO FORM AND JOIN TRADE UNIONS

42. The Minister of Labour and Social Affairs pointed out the difficulties encountered by workers seeking to assert a right before the courts, despite the existence of a detailed and comparatively full legislative arsenal. There are obvious procedural delays, as a complaint of unfair dismissal may require up to 5 years to succeed. In this field, it is expedient to establish a special procedure before a specialised chamber for labour litigation. The Minister of Justice said he would welcome a move in this direction.
43. Hindrances to freedom of trade union activity have reportedly been found in foreign and multinational enterprises. The supervision machinery prescribed by Czech law is said to be obstructed by employees' refusal to testify (for fear of reprisals). It might be desirable that the authorities consider the possibility of setting by law the number of employees above which it would be compulsory for an enterprise to provide staff structures capable of engaging in collective bargaining, without prejudice to the right to found trade unions guaranteed in Article 11 of the ECHR, in ILO Conventions and in other European and international instruments. The Czech Republic should also ratify the third protocol to the European Social Charter prescribing a system of collective complaints, and the revised European Social Charter.

¹² CommDH(2003)1, seminar organised in Copenhagen, Denmark, 5-7 February 2003.

CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

44. As a democracy upholding human rights, the Czech Republic has resolutely lived up to its European destiny. But while the Czech authorities deserve praise for the considerable efforts which they have made regarding protection of human rights, certain problems persist and must be solved. In order to sustain their firm resolve and assist them in the pursuit of their goals, the Commissioner, in accordance with Article 8 of Resolution (99) 50, makes the following recommendations:

- Adopt the bill for the general anti-discrimination law and provide the necessary resources for the proper functioning of the body which is to enforce it; look into the possibility of ratifying Protocol No. 12 to the European Convention prohibiting all forms of discrimination;
- Concerning the Roma/Gypsy community, make additional co-ordinated efforts under a comprehensive plan for access to employment, education and housing; ensure that conscientious enquiries are initiated by the prosecuting authorities against the perpetrators of acts of violence with racial connotations, whether public officials or individuals, and that where appropriate these enquiries lead to appropriate sanctions;
- Examine, with a view to its repeal, the strict regime of detention for illegal immigrants; transfer all the children held in a detention centre for aliens in the process of removal from the Czech Republic, and their parents, to reception centres; take care that this situation does not recur in future;
- Amend the Constitutional Court Act so that there is no arbitrary obstruction of access to the Court (see judgments in the cases of *Beles and others v. Czech R.* and *Zvolsky and Zvolska v. Czech R.*);
- Reconsider the arrangement whereby prisoners are required to defray the expenses attaching to their prison sentence, particularly in order that their social rehabilitation is not prejudiced by over-indebtedness;
- Adopt a national strategy to fight trafficking in human beings, to comprise measures for the protection of victims regardless of nationality (testimony, right to social assistance, rehabilitation), specific training courses for the police and security forces, and closer collaboration with the NGOs specialising in this field; 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 speedily;
- Secure better protection and assistance to victims of domestic violence through legislative measures and the opening of shelters;
- Introduce a special procedure before a specialised chamber for labour litigation;

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- Ratify the third protocol to the European Social Charter providing for a system of collective complaints, and the revised European Social Charter;
- Aid the work of the Government Commissioner for Human Rights by granting him more resources; ensure that adequate material and human resources are allocated to the Ombudsman upon the forthcoming extension of his mandate giving him authority in the supervision of psychiatric institutions.

45. In accordance with Article 3 f) of Resolution (99) 50, this report is addressed to the Committee of Ministers and to the Parliamentary Assembly.