Report on the State of Human Rights in the Czech Republic in 2008

This Report was reviewed by the Government on 1 June 2009.

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List of abbreviations used in the text

ECHR – European Court of Human Rights
European Convention – European Convention for the Protection of Human Rights and Fundamental Freedoms
SAC – Supreme Administrative Court of the Czech Republic
SC – Supreme Court of the Czech Republic
CC – Constitutional Court of the Czech Republic
UN – United Nations Organization
FRA – European Union Agency for Fundamental Rights
Ombudsman – Public Protector of Rights
CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

I. GENERAL PART

1. Introduction

The Report on the State of Human Rights in the Czech Republic (hereinafter the "Report")[1] has been drawn by the professional team of the Government of the Czech Republic's Council for Human Rights (hereinafter the "Council") since 1998. This is the eleventh such Report. The main purpose of the Report is to provide the Government with the information required to make decisions on priorities related to the protection of human rights. In this respect, the Report does not repeat general statements regarding fundamental democratic freedoms in the Czech Republic or the list of rights guaranteed by the Charter of Fundamental Rights and Freedoms (hereinafter the "Charter");[2] instead, it primarily addresses the progress achieved over the past year in areas which have been criticized in the past and also discusses deficiencies which have not yet been resolved. Nor does the Report offer a rundown of individual ministerial programmes focusing on support for human rights projects.

The progress achieved in the past year and unresolved deficiencies are evaluated predominantly in the light of international treaties on human rights of which the Czech Republic is a signatory. For this purpose, the Reports tend to contain an evaluation made by the bodies controlling compliance with these treaties, which are the only bodies authorized to formally evaluate whether or not the states generally respect their international covenants. These supervisory bodies are independent; their evaluations are based on a wide range of information which they obtain from the governments of individual states as well as from non-governmental organizations involved in human rights.

Thus, the contents of this Report are based primarily on fundamental international treaties on human rights. At the same time, it is a follow-up of Reports from previous years and, with regard to the developments occurring in 2008, pays more attention to the areas that witnesses more significant events and underwent more significant changes. At the same time, the Report is based on topics which were addressed by the Council and its committees in the past year, and on legislative proposal on which they commented through the Government Commissioner for Human Rights or the Minister for Human Rights.[3] A number of entities contribute to the Report. Ministries inform about current events from the perspective of the existing and proposed legislation; non-governmental organizations and the Council members representing civic society accentuate legislative deficiencies from the human rights protection perspective and point to practical examples. The Report strives to draw from all these views and to propose recommendations for the future, taking into account the case law of the Supreme Court and the Constitutional Court. *Passages containing evaluations and recommendations that express the author's standpoint on given issues or that propose changes are presented in italics.*

Many parts of the Report include references to its other parts; therefore the content ensures cohesion between individual rights and the issues that pertain to them. Besides this intrinsic cohesion of the content of the document, the Report also incorporates references to other

[1] The term "Report" used throughout the document refers to all Reports on the State of Human Rights, complemented with a specification of the year concerned except where the reference is to the present Report.
[2] Resolution of the Presidium of the Czech National Council No 2/1993 on the Charter of Fundamental Rights and Freedoms
[3] The Government Commissioner for Human Rights is the chairman of the Government of the Czech Republic's Council and presents this Report together with the Minister for Human Rights to the Government for review.

documents pertaining to the protection of human rights. The Report does not discuss in any detail racism, xenophobia and extremism, gender equality or the status of national minorities, including the Roma minority.[4]

[4] These subjects are covered by separate reports, such as the Report on the Situation of Roma Communities, the Report on the Situation of National Minorities, the Government Priorities and Procedures Used in the Promotion of Equality between Women and Men, and others.

2. Institutional safeguards for the protection of human rights

Institutions providing human rights protection include the Government's advisory and working bodies (to deal with conceptual matters) and, to a certain degree, the ombudsman (to settle individual complaints).

The Government's principal advisory and working bodies involved in this sphere are: the Government Council for Human Rights, the Government Council on National Minorities, the Government Council on Roma Community Affairs, the Government Council on Equal Opportunities for Women and Men, the Government Council on Seniors and Population Ageing, and the Government Board for People with Disabilities. These advisory bodies prepare conceptual materials[5] for Government meetings and, through their activities, help raise the level of human rights protection. They carry on their activities through the Government Commissioner for Human Rights (except for the Government Council on Seniors). Since 2007, the Government also includes a Minister for Human Rights and Minorities.[6]

The Public Protector of Rights (hereinafter the "ombudsman") focuses on the protection of rights and legitimate interests in relation to state administration authorities. Even with this remit, the ombudsman frequently deals with cases that have a strong human rights bent.[7] Not least, the ombudsman pays systematic visits to facilities that house or may house people whose freedom is or could be restricted. Following the approval of the Antidiscrimination Act, the ombudsman should become a "body for promotion of equal treatment", i.e. should provide assistance and support to victims of discrimination.[8]

The task of the Agency for Social Inclusion in Roma Localities[9], which was established in 2008, is to promote networking and creation of partnerships among local institutions which have or may have a direct influence on life strategies and motivation of inhabitants of socially excluded Roma localities. The key objective of the Agency is to reduce social exclusion in socially excluded Roma localities by means of creation and implementation of comprehensive local strategies. From 2008 until 2010, the Agency operates in a pilot phase in thirteen selected localities.[10]

3. The international dimension of human rights

3.1 Treaties

[5] This Report itself is the product of activities by the Government Council for Human Rights. It is submitted to the Government via the Government Commissioner for Human Rights and the Minister for Human Rights and National Minorities.

[6] From the organizational perspective, his office is a part of the Human Rights Section of the Government Office.

[7] For instance, the ombudsman investigated in 2007 a case of payment of destitution allowances in in-kind form. See www.ochrance.cz. In the context of his competencies, the ombudsman often investigates cases of children taken away from their families, complaints against police procedure and motions concerning foreigner rights.

[8] Details see the Reports for previous years; current developments pertaining to the Antidiscrimination Act see Chapter II.7.

[9] Government Resolution No. 85 of 23 January 2008.

[10] Most, Ústí nad Labem, Roudnice nad Labem, Cheb, Broumov, microregion Šluknovsko, Brno, Břeclav, Přerov, Holešov, the city part Slezská Ostrava, the microregions cluster in Jesenicko and Litvínov.

The Czech Republic is a party to international treaties on human rights concluded in the UN and in the context of the Council of Europe. Most of these treaties introduce controlling mechanisms, which monitor whether and how the states parties comply with the provisions of these treaties. These controlling mechanisms are represented by committees whose establishment is envisaged in the relevant treaty. Then, the states send to such committee in regular intervals reports on the fulfilment of obligations arising from the treaty. This chapter presents an overview of reports drawn up by the Government of the Czech Republic and informs about new international treaties and on selected complaints filed against the Czech Republic.

3.1.1 Reports on the fulfilment of obligations under international human rights treaties and under a new international treaty

The Third and the Fourth Periodic Report on the Performance of the Obligations under the Convention on the Rights of the Child and the Information of the Czech Republic on the Implementation of the Optional Protocol on the involvement of children in armed conflict describes the developments in the Czech Republic in the period from 1 January 2000 until 31 December 2006. The Government approved this Report in July 2008[11] and decided to deliver it to the Committee on the Rights of the Child.

The UN General Assembly adopted in December 2008 the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights. This optional protocol allows filing individual complaints against violations of right guaranteed by this Covenant.

The Convention on the Rights of Persons with Disabilities with its Optional Protocol, which was adopted by the UN General Assembly in 2006, came into force on 3 May 2008.
This Convention is based on the principle of equality and guarantees people with disabilities full exercise of all human rights and promotes their active involvement in the life of the society. The ratification process of this Convention took place in 2008.[12] Following a revision of the national legislation, the proposal for ratification of the Convention was approved by the Czech Republic Government on 16 February 2009. Since this Convention regulates personal rights and obligations,[13] it belongs to the category of "presidential treaties" and its adoption requires the consent of both chambers of the Parliament of the Czech Republic.

The Parliament of the Czech Republic expressed in 2008 its consent with the Rome Statute of the International Criminal Court. The Czech Republic signed the Rome Statute of the International Criminal Court on 14 April 1999, but has not yet become a contracting party. The completion of the ratification requires the President's signature. As much as 108 states acceded to the Rome Statute in 2008. The Rome Statute was adopted in Rome on 17 July 1998 and came into force on 1 July 2002. The court prosecutes the most serious crimes under international law, genocide, crimes against humanity, war crimes and aggression even if such crimes are not investigated by the relevant state.

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[11] Government Resolution No. 921 of 23 July 2008. The Report is available at the Government Office's website (Advisory and working bodies of the Government – Government Council for Human Rights, see www.vlada.cz).
[12] In accordance with the Resolution of the Czech Republic Government No. 1331 of 11 February 2004 concerning negotiations, national review, implementation and termination of validity of international treaties and with the Resolution of the Czech Republic Government No. 284 of 19 March 2007 on the proposal to sign the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto.
[13] Art. 49(a) of the Constitution of the Czech Republic.

3.1.2 Ad hoc visit by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Czech Republic (CPT)

The European Committee for Prevention of Torture, hereinafter the "CPT", made between 25 March and 2 April 2008 an irregular controlling visit to the Czech Republic. CPT members visited the Prison Facility Kuřim and Valdice (Ward E) and psychiatric hospitals in Bohnice and in Havlíčkův Brod.[14] Based on findings made during this visit, CPT prepared a Report on this visit for the Czech Republic Government. The level of cooperation with Czech central and local authorities was rated as relatively good. However, two exceptions from this otherwise good cooperation concerned the access to individual medical documents in the psychiatric hospital in Horní Beřkovice and the provision of detailed information required by the Committee for the fulfilment of its tasks.[15] The Report focuses mainly on the issue of treatment of sexual offenders (castration) and on the situation in Ward E of the Valdice Prison. CPT's position on castrations and the Government's response in dealt with below in a separate chapter focusing on castrations.[16]

As regards prisoners sentenced to life in prison, CPT explained it in its Report that the placement of these prisoners must be based on a thorough and systematic assessment of risks and needs of the convicts based on an individualized plan of the execution of the sentence and not only on the length of the sentence. CPT recommended to Czech authorities to take, as soon as possible, steps necessary for an amendment to the Act on Imprisonment and other prison regulations in the light of the above comments to ensure gradual integration of prisoners serving life sentence into the other prison population.[17]

In its report, the CPT also mentioned the issue of access to medical documentation of persons whose personal freedom has been restricted. This problem is not resolved appropriately in the existing Czech legislation. The law defines a group of persons who may inspect a patient's medical documentation without his/her consent for the purpose of performance of a specific task.[18] Such persons include, for instance, medical employees or court-appointed experts, as well as the ombudsman, who represents one of the key national bodies involved in the protection of human rights of persons restricted in their freedom.[19] It is puzzling in this respect that this right is not granted to international bodies involved in the protection of persons restricted in their freedom, such as the CPT and the SPT.[20]

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[14] During its visit, the CPT delegation met with the Minister for Human Rights Džamila Stehlíková and with deputy ministers of health and justice. The delegation also met with leading Czech sexologists and with members of three commissions responsible for approval of applications for surgical castration.

[15] According to the Report, this concerned mostly the number of sexual offenders detained in these facilities who were subject to surgical castration or waited for it (e.g. the data relating to the psychiatric hospital in Bohnice and the Kuřim Prison were not accurate).

[16] Chapter II.6.6.

[17] Further CPT's comments and recommendations see the CPT's Report available at http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/dokumenty/zpravy-plneni-mezin-umluv/evropska-umluva-o-zabraneni-muceni-a-nelidskemu-nebo-ponizujicimu-zachazeni-nebo-trestani-17701/.

[18] Act No. 20/1966 Coll. on the Care for Health of the People, as amended.

[19] Act. No. 349/1999 Coll. on Public Protector of Rights (Ombudsman). The ombudsman's competencies were expanded in 2008 to cover also security detention institutes.

[20] The possibility to inspect medical documentation is currently regulated by Section 67b(10) of Act No. 20/1966 Coll. on the Care for Health of the People, as amended. This legal provision is to be replaced in the near future by a new Healthcare Services Act. According to available information, the bodies authorized to inspect medical documentation which are listed in the most recent draft of this Act should include the ombudsman (like in the existing Act on the Care of Health of the People), but not the international controlling bodies – representatives of the CPT (a body of the Council of Europe) and SPT (a UN body), arriving in the Czech Republic to make regular or irregular controlling visits.

The Government of the Czech Republic took note of CPT's Report and the Government Commissioner for Human Rights prepared subsequently a response to this Report.[21] The Government objected to some criticism and submitted the required explanations of other issues. As regards the access to medical documentation, the Ministry of Health stated that, according to the existing laws, the CPT is not among the bodies entitled to inspect medical documentation of patients without their consent and the future legislation does not envisage adding the CPT members to persons entitled to inspect medical documentation. In this respect, the Ministry of Health proposed to permit the inspection of medical documents under the condition of anonymisation of personal data in the documentation; *however, this procedure has been found by some experts as impracticable for the achievement of the purpose of control.*

3.1.3 Complaints against the Czech Republic before the European Court of Human Rights

The Registry of the European Court of Human Rights reports a total of 721[22] complaints filed against the Czech Republic in 2008. The Court asked the Czech Government for comments on the admissibility and justification of a total of 19 new complaints.[23]

The European Court for Human Rights (hereinafter also the "Court" or "ECHR") issued in 2008 a total of 15 judgments where it concluded that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the "Convention") had been breached at least in some aspects of the cases presented to it. In particular, the Czech Republic was sentenced for a breach of the right to a fair trial pursuant to Article 6(1) of the Convention, specifically as regards the right to access to the court (*Glaser, Hoření, Drahorád and Drahorádová, Mourek, Faltejsek, Rechtová, Regálová*), the right to a fair trial (*Vokoun, Melich and Beck*) and the right to a trial (*Družstevní záložna PRIA et al.*), as well as the right to liberty and security of person within the meaning of Article 5 of the Convention (*Fešar, Rashed, Husák*),[24] the right to the peaceful enjoyment of property within the meaning of Article 1, Protocol No. 1 to the Convention (*Družstevní záložna PRIA et al., Forminster Enterprises Limited*) and the right to respect private and family life pursuant to Article 8 of the Convention (*Andělová*).

In the same period, the Court declared as inadmissible more than one hundred complaints with respect to which the Government had already provided its response regarding their admissibility and justification. Most of these complaints concerned the right to a hearing

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[21] See Response of the Czech Republic Government to the Report drafted for the Government by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment after its visit to the Czech Republic on 25 March until 2 April 2008 - http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/dokumenty/zpravy-plneni-mezin-umluv/evropska-umluva-o-zabraneni-muceni-a-nelidskemu-nebo-ponizujicimu-zachazeni-nebo-trestani-17701/.

[22] These figures represent the number of complaints referred for decision to some of the decision-making chambers of the Court (a three-member committee or a seven-member senate). Information about the total number of contested complaints – including complaints that are finally settled only by an administrative procedure applied by the Court Office, e.g. because the complainants failed to remove defects of their original submissions and their complaints cannot be thus reviewed – have not been included in the Court statistics since 2007. The above figure is preliminary and may be amended later on (the Court's statistics are available at its website *www.echr.coe.int*, section *Reports*/*Rapports*).

[23] The numbers of complaints sent by the Court to the respondent governments for comments represent only several percents of the entire number of submitted complaints. The rest is dismissed even before by the Court as inadmissible based on the information and documents submitted by the complainants.

[24] Details on Fešar's and Husák's cases see chapter II.3.2.1.

within a reasonable time (Article 6(1) of the Convention), or the right to an effective remedy of a breach of this right (Article 13 in conjunction with Article 6(1) of the Convention). These complaints were rejected by the Court with regard to the new compensatory remedy introduced in Act No. 82/1998 Coll. on liability for damage caused during the execution of public authority (specifically, Act No.. 160/2006 Coll., which amended the above-mentioned Act, and which also offers a possibility seek adequate satisfaction for immaterial loss). *Although this procedure has been used more and more often through the Ministry of Justice, the knowledge of this remedy remains unfortunately insufficient.*

The rest of the complaints which were declared as inadmissible by the Court related, for instance, to the issues of the right to a fair trial (*Buryška*, *Hejkrlíková*, *Schwarzkopf and Taussik*), the right to family life in the context of difficulties in contacts between parents (or grandparents) with minor children (*Káňa, Mikeš, Jedličková and Jedlička, Kabešová and Ondráček*), the right to peaceful enjoyment of property (*Mikrotechna, s. r. o., Baťa*) or the right to liberty and security of person (*Hýbner*).

The Court's judgments pointing to a breach of right to a hearing within a reasonable time represented in recent years the most numerous category of judgments delivered against the Czech Republic. *Despite various steps to accelerate court proceedings and despite positive trends, the average length of court proceedings in the Czech Republic has not been reduced significantly in recent years. Although the ECHR considers the above-mentioned procedure as an effective remedy, it is possible to find several serious problems associated with it. One of its shortcomings consists in the lengthy remedial process of such delays. The Ministry of Justice often fails to settle the matter within the six months' time limit stipulated by the law.* Therefore, the applicant has to turn to the court where the indemnification proceedings take in average other 733 days.[25] *One of the causes of these further delays consists in the work overload of the Ministry, which lacks sufficient capacity to proceeds applications. Another reason is the work overload of the District Court for Prague 2, which resolves the most part*[26] *of petitions for granting satisfaction for delays. Another apparently problematic aspect is the fact that the advocacy tariff does not set an amount of fees for representation at negotiations with the Ministry and solicitors lack motivation to represent clients in such cases.*[27]

As an example of the complaints before the ECHR, we would refer to the judgment in the case of Rashed *versus* Czech Republic.[28] The complainant arrived in August 2006 at the International Airport Prague-Ruzyně, where he expressed immediately after arrival at the transit area his wish to apply for international protection. Therefore, he was placed in the admission centre in the transit area of the international airport. On 1 September 2006, the complainant filed an application for international protection, which was dismissed by a decision of the Ministry of the Interior as evidently groundless, because the complainant quoted only economic reasons. In the period between May and October 2006, the Czech Republic faced a wave of Egyptian nationals applying for international protection and since the capacity of the admission centre in the transit area of the Prague-Ruzyně Airport could no longer absorb this wave at the time of the complainant's arrival, the complainant was relocated on 10 September 2006 to the "detached establishment of the admission centre in the transit area of the International Airport", situated in Velké Přílepy.

[25] Statistical Summary of Court Dockets. Part II. .2008. Ministry of Justice of the Czech Republic.
[26] 290 of 382 decisions issued under Act No. 82/1998 Coll. were issued in Prague. This figure relates to 2007. See the Statistical Summary of Court Dockets. Part II. .2008. Ministry of Justice of the Czech Republic.
[27] Taken from the contribution of the Human Rights League, www.llp.cz
[28] Judgment of 27 November 2008, complaint no. 298/07.

The complainant filed an administrative action against alleged illegality of his being continuously deprived of his freedom and his relocation to Velké Přílepy. This action was dismissed by the Municipal Court in Prague in January 2007, claiming lack of subject-matter jurisdiction and stating this action should be decided, according to its opinion, by a court in proceedings held under Section 200o et seq. of the Civil Procedure Code. However, this decision was abolished in November 2007 by the Supreme Administrative Court, which ruled that the complainant's action was to be decided in administrative judiciary and the procedure was to be adjusted in a manner allowing to fulfil the requirement for expedient decision under Article 5(4) of the Convention. The complainant stayed in the centre in Velké Přílepy without a possibility to leave it until June 2007, when he returned to Cairo under a voluntary repatriation programme, after his application for international protection had been finally dismissed by the Supreme Administrative Court in May 2007.

After rejecting the Government's objection that the complainant failed to use all national remedies, specifically to submit a constitutional complaint, the Court stated that the complainant had no remedy whereby the court would quickly decide whether his deprivation of freedom was legal. The Court noted that the case law of Czech courts was not established at that time, the possibility to file an action under Section 200o of the Civil Procedure Code was ruled out later on by the Supreme Administrative Court and the administrative petition did not provide the legal guarantee of expeditious decision. In the complainant's case, no decision was issued during the entire ten-month period of his deprivation of freedom. This constituted a breach of Article 5(4) of the Convention.

The Court further found that the then wording of the Asylum Act was vague, did not provide sufficient protection and legal certainty against arbitrary interference into personal liberty and could not therefore serve as a sufficient basis for the complainant's deprivation of freedom. In particular, the Court referred to the fact that the Asylum Act did not permit detention of applicants for international protection in a place other than the transit premises of the international airport. The Court further shared the ombudsman's opinion according to which the Ministry's decision on the application for international protection must also be served on the applicant within the statutory time limit; it is not sufficient to only notify the applicant that the decision has been adopted and will be served on him later at a specified date. Due to the ambiguity of the Act, the applicant also failed to seek timely court review of the legality of his deprivation of freedom. This led to a breach of Article 5(1) of the Convention.

With regard to this judgment, we note that the establishment of the detached establishment of the admission centre in Velké Přílepy was criticized by the Report for 2006. One of the issues which were considered as problematic was the impossibility of effective and expedient review of the legality of deprivation of personal liberty.[29]

3.1.4 Notices filed against the Czech Republic with the Human Rights Committee

In 2008, the Committee issued five opinions criticizing the existence of citizenship as a condition for restitution (the notices of Preiss, Süsser, Vlček, Lněnička, Kohoutek). One notice was found to be inadmissible (Schmidl).

Four new notices were communicated to the Government in 2008; three of them criticize the restitution legislation (notices of Sudeten Germans whom the restitution laws deny the

[29] See Report 2006, chapter II.10.3.2.

possibility to recover property confiscated under presidential decrees) and unsuccessful attempts at restitution of property under Act No. 87/1991 Coll. The remaining notice concerns alleged discrimination, which consists, according to the complainant, in the fact that the remuneration obtained by him, as a convict serving a prison sentence, for work performed by him was lower than the minimum wage determined at the relevant period by applicable law.

3.1.5 Implementation of decisions of international controlling authorities in the Czech Republic

Issues relating to the respect of the right to family life in lawsuits between parents of minor children is resolved with an amendment to the Civil Procedure Code, which is discussed later in the chapter concerning disputes between parents.[30] *However, it will be up to the awareness of the judges, who should respond in time and with sufficient decisiveness to the resistance of a parent who prevents the child's contacts with the other parent in accordance with the regulation of contacts determined or approved by the court.* The results of evaluation of information provided by the Government to the Committee of Ministers about the execution of judgments in this field are now expected to be issued (this concerns not only Andělová's case but to some previous judgments).

The largest category of judgments awaiting implementation is comprised of cases of excessive length of judicial proceedings (see above). Further attention will have to be paid to the enforcement of the judgments in cases of Wallová and Walla and Havelka et al., delivered by the Court in previous years. They concern the undesirable practice of withdrawal of children from care of their biological parents, often without sufficient grounds, and their entrusting into institutional care.

The Constitutional Court responded positively to the judgment in the case of Smatana (September 2007), as regards the length of time spent in deciding on pre-trial detention in criminal proceedings and the right to damages for unlawful detention. On the one hand, the Constitutional Court adopted certain measures aimed at making these case visible among constitutional complaints, which would enable their more expedient resolution; on the other hand, it issued a unifying position of its plenum,[31] clarifying the relation between decisions on illegality (unconstitutionality) of deprivation of freedom and the relating right to damages and compensation of immaterial loss in accordance with the amended Act No. 82/1998 Coll.

In response to the judgment in D.H. et al. (November 2007), relating to the discrimination of Roma children by their placement in special schools, the Ministry of Education, Youth and Sports undertook to prepare and presented for the Committee of Ministers of the Council of Europe a draft action plan of measures which will lead to the elimination of the criticized practice. A number of these measures are already implemented and the Ministry works on the others. The prerequisite for setting guidelines for these issues is represented by statistical and methodological research, which has been commissioned by the Ministry.[32]

[30] Act No. 295/2008 Coll. See also Chapter II.8.4.
[31] File no. Pl. ÚS-st 25/08, in this respect see also Chapter II.3.2.2.1.
[32] Details of this research see Chapter II.8.2.

3.2. The Czech Republic's contribution to the promotion of human rights protection and democracy in the world

3.2.1. UN – Human Rights Council

In 2008, the Czech Republic was subject to the *Universal Periodic Review (*hereinafter the "UPR"). It is a mechanism by means of which the UN Council for Human Rights reviews once every four years the state of human rights in all UN Member States. The Czech Republic was subjected to this review in April and June 2008 in Geneva. The background documents for the UPR include the national report presented by the government of the relevant state, a report of non-governmental organizations and a report of the UN High Commissioner's Office (a compilation of conclusions of UN monitoring bodies).

The National Report of the Czech Republic, prepared by the Ministry of Foreign Affairs, contains information about the performance of voluntary obligations assumed by the Czech Republic during its candidacy to the Human Rights Council in 2006, the institutional safeguards of human rights protection in the Czech Republic, and about the implementation of significant recommendations of the treaty bodies, which assess the performance of international obligations of the Czech Republic in the field of human rights. The topics that are dealt with in the report include, for instance, the use of closed restraining beds, discrimination of minority groups, investigation of complaints against delinquent conduct of Czech police officers, domestic violence, trafficking with humans or exploitation of children, The above-mentioned reports were reviewed on 18 April 2008 by the Council's Working Group during an interactive dialogue between the Czech Republic and other UN Member States. The Czech delegation presented the National Report and responded to all questions and recommendations from participants in the UPR, which were focused mainly on the above-mentioned topics.

The Office of UN High Commissioner for Human Rights then elaborated a report describing the course of the session of the Council's Working Group and summarizing recommendations from individual UPR participants addressed to the Czech Republic. The report was published on 23 May 2008. Then, the Ministry of Foreign Affairs prepared again in cooperation the relevant ministries and with the Government Office a response of the Czech Republic to the recommendations.[33] The response, which was delivered to the Office of the UN High Commissioner for Human Rights in June 2008, describes measures taken or planned by the Czech Republic in areas covered by the recommendations, or explains that there is no reason to adopt any measure in the relevant area.

On 11 June 2008, the scrutiny of the Czech Republic was discussed by the plenary session of the Council. During this session, the Czech Republic responded to recommendations and provided supplementary information to its written response, particularly to the issues of discrimination of minorities, extremism, women's sterilization, trafficking in humans, the protection of children's rights or the use of cage or net beds in social and medical care facilities. Thereafter, the Council adopted by the consensual decision 8/115 UPR's recommendation for the Czech Republic, which comprise the report of the Council's Working Group, including responses of the Czech Republic to these recommendations.

[33] The report and the response may be found at the address: http://www.vlada.cz/cz/ppov/rlp/dokumenty/zpravy-plneni-mezin-umluv/univerzalni-periodicky-prezkum--54439/.

3.2.2. European Union

- Working Party on Human Rights

In 2008, the Czech Republic was actively involved in the formulation of EU human rights policy in the EU Working Party on Human Rights (COHOM). COHOM prepares EU positions for meetings of the Human Rights Council and for the 3rd Committee of the UN General Assembly, dialogues and consultations on human rights with countries outside the EU, the EU annual report on human rights and implementation of EU instructions against torture, against death penalty and concerning children in armed conflicts, human rights defenders and human rights dialogues. The Council of Ministers approved new instructions on violence against women and an amended version of the existing instructions. COHOM opened a dialogue with the African Union. The Council of Ministers agreed with the opening of the dialogue with Argentine, Brazil, Chile, Columbia and Mexico. A new COHOM's focus is democracy.

- Activities of the EU Agency for Fundamental Rights

The European Union Agency for Fundamental Rights (Fundamental Rights Agency, hereinafter the "FRA") published in the second year of its activities a number of reports from various human rights areas, such as a report on Muslim communities in Europe, the 2008 annual report, a report on violent attacks against the Roma in Italy and a report on homophobia in Europe.[34]

- Resolution of the European Parliament on the state of fundamental rights in the EU

The European Parliament discussed in 2008 a resolution on the situation of human rights in the European Union in 2004 – 2008.[35] The resolution contains almost 160 recommendations designated to improve human rights protection in the EU. A number of these recommendations is based on FRA's activities (e.g. safeguarding freedom of motion of registered partners, details see Chapter II.7.4.1.) The European Parliament appreciates FRA's work and stresses the need for a more active role of this agency in the legislative process in the EU.[36]

- Council Framework Decision on combating expressions of racism and xenophobia by means of criminal law

The Council of the European Union passed in November 2008 a Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.[37] The objective of this decision is to define common criminal law approach to racism and xenophobia. These acts should be considered as criminal offences in all Member States. At the same time, adequate sanctions for offenders from among individual and legal entities should be determined.

[34] See Chapter II.7.4.1
[35] Approved on 14 January 2009
[36] inFra newsletter, January 2009, available at www.fra.europa.eu.
[37] Council Framework Decision 2008/913/JHA of 28 November 2008.

- Draft Council Directive forbidding discrimination in the area outside employment and occupation

The European Commission approved on 2 July 2008 a draft Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. The draft supplements the existing legislative framework of protection against discrimination.[38] Hence, the objective of this new directive is to implement the prohibition of discrimination based on age, religion, disability and sexual orientation outside the field of employment, specifically in the area of supply of goods and services (including housing), social protection (including social security and medical care), social benefits and health care.

The draft directive evoked contradictory reactions in EU Member States. Protectors of human rights, particularly non-governmental welcomed the draft, criticizing at the same time the large number of exceptions, i.e. situations where discrimination is permitted. The majority of EU Member States welcomed generally the draft, but a number of them have taken a reserved approach. It can be said that its review in the EU Council[39] has been accompanied by disputations between supporters and opponents of antidiscrimination legislation. The draft is criticized for its vagueness and uncertainty of terms used by it. The Member States stress the importance of legal certainty and fear that an incorrect implementation of the directive in national law will result in a wave of complaints raised before the European Court of Justice. Another important factor is the division of powers between the Member States and the European Union to avoid any major interference of the draft into exclusive competencies of the Member States.

The position of the Czech Republic Government to the draft directive was formed for several months. At first, the coordinator[40] of the directive was the Office of the Minister for Human Rights and National Minorities,[41] which was prepared to support the draft in the EU. Later on, it was agreed that the coordination tasks would be assumed by the Ministry of Labour and Social Affairs, whose attitude to the draft is not so welcoming. Thereafter, the Government adopted a very restrained position to the draft. In general, it does not support the draft; according to it, the protection against discrimination is a task that should be entrusted to national governments.

However, the draft can be considered as positive from the human rights perspective. It is desirable to have a similar level of protection against discrimination in all Member States, if only because of the existence of free movement of persons – EU citizens should have a minimum guaranteed standard of equal treatment irrespective of the EU Member State where they are currently staying. Even today, we know that the existing antidiscrimination directives have been transposed by different methods in EU Member States (while the protection provided in a number of these states is more extensive than the protection required by these

[38] Taken from the EU perspective, the existing framework of protection against discrimination is comprised mainly by the following directives: Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

[39] This draft is reviewed by the Social Questions Working Party.

[40] All proposals presented by the European Union are allocated a national coordinator, i.e. a central state administration authority whose representatives are involved in the EU in the negotiations about the final shape of the legislation.

[41] Formally the Government Office – Human Rights Section.

directives, other states fail to fulfil the requirements of this directive); this indicates that the protection against discrimination differs for one state to another.

3.2.3 Transformation cooperation

Transformation cooperation consists of support for democracy and the defence of human rights in developing and transforming countries, as well as in undemocratic regimes where human rights are violated. It focuses on the creation and reinforcement of democratic institutions, the rule of law, civil society and good governance. It is implemented primarily via education projects, the dissemination of information, views and experiences of non-violent resistance to the totalitarian system, and the process of social transformation, as witnessed in the Czech Republic in the 1990s.

Transformation cooperation is geared toward countries of eminent interest under the Czech Republic's foreign policy (Belarus, Bosnia and Herzegovina, Georgia, Iraq, Cuba, Moldova, Myanmar, Serbia and Ukraine) and reflects trends in EU policy related to those countries. In 2008, a total of 50 projects of Czech nongovernmental institutions and separate activities managed by the Ministry of Foreign Affairs received funding totalling over CZK 44 million.

II. SPECIAL PART

1. FUNDAMENTAL CIVIL AND POLITICAL RIGHTS

1.1. Property rights

1.1.1. New proposed regulation of apartment leases

The Ministry for Regional Development prepared in 2008 an amendment to the Civil Code[42] relating to apartment lease.[43] This proposal strives to further improve the balance between the interests of tenants and property owners - landlords. Primarily, it directly stipulates the possibility that has been promoted for a long time by the Constitutional Court in its case law, i.e. the ability of both parties to turn, in case of a dispute, to the court, which will determine the rent in the rate that is common at the relevant place and time.[44] The court may so decide even in case of a substantial change of circumstances which would constitute gross disproportion in the rights and obligations of the parties.[45] If the tenant does not pay rent or other payments connected with the use of the apartment, the landlord may use for their payment a security deposit in the maximum amount equal to three times the monthly rent, which shall be paid by the tenant upon the conclusion of the lease agreement, unless agreed otherwise by the parties and provided that the claim has been acknowledged by the tenant in writing or adjudged by an enforceable court ruling.

The landlord's ability to control persons occupying the apartment and to regulate their number will also be expanded.[46] However, he will not be allowed to deny consent to the tenant's partner or child. The transference of the lease to third parties in case of the tenant's death requires the landlord's consent, unless the lease passes to closest relatives; however, even such lease is limited to two years, except in case of minors or older people.[47] In case of termination of the lease without a court ruling under Section 711 of the Civil Code, i.e. if the apartment is not used or in case of gross breach of obligations connected with the lease, the landlord will only be obliged to provide a shelter.[48]

The new draft of the Civil Code,[49] which represents a new consolidated regulation of private law, regulates the apartment lease in a manner similar to the manner described in the above amendment. The determination of the rent (unless agreed by the parties) will no longer be left to the decision of the court; but under the law, the landlord will bee automatically entitled to the rent in an amount that is common at the time and place of conclusion of the lease agreement in respect of a new lease of a similar apartment under similar conditions.[50] Rent will be increased as agreed by the parties or as proposed by the landlord; the maximum possible increase will be 20% per three years. If the tenant disagrees with an increase, the landlord may file within 3 months a petition to the court for an increase of the rent. The common amount of rent at the place and time will be identified in accordance with an

[42] Act No. 40/1964 Coll., the Civil Code, as amended.
[43] This amendment was approved by the Government in April 2009 and is currently being reviewed in the Chamber of Deputies (Release of the Chamber of Deputies No. 805)
[44] Section 696(2) of the draft Civil Code.
[45] Section 696(3) of the draft Civil Code.
[46] Section 689(1) of the draft Civil Code.
[47] Section 706 of the draft Civil Code.
[48] Section 711(3) and Section 712(5) of the draft Civil Code.
[49] The new draft Civil Code was also approved by the Government in April 2009 and is currently being reviewed in the Chamber of Deputies (Release of the Chamber of Deputies No. 835).
[50] Section 2085 of the new draft Civil Code, as approved by the Government and presented to the Parliament of the Czech Republic.

implementing regulation.[51] The rent can be also increased on the basis of improvements made by the landlord in the relevant apartment or building but for not more than 10% of such costs. *This provision contains a somewhat doubtful clause, which makes this increase conditional upon the consent of 2/3 and not all tenants.*[52] *It may be reasonably believed that the opinion of each tenant, i.e. whether he agrees with an increase of the rent of the apartment leased by him, should be respected. In any case, the landlord should primarily strive to agree with all tenants before making any structural modifications and should ensure their consent beforehand, including the method of covering of costs by all tenants. In case of a cooperative or an owners association, this issue can be resolved by creating a repairs fund or another similar institute.* The draft also sets out the amount of security deposit (increased to the maximum of 6 monthly rent amounts) and the conditions of increase of persons living in the apartment, as well as the passage of the lease in a manner similar to the manner stipulated in the previous draft.

1.1.2. Complaints lodged by house and apartment owners with the European Court of Human Rights

The Government's opinion on the admissibility and justification of four selected pilot complaints[53] was described in the Report for 2007.[54] In May 2008, the Government received the complainants' comments on this opinion, together with a response of the Civic Association of Owners of Houses, Flats and Other Real Estate in the Czech Republic, which acts in the proceedings on the complainants' behalf. In the meantime, the complaint no. 11163/06 – Vladislav Hlaváček and Václav Hlaváček *v.* Czech Republic was struck out from the docket by a decision dated 25 March 2008, because the complainants no longer insisted on its further review. The review of the complaint no. 11179/06 – Oskar Morawetz *v.* Czech Republic was suspended due to the complainant's death. It is now fully at the ECHR's discretion to decide what further steps to take in this case.

1.1.3. Finding of the Constitutional Court in re Schwarzenberg Tomb

A very interesting decision regarding not only ownership rights but also private and family life is the judgement[55] relating to the long-term dispute between Elizabeth Petzold and the Czech Republic about the property of the Hluboká branch of the Schwarzenberg family. This time, the object of the dispute was the Schwarzenberg family tomb in Třeboň-Domanín. Unlike the previous decisions focused mainly on the confiscation under the "Beneš Decrees" or under Lex Schwarzenberg (No. 143/1947 Coll.), the Constitutional Court resorts in this case to a broad application of human rights related arguments.

In its judgement, the court concluded that the complainant's right to respect of private and family life under Art. 10(2) of the Charter and Art. 8(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms had been breached, "*Hence, the scope of interpretation of the notion of family life is based primarily on social experience, which may*

[51] Section 2088 of the new draft Civil Code, as approved by the Government and presented to the Parliament of the Czech Republic.
[52] Section 2089 of the new draft Civil Code, as approved by the Government and presented to the Parliament of the Czech Republic.
[53] Jan Vomočil *v.* Czech Republic (No. 38817/04), Oskar Morawetz *v.* Czech Republic (No. 11179/06), Vladislav Hlaváček and Václav Hlaváček *v.* Czech Republic (No. 11163/06) and Art 38, a.s. *v.* Czech Republic (No. 1458/07)
[54] See Chapter II.1.1.1. of the 2007 Report.
[55] Judgement file no. I. ÚS 2477/08 of 7 January 2009.

be subject to change in the course of the development of the society. It can be clearly stated that the family and family life represent a community of persons linked by biological, emotional and implicitly also by property ties; this represents not only the set of ties maintained among living individuals but also ties transcending human life …. An indisputable part of the right to family life is thus also the relation of a living family member to his deceased ancestors, whose typical and socially provable content is the respect to the memory of ancestors, or the requirement of reverent treatment of ancestors …In other words, family life includes undoubtedly the manner of treatment of deceased ancestors, the form of depositing their remains and the place where the remains are placed".[56]

According to Art. 8(2) of the Convention, the right to family life may only be restricted for the sake of national security, public safety, the country's economic welfare, prevention of unrest and crime, the protection of public order, health or morals, or for the protection of the rights and freedoms of others. The Constitutional Court did not find any such reasons in the confiscation of the tomb. Moreover, the private nature of the structure disallows classifying it as agricultural or other economic property defined by the Confiscation Act, because such interpretation would interfere into the respect to family and private life. The Constitutional Court indicated properly in this case that human rights must be also respected in controversial causes with political background.[57]

1.1.4. Enforcement issues

The "small amendment" to the Rules of Enforcement[58] has enhanced supervision over the enforcement activities, carried out by the Ministry of Justice and by the Chamber of Executors, specifying and expanding powers of the supervisory bodies and the corresponding duties of executors to provide necessary assistance to these authorities in the exercise of their supervisory activities. A particularly important material factor is the abolishment of the executors' confidentiality obligation towards the Ministry of Justice, which was superseded by the duty to present, within a stipulated time limit, the execution file, to provide a written statement or (upon summons) an oral explanation of the relevant matter.

A "medium-term" amendment of the Rules of Enforcement was prepared in 2008. This amendment is necessary with regard to the increasing number of executions, which is related, among others, to the increasing number and popularity of consumer loans. This amendment imposes new duties and restrictions on executors and enhances supervision over their activities. The objective of this amendment is to increase the quality of activities performed during the enforcement proceedings and to impose strict supervision over the executors, to transfer to the executors administrative activities not related to decision-making which

[56] See paragraphs 35 and 36 of the judgement and the relevant references to literature and to the case law of the European Court of Justice (the judgment of 17 January 2006 in Elli Poluhas Dödsbo *v.* Sweden).

[57] It has to be noted that the Constitutional Court did not review the decision relating to the direct determination of ownership of this object (the Schwarzenberg Tomb), but only to its inclusion in the estate of the last owner Dr. Adolf Schwarzenberg, which would be then the object of probate proceedings. According to the Constitutional Court, the plenum's opinion file no. Pl. ÚS - st. 21/05 (no. 477/2005 Coll.) will not apply here as well, because it does not concern the issue of respect to private and family life, but solely property issues. Based on this judgement, the District Court in Jindřichův Hradec decided on 24 February 2009 that the tomb is a part of the estate, This judgment has not yet become final and effective.

[58] Act No. 120/2001 Coll. on Court Executors and Enforcement Activities (Rules of Enforcement) and on the Amendment to Other Laws, as amended. The amendment was implemented by Act No. 347/2007 Coll. and became effective on 1 January 2008.

represents a burden for the courts,[59] and to simplify ordering executions in order to increase creditors' protection against defaulting debtors. These changes should further contribute to the expediency of enforcement proceedings, resulting in a more effective and quicker collection of receivables (debts) without breaching or endangering the rights of the obligor (defaulting debtor). At the same time, the amendment makes sure that the obligor is not unreasonably affected during the execution and that his fundamental rights are protected.[60]

Another amendment to the Rules of Enforcement, which is currently under preparation, would enable the Ministry of Justice to supervise the activities of the Chamber of Executors. This amendment enables the Ministry to suspend the effects and enforcement of an order, decision or other measure taken by the Chamber if it finds a conflict with the law or another regulation. The amendment also introduced an administrative offence of the Chamber of Executors, which is committed by the Chamber by breaching a duty stipulated by the Rules of Enforcement. Finally, the amendment entrusts supervisory powers to the presiding judge of the district court within whose jurisdiction the executor has been appointed or to the presiding judge of the district court which has commissioned the executor with the performance of the execution.

The crucial and must urgent practical problems include, in particular, the considerable extent of arbitrariness manifested in dealings with executors, where communication and possibility to inspect the file are totally ruled out in some case. Other problems include the delay in launching the central register of executions (which will become unavailable to a number people due to the fees that are to be imposed on its use), and frequent errors in designating and disposal of the obligors property in case of executions of movable property, where the property of third parties is often wrongly marked and seized, even in cases where it is quite evident that such assets provably belong to third parties. The absence of an effective controlling mechanism in the form of a sanction apparatus in case of detection of any breach of the law results in frequent abuse of the obligation of confidentiality serving to frustrate the investigation or verification of suspected criminal activities of the executors and employees of executor offices, where the Chamber often refuses to withdraw the obligation of confidentiality, thus preventing the investigation of criminal activities not only within its profession. As regards property disposal, no time limits for payment of enforced performance have been set and there are also problems with surrender of interest on funds administered

[59] From the perspective of the right to a fair trial, the amendment contained problematic shifts of competencies from the courts to executors, where the courts were to commission the executors with the performance of the execution and such commissioning would not represent a decision of the court. The transfer of decision-making powers from the courts to the executors went even farther, and the executors were to assume judicial powers which had been reserved to independent judicial powers (only with the exception of postponement or staying of the execution and striking out things from the list). Upon recommendation of the Legislative Council of the Government, the Ministry of Justice modified the amendment and returned some powers back to judges. The amendment was approved by the Government in April 2009 a and is now reviewed by the Chamber of Deputies (Release of the Chamber of Deputies No. 804)

[60] According to the proposed amendment to the Rules of Enforcement, filing an exscinding action by a beneficial owner of the thing included in the list would only follow after the executor's dismissal of such person's application to strike out the thing from the list. Moreover, the proposed amendment grants to third parties the right to inspect the execution file, which would enhance their procedural position. Until now, it has been difficult for them to identify the entitled party and to find against whom to file the exscinding claim. The pitfall of such exscinding action lies in the fact that the executor need not learn about the action and may thus sell the thing that is the object of the proceedings. This could be prevented by a change of passive legitimacy (it would be the executor who would be sued), and by imposing on the court the duty to notify the executor that an exscinding claim has been filed. This requires including in the Civil Procedure Code a provision stipulating that the auction of movable things may not be held until the issue of the decision on the exscinding claim (as stipulated expressly by the law in case of sale of real estate and the enterprise).

temporarily by the executor, with possible fraudulent handling of the execution costs and fraud in the organization of auctions, which are often held almost secretly and confiscated things are sold there much cheaper than their actual price, and last but not least the failure to comply with the principle of proportionality stipulated by the law, where the executors seize property of a much higher value than the debtor's debt. Non-governmental organizations frequently encounter problems appearing at the end of execution, when the debtor is not informed that the execution has ended and his account, real estate and other objects remain blocked, etc. These problems will have to be resolved in cooperation with the Ministry of Justice. [61]

The principal problems with the performance of executions are summarized in the Motion of the Czech Republic Government Council for Human Rights on executions, which was adopted by the Council in February 2009.[62]

1.2 Right to privacy and its protection

Several technical novelties that were developed in 2008 affected directly the right to privacy and the related personal data protection.

1.2.1 Electronic identity card

New electronic identity cards should have a machine-readable zone containing personal data; another option is represented by electronic contact chips. These identity cards can be used in electronic communications with basic registers and other public administration information system. A person will be allocated a personal security code for communication with public administration information systems, which is to prevent misuse of the card. Identity cards without machine-readable data will remain in force alongside the new cards, but with the maximum 6 months' validity. The number of published data in new identity cards should be limited to the name(s), surname, sex, nationality, date, place and district of birth and data concerning the identity card itself. Hence, the birth identification number will no longer appear in such card. The proposed change will reduce the currently frequent need to replace the identity card in case of a change of any recorded data, which has represented an unnecessary burden for both citizens and the state budget.[63] It is expected that the introduction of the electronic identity card will also increase the protection of citizens in case of loss or theft of this documents.

1.2.2 Basic registers

A new element of the electronization of the state administration is represented by the "basic registers".[64] These new information systems will allow the establishment of a unified,

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[61] A paper of the non-governmental organization Iuridicum Remedium, o.s., www.iure.org.

[62] See http://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-26--unora-2009-54800/.

[63] The introduction of identity cards is the object of the current legislative proposal, which is to become effective as of 1 July 2010 and is now reviewed and approved in the Chamber of Deputies under the Release of the Chamber of Deputies No. 714/0, which has been ordered in the second reading held at the time of the preparation of this Report (March 2009) to be reviewed by the Committee for Public Administration and Regional Development.

[64] The bill on basic registers was approved by the Chamber of Deputies in February 2009 and was referred to the Senate - Release of the Chamber of Deputies No. 598/3, Release of the Senate No. 33. It was approved by the Senate in March 2009, was signed by the President of the Republic and was published in the Collection of Laws under No. 111/2009 Coll. The expected effective date of the acts establishing the registers is 1 July 2010.

mutually linked and comprehensive system, which will allow drawing and sharing data about natural persons and legal entities and their rights and obligations vis-à-vis public administration from a single relevant data source, which will be reliably and transparently updated, with the appropriate security level of the work with such data. Data included in basic registers that will be marked as reference data will be deemed correct (unless the opposite is proved) and the public authorities will no longer have to check their validity and accuracy, or to require their confirmation from the affected persons (reference data will be endowed with the presumption of accuracy).

Data security will be safeguarded by a system of individual indicators – every natural person will be allocated a numerical code (the "source indicator"), from which further (agenda) indicators will be derived for each agenda, i.e. for each public administration activity where the relevant person is involved. Since the person will be identified by a different indicator in each agenda, it will be technically impossible to put together without authorization various data concerning any person. However, the bills on basic registers do not eliminate the birth identification number (which will be used as another indicator in individual agendas and its importance will be gradually "downsized").

Four basic registers will be created: the basis population register, the basic register of legal entities, business persons and public authorities, the basic register of territorial identification, addresses and real estate and the basic register of public authorities and certain rights and obligations.

The population register will maintain reference data about citizens of the Czech Republic and foreigners with long-term or permanent residence permit in the territory of the Czech Republic, about EU and EEC citizens staying here for more than 90 days, persons residing in the Czech Republic after being granted asylum and other persons defined by the law. The population register will be administered by the Ministry of the Interior and will be the only register that will not be accessible to the public due to the protection of personal data. However, natural persons will be able to obtain access to data maintained with respect to them based upon an application filed electronically, by letter or in person at a public administration contact point (CZECHPOINT). *In this respect, it will be necessary to monitor whether the access conditions are not too complicated for some groups of the population (e.g. for older people), namely with regard to the form of their valid identity documents.*

1.2.3 Interception

The existing provisions of Section 88 of the Criminal Procedure Code did not specify the terms for permitting interception and recording the telecommunication traffic; a reasonable expectation that the interception will disclose facts relevant to the criminal proceedings was sufficient for this purpose. In addition to this presumption, an emphasis is put now[65] on the principle of adequacy and restraint, i.e. the us of this operative and tracing means will only be possible if the desired purpose cannot be achieved otherwise or if its achievement is substantially more difficult. The reasons for a motion to issue an interception order must state specific circumstances of the case which justify the issue and duration of such order. Another change is the shortening of the interception period from the current six to four months. Under

[65] The new amendment of interception regulations was implemented by Act No. 177/2008 Coll. amending Act No. 141/1961 Coll. on Criminal Court Procedure (the Criminal Procedure Code), as amended, a Act No. 127/2005 Coll. on Electronic Communications and on the Amendment to Certain Related Laws (the Electronic Communications Act), as amended.

the new legislation, the police authority is obliged to assess the interception on an ongoing basis and to examine whether the reasons for interception still exist. A substantial change is the duty to subsequently notify the tapped persons of this fact, enabling them to file directly with the Supreme Court a motion for review of the legality of interception and recording telecommunications traffic. It is at the absolute discretion of the citizen whose rights have been interfered into by the state whether he will exercise this right. Based on the results of scrutiny by the Supreme Court, he may elect further steps, including an application for satisfaction in money for the immaterial loss, if the Supreme Court finds that the conditions stipulated by the law for the issue or an order for interception and recording of telecommunications traffic have not been met.

During the preparation and approval of this Act, an extensive discussion took place in the Constitutional Committee and the Security Committee of the Chamber of Deputies, particularly with regard to the abolishment of the possibility of interception with the consent of the user of the relevant telephone station. Finally, a compromise was adopted, according to which the interception with the user's consent can be used only in connection with specifically enumerated criminal offences (violence against a group of citizens and against an individual, kidnapping, trafficking in children, extortion, restriction of personal freedom), because such offences are not classified by the Criminal Code as especially serious offences[66] (where the interception may be ordered by the court during their investigation), and there may be a general interest in the use of interception during the investigation of those crimes, particularly with regard to the interests of their victims. A significant change consists in the fact that such consent with interception is no longer granted only by the subscriber of the telecommunications service, i.e. the person who has concluded a contract on its provision[67], but directly by its specific user at the specific moment when the call takes place.[68] *Hence, it can be said that the protection of privacy has been increased in this situation, because every person will be able to say whether he agrees with interception of his calls, and will not be bound by the consent of the person using the relevant telephone station under a contract with the service provider.*

The regulation of interception has been also significantly affected by an amendment to the Criminal Procedure Code[69] relating to disclosure of information about criminal proceedings. The disclosure of this information has been restricted for the sake of protection of the defendant, witnesses, victims and enjoined parties (particularly minor victims in case of such offences as pandering or dissemination of child pornography). It is prohibited to publish any information that would allow identification of the victim and which has not yet been used as evidence in criminal proceedings. This prohibition applies to law enforcement authorities and other persons to whom the information about criminal proceedings has been provided. The only exception is the possibility to "*publish the information to the necessary extent solely for search for persons or for achievement of the purpose of criminal proceedings*" or a written consent of the relevant person.[70] The special provisions of the new Section 8c of the Criminal Procedure Code expressly prohibits publishing interception or records of telecommunications traffic or information obtained by tracking persons or things under the Criminal Procedure

[66] Section 41(2) of the Criminal Code defines especially serious criminal offences as "offences defined in Section 62 and those premeditated crimes punishable by this Act by a maximum term of imprisonment of at least eight years."
[67] See Section 2(a) of Act No. 127/2005 Coll. on Electronic Communications, as amended.
[68] See Section 2(b) of Act No. 127/2005 Coll. on Electronic Communications, as amended.
[69] Act No. 52/2009 Coll. passed in February 2009.
[70] The new Section 8b(3) and (5) of the Criminal Procedure Code, as amended of Act No. 52/2009 Coll. The major protection is focused on the victim

Code.[71] In this respect, a new administrative offence, "Prohibition of publication of personal data stipulated by another law", has been incorporated into the Personal Data Protection Act[72] and is punishable by a fine of up to 5 million CZK.[73] Section 178 of the Criminal Code relating to the unauthorized disposal of personal data has also been re-worded. According to the amendment, all unauthorized disposal of personal data must "seriously prejudice the rights or justified interests of the person".[74] Hence, an act demonstrating otherwise the characteristics of an offence which does not cause a serious detriment should not be handled as a criminal offence.

Whilst the current amendment increased the protection of identity of victims and alleged offenders, it also provides an opportunity to organize interception in accordance with the law. Some experts on the protection of privacy warn that the amendment may interfere excessively with the right to information and freedom of speech. Sanctions imposed under criminal law will depend primarily on the judicial interpretation as to which specific acts will "seriously prejudice the rights or justified interest of the person" and will thus be criminal offences. In case of prohibition of interception under the Criminal Procedure Code, the publication will be prosecuted as transgression under the Personal Data Protection Act, unless it meets the characteristics of a crime. The issue here concerns fines imposed by the Personal Data Protection Office and whether their amount will be adequate with regard to the circumstances of the case or whether it will be too restrictive.

1.2.4 Human rights and technology

A number of modern technologies and activities resulting from them may bring around a risk of interference with the right to protection of privacy. The use of modern technologies by the state and often also by private entities may lead to unjustified interference into individual privacy.[75]

1.2.4.1 Opencard

The Prague City Hall announced in 2008 its plan to add to the contactless chip card called Opencard the function allowing it to be used as an electronic ticket in Prague integrated transport means and in suburban lines as the sole alternative of the annual public transport season ticket. *Since the City Hall did not offer an anonymous version of this card, this situation provided real possibilities to misuse the opencard for blanket monitoring of the movement of its user in the Prague integrated transport structure and to track other habits and behaviour of Prague residents or visitors. According to the findings of the civil association Iuridicum Remedium, the security of the personal data stored in the opencard's hybrid chip was totally insufficient and the cardholder's name, surname, sex and date of birth could be read by a readily available online device. Moreover, the terms stipulated by the Prague City Halls are very unfavourable potential cardholders. A person wishing to obtain such card is ultimately obliged to provide personal data and to grant subsequent consent with their processing to an extent that is unprecedented in the existing provision of the Prague integrated transport services.* All data regarding the use of applications, such as library

[71] Section 88, 88a and 158d(2) and (3) of the Criminal Procedure Code.
[72] Act No. 101/2000 Coll., as amended.
[73] Section 44a and 45a of Act No. 101/2000 Coll., as amended by Act No. 52/2009 Coll.
[74] This condition is also set out in the new Criminal Code No. 40/2009 Coll. - Section 180.
[75] Prepared on the basis of materials provided by Iuridicum Remedium, o.s., www.iure.org.

borrowings, transit controls or parking payment, may be ascribed by the administrator of the database containing these persona data to specific persons.[76]

The Prague City Hall launched on 17 December 2008 the sale of anonymous cards, whose users need not state their personal data and consent with their processing as a condition for the issue of the card. However, those "transferable coupons" are sold at a fee of 200 CZK and with a significantly higher price for the public transport seasonal ticket. *Thus, people wishing to purchase an opencard will have to pay in future an extra fee for the protection of their privacy.*

1.2.4.2 CCTV systems

The area of monitoring systems lacks legislation that would define the admissibility of such systems as regards proportionality and the possibility to achieve the same purpose with other, less invasive means. There is no regulation that would consider the proportionality aspect also in relation to security. At the same time, there is no regulation determining the time limit and other terms of keeping of the obtained data. Therefore, the Government Council for Human Rights adopted last November a Motion for Regulation of the Use of Monitoring Systems.[77] If approved, this proposal would allow the operation of these cameras by private entities only for the purpose of protection of their own and their close persons' property; a public authority would be allowed to make such records only in matters of public interest and for a purpose defined by the law. This motion also sets obstacles to excessive processing of personal data and imposes at the same time a duty upon CCTV systems operators to inform about the existence of the system at the place where it is located. Another objective of his motion is to introduce strict regulation of keeping of records and the duty to explain and to document in writing the purpose of installation of each specific camera system by the police or another security force.[78]

The introduction of monitoring systems in connection with highway toll collection has to be considered a risk with regard to the protection of privacy and personal data. This system processes data about all passing vehicle and identifies only subsequently the relevant vehicle. Moreover, even this differentiation will be eliminated after the introduction of highway toll for smaller vehicles. Hence, it depends only on the relative security level whether these data, mapping in real time (on-line) and in the digitized form the movement of vehicles and persons throughout the territory of the Czech Republic, are or can be further used (whether legally or illegally) or misuses. *Thus, blanket screening, immediate recording and digitalization of information about movement of persons, carried out by state administration or private entities, represents a serious threat to and interference with personal rights guaranteed by the constitution.*

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[76] In connection with opencard's deficiencies, the civil association Iuridicum Remedium initiated at the beginning of September 2008 a petition demanding the introduction of a multifunctional chip card – opencard – which will no longer require the provision of personal data and which will be issued under the same, i.e. non-discriminatory terms as the existing card, the deletion of personal and user data concerning opencard holders form the central register and last but not least the compliance with the database administrator's duty and enabling the deletion of user information about persons who apply for such deletion. The petition included an application for introduction of an anonymous opencard version for the same price as the non-anonymous versions, whose counterparts are commonly used in other EU Member States.

[77] The motion is available at: http://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-28--listopadu-2008-54794/.

[78] As of the elaboration date of this Report, the motion is reviewed by the Government.

The Office for Personal Data Protection has begun to resolve the issue of section control of vehicle speed by means of camera systems with their blanket processing of personal data of all persons by means of digitizing the licence plate and photos of persons in the vehicle. The Office has begun to ask from the operator (the City of Zlín, followed by Prague) a change of the technology (sequences, organization) used in the processing of personal data to avoid storing the data of persons who did not breach traffic laws are not kept.[79]

1.2.4.3 Transfer of flight passenger data (PNR)

The Passengers Name Records – PNR serve primarily for the purposes of airline companies. Following the terrorist attacks of 11 September 2001, there appeared an increasing demand addressed to the airline companies providing transport to or from the United States or across the US territory to submit to the US authorities online the data gathered about their passengers.

After complicated negotiations, the presiding EU Member State presented in June 2007 a draft agreement between the EU and USA. Comments on Czech Republic's behalf were provided by the Office for Personal Data Protection. According to it, the draft worsens the level of personal data protection in comparison with the previous arrangements; US authorities are granted arbitrary access to personal and sensitive data of millions of people without guaranteeing elementary rights, such as the right to correct false data, notification of the processing of such data, and other. The new PNR agreement between the EU and USA was opposed in November 2008 by members of the European Parliament, which is not a party to the ratification process. The agreement did not find support in the Foreign Affairs Committee of the Chamber of Deputies and in the Standing Committee of the Senate of the Czech Republic for Protection of Privacy. *The Committee for Foreign Affairs, Defence and Security recommended ratification of the Agreement and the Senate approved its ratification on 4 June 2008. Moreover, this doubtful US practice has inspired the EU, which intends to enact the right to monitor flights of all Europeans*.[80]

The elaboration of a proposal to use flight passenger data for combating terrorism and crime in the EU was incorporated in the Hague Programme of the development of the area of justice and home affairs as early as in 2004. In the meantime, programmes using PNR against terrorism have been implemented by such states as Denmark, United Kingdom, Canada or Australia. The Commission prepared a proposal of a framework decision on the use of PNR in flights from and to the EU in 2007. The proposed framework decision was declared by the European Parliament in November 2008 as insufficiently legally substantiated; therefore, potential conflicts of this proposal with the European Convention for the Protection of Human Rights and Fundamental Freedoms, the EU Charter of Fundamental Rights and with the Convention of the Council of European No. 108 on protection of personal data cannot be ruled out. However, the European Parliament did not submit a formal dismissing opinion.

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[79] Prepared on the basis of a contribution by Otevřená společnost, o.p.s. www.otevrete.cz

[80] The proposal for a Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes {SEC(2007) 1422} {SEC(2007) 1453} * COM/2007/0654 final - CNS 2007/0237 */ http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0654:CS:NOT . See also the Opinion of the European Data Protection Supervisor at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008XX0501(01):CS:NOT and the opinion of the EU Agency for Fundamental Rights (FRA) at http://fra.europa.eu/fraWebsite/attachments/FRA_opinion_PNR_en.pdf

1.3 Right of access to information

In its precedent ruling, the Supreme Administrative Court concluded that state controlled legal entities are obliged subjects (i.e. subjects obliged to provide information) even under the current law, and it is therefore unnecessary to amend the law, as anticipated and as ordered formerly by the Government to the Ministry of the Interior. [81] *Therefore, it will be necessary to monitor how this judgment will be reflected in the approach of various institutions that have refused until now to provide information, such as city transport services, housing service or municipal service companies and others, notwithstanding their legal form (joint stock companies, limited liability or public benefit companies or other). The Ministry is currently analyzing possibilities to make a more extensive amendment to the Act on Free Access to Information, including the establishment of the institute of an "information commissioner" (an analogy to the Public Protector of Rights, who will focus on access to information)* [82] *a and to unify both Acts on Access to Information into a single legislation.*[83] *The preparation of potential changes is under way and if the Ministry proposes specific legislative changes, this legislation will also incorporate the Motion of the Government Council for Human Rights to issue a generally binding regulation on the publication of certain internal regulations of the obliged parties.*[84] *This Motion proposes to enact a new duty under which the obliged entities are to publish internal regulations which further specify and describe the performance of their administrative activities and have an impact on third, unsubordinated parties, whether natural persons or legal entities. The objective is to provide a possibility to be familiar with internal regulations which further specify in accordance with the law the rights and obligations of third parties outside the relevant entity.*

There are still cases where the authorities unlawfully deny the provision of required information. For instance, the City Hall in Karlovy Vary effectively blocked for a year and half the access to information on the performance of the state construction supervision (a total of six requests for such information were rejected). For this purpose, the City Hall made use of the possibility to issue in lieu of an abolished defective decision another decision, which was also defective. In one case, this procedure was repeated almost identically six successive times. In another case, the Czech Trade Inspectorate refused to public the information about results of control of gasoline quality at fuel station and has not changed its opinion despite the ombudsman's opinion and the pressure from the part of the media and non-governmental organizations. The matter will be resolved by the court. In cases of requests to inspect contract with suppliers, the obliged subjects invoke contractual secrets (e.g. in the case of Kapsch – Ministry of Transport). The statistics of lawsuits concerning information shows an excessively high number of cases (ca 95%) where the right is on the applicant's side and refusal of information is unlawful. Moreover, some information has been disclosed only partially despite a court order (e.g. the case of the Russian debt and the Ministry of Finance *v.* Respekt magazine). The knowledge of officials concerning provision of information is still insufficient.

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[81] See the judgment of the Supreme Administrative Court of 29 May 2008, ref. no.. 8 As 57/2006 - 67, www.nssoud.cz The court designated The Soccer Club – a joint stock company of the city, as an obliged subject and provided its opinion on other key issues: the broader notion of the term "state", which encompasses self-government units, the obligation of businesses established by municipalities and regions to fulfil public needs and "not to behave privately, even if they manage their own business income.

[82] This is an independent authority promoting this right by analytical, methodological and enforcement means, like in the UK or Germany.

[83] The second law is the Act No. 123/1998 Coll. on Right to Environmental Information, implementing Art. 35(2) of the Charter

[84] The Motion was approved by Government Resolution No. 1334 of 3 November 2008.

Obliged subjects often breach other duties arising under the Act on Free Access to Information. A part of the general right to information is to be implemented through a defined category of information which is to be disclosed by public authorities, particularly on the Internet. *These duties are fully complied with by only a part of the ministries. A major part of central state administration authorities and a major part of territorial self-government units fail to fulfil such duty even to a satisfactory extent. For instance, the duty to publish information that has been provided once to applicants is fulfilled only rarely*.

Even basic information on the life of municipalities and regions, such as minutes and records of meetings of the assemblies, or agreements concluded by municipalities for the implementation of public contract, is often denied. For instance, Karlovarský Region refuses to provide to assembly members audio recordings of the meetings of this assembly. *This defective opinion has been also confirmed by the Ministry of the Interior*.[85]

Another problematic issue is the access to information in administrative proceedings based on certain special laws, where the right of access to information is restricted without legitimate reasons sometimes even to the party whose rights and obligations are being decided.

The right to comment on all background materials for the issue of an administrative decision is one of the key procedural rights of the party to administrative proceedings. If such party wishes to defend effectively its rights, it must also have a possibility to make copies of such background materials so that it can review them at home or consult them with an expert on the relevant problems. This is hindered by the provisions of certain laws [e.g. by the second sentence of Section 168(2) of the Building Act (Act No. 183/2006 Coll. as amended), or Section 23a of the Asylum Act (Act No. 325/1999 Coll., as amended)]. If the party has the possibility to inspect the contents of the file, there is no reason for not issuing to it a copy of the documents inspected by it. Arguments about possible misuse of copies are somewhat peculiar, because documents containing information whose misuse could result in the frustration of the purpose of proceedings or in the prejudice of another party's rights should not be made available to the parties for inspection (because even the inspection of such documents could be misused).

This issue has been dealt with for a long time by the ombudsman, who recommended to the Chamber of Deputies in his summary report for 2008 to ask the Government for the presentation of an amendment to the Building Act and the Asylum Act which would fully guarantee the rights of parties to the proceedings to make copies of ¨documents on record.

1.4. The right to disseminate information

A serious national problem in the area of freedom of speech continues to be the phenomenon of "city hall periodicals", i.e. printed media published by municipalities and regions. *These communication media, which are passed as public,*[86] *are demonstrably subject to large-scale censorship, whether direct or indirect.*[87] For instance, the city management of Karlovy Vary refused repeatedly to include in the newsletter appropriately extensive information presented for publication by the club of opposition members of the assembly, even in the form of a paid

[85] Contribution of Otevřená společnost, o.p.s. www.otevrete.cz.
[86] A qualified estimate of Otevřená společnost, o.p.s., amounts to 400 million CZK a year.
[87] See the survey of Oživení o.s. and Otevřená společnost o.p.s.: City-hall Newsletters without Censorships, 2006.

ad. *At the same, the newsletter is misused for unilateral promotion of single local political group. This results in a breach of free competition of political forces and of freedom of speech in conjunction with unequal access to public sources. Another breach of the freedom of speech is represented by a number of cases where public authorities assign advertisement with selected media in exchange of an accommodating attitude of these media to the activities of such authority.*

1.5. Freedom of assembly

Several problematic events occurred in 2008 in the area of implementation of the freedom of assembly. Their common factor was represented by their organizers, who originated from among the ranks of various extremist groups, and by the related conflict between the exercise of the assembly right and freedom of speech and the right to protection of personality, respect to social differences and rights of national and ethnic minorities. A march of right extremists for freedom of assembly and freedom of speech, which was to be held in Plzeň on 19 January 2008, was forbidden by a decision of the mayor of the statutory city of Plzeň. However, this decision of the mayor had to be abolished by the Regional Court in Plzeň for conflict with the law;[88] therefore, the march was held at a substitute date, i.e. on 1 March 2008 with the participation of more than 200 extremists. Several hundreds of opponents protested against this march.

The second major assembly was held in Litvínov on 18 October 2008. This assembly was convened by the Workers' Party as a "protest against Gipsy terror", and the Workers' Party presented it as a mere civic protest of people dissatisfied with the situation in Litvínov. The assembly was not notified and was attended by 350 extremists and several hundreds of local citizens. After speeches of the representatives of the Workers' Party, the city mayor dissolved the assembly. An intervention of the Police of the Czech Republic resulted in an altercation with representatives of the Workers' Party, which were supported by local inhabitants, dissatisfied with the situation in the locality.[89]

1.5.1. Problems with gatherings in support of extremism

The Parliament of the Czech Republic passed in 2008 an amendment to the Act on the Rights of Assembly,[90] which enacted a stricter prohibition of covering the face in a manner hindering identification of the participant of the assembly. This probation applies now to the entire course of the assembly (not only to the time of police intervention). This means that an assembly whose participants will be disguised may be dissolved and its participants may be penalized for breach of their duties by a fine of up to 10,000 CZK. *Due to its a priori criminalization of disguise at assemblies, such provision might represent an excessive interference with freedom of assembly. Therefore, the Government Council for Human Rights approved in February 2009 a motion for re-introduction of the prohibition of disguise only*

[88] See the judgment of the Supreme Administrative Court of 21 February 2008, ref. no. 2 As 17/2008 - 77, www.nssoud.cz. The grounds for the abolishment of the decision was the failure to comply with the statutory time limit for possible ban of the assembly and lack of competence of the City Hall of Plzeň to issue this prohibition, because the competent authority was the Authority of the City Part Plzeň 3, which did not issue any such prohibition within the statutory time limit.

[89] See also the chapter dealing with racial discrimination.

[90] Act No. 84/1990 Coll. on the Right of Assembly, as amended. Its amendment, implemented by Act No. 274/2008 Coll., became effective since 1 January 2009.

during the police intervention.[91] Under a new provision, an assembly may also be dissolved of the participants bear weapons.

The existing statutory regulation of the right of assembly is often considered insufficient by municipal authorities with regard to an ever-increasing number of radical movements. This relatively widespread opinion is reflected in recent decisions of municipal authorities prohibiting notified assemblies, which enjoyed major attention of the media. However, most of these decisions were subsequently abolished by administrative courts, and this procedure was upheld in most cases by the Supreme Administrative Court. The reasons of such bans include concerns of the municipal authorities regarding assemblies of extremist movements held within their jurisdiction. Out of fear of such assemblies, municipal authorities issue insufficiently substantiated bans. In such case, the person deciding on such prohibition infers from various circumstantial evidence that the notified purpose of the assembly is only a smokescreen or is false and that the assembly is actually held for a different purpose, which promotes in such cases a form of anti-democratic appeal. The authorities most often derive such conclusions from the characteristics of the convening person or his representative, who is often linked to extremist or neo-Nazi parties. The authorities rely in their allegations on past experience with such persons, on Internet portals presenting such movements or on the statements of police authorities.

The right of assembly belongs to any person and may be restricted only on legal grounds. Hence, it is impossible to infer from mere membership of any grouping that such person has different plans with regard to the assembly and to anticipate his/her behaviour without having any other evidence of such facts. A notification of an assembly has to be viewed in its entire context, taking into account the relevant circumstances. Special caution should be exercised in the examination of the purpose of the assembly. In the past, the municipal authorities were not sure whether to examine only the purpose of the assembly stated in the notification or whether to take into account the entire context of the assembly. In connection with the interpretation of the term "notified purpose of the assembly", the Supreme Administrative Court clearly stated that "*the municipal court's opinion that the administrative authority must consider only the notified purpose of the assembly is not sustainable. Experience indicates that subjects whose objectives contravene basic principles of democracy do not reveal those objectives before their implementation. A formally reported purpose of the assembly may then certainly conceal objectives and intentions which differ from those proclaimed.*[92]" The Supreme Administrative Court further stated: "*However, if the administrative authority wants to ban an assembly because it believes that the person convening it is masking the actual, objectionable purpose of the gathering by announcing a purpose which is not objectionable, it must prove this conclusion and to that effect carries the burden of proof. If the administrative authority doubts the notified purpose of the assembly but is unable to prove the reasons for such doubt, it has no choice than to take it into account in its readiness to dissolve the assembly if it deviates from the formally declared purpose.*"[93] An assembly that attacks in any way democratic values may be very quickly dissolved not only by the administrative authority but also by the police. In any case, every movement, even an extremist one, may hold a peaceful assembly, until it commits any illegal acts towards third parties. If the municipal authorities

[91] The motion is available at http://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-26--unora-2009-54800/.

[92] Judgment of the Supreme Administrative Court dated 5 November 2007, ref. no. 8 As 51/2007-67, www.nssoud.cz.

[93] Ibid., "*the grounds for prohibition of the assembly may already exist if the above-described characteristics of the relevant persons are accompanied by other facts, e.g. the date … and place of the assembly … .*"

conclude that the notified assembly has to be dissolved, they have to properly substantiate such decision in accordance with the Administrative Procedure Code, including factual and legal considerations that have led the municipal authority to take such serious step. Mere affiliation of the convening person to an extremist movement does not constitute grounds for banning the assembly. It has to be noted, however, that the ban itself is not always a solution.

A very serious shortcoming is the communication between the municipalities and the persons convening the assembly. The Assembly Act clearly defines the convening party's duty to cooperate with the municipal authority. The convening person and the organizers are obliged to provide the necessary assistance in the entire course of the assembly and must comply not only with the Act on the Right of Assembly but also other laws. Transgressions committed during assemblies are not subsequently prosecuted many times; administrative authorities should systematically enforce the compliance with the laws.

In the end of 2008, the Ministry of the Interior began to prepare an Assembly Manual, which will contain a practical explanation of the Assembly Act, including an analysis of current case law. The Manual will also include a Calendar of Risk Days, which will help disclose the actual purpose of assemblies notified under a fictitious purpose.

1.5.2. Proposals to dissolve problematic entities

The Ministry of the Interior analysed in cooperation with the Police of the Czech Republic the activities of the National Party and of the Workers' Party. As regards the establishment of the National Guard, initiated by the National Party, this gathering is still viewed, on the basis of obtained knowledge, as a grouping existing outside legal regime of the Act on Association of Citizens and of the Act on Association in Political Parties and Political Movements.[94] According to publicly available sources (the articles of association and the website of the National Party), the National Guard is not presented as a part of the organizational structure of that party. Motions to dissolve the National Party which were received by the Ministry of the Interior in the course of 2008, were not found substantiated for the purpose of elaboration of the relevant Government motion to the Supreme Administrative Court. On the contrary, grounds for preparation of motion to dissolve the party for the Government review were found in case of the Workers' Party, specifically in conjunction with the breach of the Assembly Act. The Government filed a motion for dissolution of this party to the Supreme Administrative Court, which dismissed it on 4 March 2009 because it could not be proved on the basis of the motion that the Workers' Party had actually fulfilled, by its activities, the grounds for dissolution under the Act on Association in Political Parties and Political Movements.[95]

The registration of a civic association called Home Defence Militia was rejected in 2008. In the context of the registration proceedings, the Ministry of the Interior came to the conclusion that it is a prohibited civic association, because its real purpose is to promote violence or to otherwise breach the constitution and the law.[96]

[94] Act No. 424/1991 Coll., as amended.
[95] See the judgment of the Supreme Administrative Court dated 4 March 2009, ref. no. Pst 1/2008 - 66, www.nssoud.cz.
[96] A petition against the decision on rejection of the registration of this civic association of 24 July 2008 was filed with the Municipal Court in Prague, which stayed the proceedings by its resolution dated 10 December 2008, because the claimant failed to pay mandatory fees.

It may be said in general that the number and activities of rightist and leftist radicals and their groupings continues to grow. This is also manifested by the number of organized events, such as marches at various places in the Czech Republic, with an attempt to come out of illegality, and by the establishment of new associations, such as the Young National Democrats, National Resistance, etc.

The new Act on the Police of the Czech Republic, effective from 1 January 2009, redefined responsibilities for keeping safety and order during sports events. The police role at these events is somewhat subsidiary and if the police and its means are used (subject to the fulfilment of the conditions stipulated by the law), the costs of such intervention may be borne by the responsible person. In case of a serious breach of duties, the Ministry of the Interior is entitled to decide that the relevant sports event will be held without viewer participation (for a period of up to one year). The Ministry of the Interior issued in 2008 a "Manual for Soccer Clubs", which defines rights and obligations of organizers in ensuring safety at sports matches.

1.6. Freedom of association

Freedom of assembly should become the future subject of the provisions of the draft new Civil Code regulating the establishment of associations.[97] *However, the draft Civil Code retains the old registration principle, contravening democratic principles, under which the establishment of any association is decided by a governmental authority.* This means, in practice, that whoever will wish to establish an association will have to file a petition for registration in a public register and will have to wait for the decision whether the registration will be permitted. If the registration is refused under criteria that have not been defined in advance, the association will not be established.[98] In case of inactivity of the relevant authority, the law creates a fiction of registration, where the time limit for the decision changes from the former 40[99] to 30[100] days, which somewhat shortens the period of uncertainty for the associated persons. This, however, will lead to the abolishment of the 10 days' time limit for the administrative authority to refuse the registration[101], which represented at least some certainty for the associated persons that their petition will not be refused and in case of inactivity of the administrative authority, their association will be established *ex lege* after 40 days of inactivity. Now, there will be a unified time limit during which the associated persons will have no knowledge at all whether their association will or will not be registered, which may be considered as certain worsening of their situation.

The former draft Civil Code was based on the notification principle, i.e. that the associations were not to be established upon a decision of the Ministry of the Interior, but only upon the effective date of their statutes adopted at the constituent meeting of members of the association. Hence, the registration in a public register would not affect the establishment of the association but would only attest to its existence and publish its statutory bodies. According to the Charter of Fundamental Rights and Freedoms, no act from the part of the

[97] See Chapter II, Volume 3, Division 2, Subdivision 2, Sections 209 – 298. The new draft Civil Code presumed the abolishment of the existing Act No. 83/1990 Coll. on Association of Citizens.
[98] See Section 222(1) and (2) of the draft Civil Code, as amended, which has been approved by the Government and submitted to the Parliament of the Czech Republic.
[99] See Section 8(5) of the existing Act No. 83/1990 Coll. on Association of Citizens.
[100] See Section 222(3) of the draft Civil Code, as amended, which has been approved by the Government and submitted to the Parliament of the Czech Republic.
[101] See Section 8(2) of the existing Act No. 83/1990 Coll. on Association of Citizens.

state administration is required to exercise the right of association. *Thus, the Czech Republic could have become close to the modern legislation existing in The Netherlands, Sweden, Switzerland or other western countries where it is common for civic associations to only notify the register court of their establishment.*[102]

Another area that seems problematic is the legislation relating to the contents of the articles of association, liquidation, merger and other issues relating to the life of the associations. It is closer to the legislation regulating businesses. For instance, the current draft stipulates the statutes of an association must also include data about the source of income and a description of the internal structure of the association. *Civic associations consider the excessive thoroughness with which the bill tries to cope with all these issues as contravening the principles of private law, in the context of which not all details of civil life are to be regulated by the state. Civic associations are convinced that such complicated legislation will deter citizens from establishing associations and will diminish the diversity of civil life.*[103]

1.7 Suffrage

The Government initiated in 2008 a reform of the system of elections to the Chamber of Deputies of the Parliament of the Czech Republic. The objective of this amendment is to ensure, while keeping the proportional electoral system, a possibility to establish stable governments capable of acting by means of a certain bonus for the winner of the elections and of a change of the mandate allocation system. The current situation requires different number of votes for acquiring one mandate in various electoral regions and such number may differ by up to 100%. Therefore, results of the elections are rather disproportionate in small regions. In accordance with the case law of the Constitutional Court, the amendment strives to maintain the system of proportional representation. The proposed variant of the change is to be a balanced combination of elements enhancing the proportionality of the system and elements increasing the winner's gains. The basic variables which will be used in the change of the electoral system include the construction of electoral regions (the number and size of constituencies) and the electoral formula (the method of conversion of votes to mandates). The combination of different variants within the context of these two variables may modify the electoral system as required.

The Government finally selected the "Greek variant",[104] which retains the existing 14 regions but introduces the "associated regions" for the purpose of conversion of mandates. Such regions correspond to territorial units defined for statistical and analytical purpose and for EU needs, specifically the NUTS 2.[105] The result of the electoral subject in an associated region is comprised of the sum of its results in the relevant electoral regions. At this level, the mandates

[102] Hence, ironically, the new legislation is stricter for the associations than the original one, which strictly defined the grounds on which the Ministry of the Interior could refuse to register an association – the conflict with the constitutional order, restriction of freedom of citizens and others (Section 8(1) in conjunction with Section 4 of Act No. 83/1990 Coll. on Association of Citizens), or even than the current regulation of business companies under the Commercial Code and the Civil Procedure Code, where the court only reviews the fulfilment of formal conditions stipulated by the law.

[103] Taken over from materials of the Human Rights League www.llp.cz.

[104] As of the elaboration date of this Report, this Government-approved variant has been submitted to the Chamber of Deputies and reviewed in the Organizational Committee.

[105] The introduction of associated regions is to serve for reinforcement of proportionality, because such areas are mutually comparable: the average size of such defined administrative unit must lie within clearly defined limits of the number of their population, i.e. the territorial units must have similar numbers o the population.

are divided in the 1st scrutiny. This method of conversion of votes in the 1st scrutiny, made within the framework of associated regions, which consist either of one or of more regions (according to their size), will ensure a higher extent of proportionality, because the larger the regions, the more proportionate the results.

According to the electoral procedure, the "mandate number of the republic" will be calculated, after adding up all votes cast in the republic, as the quotient of the total number of valid votes cast for all political subjects and the number of all mandates (i.e. 200 MPs). This republic number will be then used to divide the number of valid votes cast in each associated region and the resulting figures will indicate the number of mandates belonging to each associated region. Political subjects are then allocated mandates calculated at the level of associated regions by means of the Hagenbach-Bischoff formula.[106]
It is probable than not all mandates will be ever divided by the allocation of mandates by applying the Hagenbach-Bischoff formula to the associated regions. All remaining mandates will be allocated in the second scrutiny to the political subject that has won the highest number of votes in the republic. The number of such allocated "bonus" mandates will be never known beforehand – it will be a "floating" bonus. Mandates allocated to the winning subject in the second scrutiny will increase the distance between such subject and the subject that will occupy the second place, which will contribute significantly to the probability that the winner will constitute a majority government.[107]

[106] According to this electoral formula, the number of cast votes will be divided by the number of allocated mandated increased by one, which is to ensure the allocation of a higher number of mandates in the first scrutiny. The resulting number will be used to divide the number of valid votes cast for the relevant political subject, which will determine the number of mandates allocated to the political subject in the associated region. Mandates obtained by each political subject are then allocated by means of d´Hondt's factor (the numerical series 1, 2, 3…) to the relevant regional tickets of the party in accordance with the number of valid votes cast in the relevant region. All quotients calculated by means of d´Hondt's factor will be then sorted by their size in a descending order within the associated region. A mandate will be allotted to the regional electoral ticket than shows the highest average of division per one mandate. If a candidate receives the relevant number of preferential votes, such votes will be taken into account at the allocation of votes at the level of electoral regions.
[107] At the time of preparation of this Report, this variant has been approved by the Government and has been submitted to and is reviewed by the Organizational Committee.

2. JUDICIARY, RIGHT TO JUDICIAL AND OTHER PROTECTION

2.1. Right to a fair trial and right of access to justice

A condition for the issue of an interlocutory injunction – the lodging of a deposit, designed to be a guarantee for the compensation for damage incurred by the interlocutory injunction[108] *appears to be more and more problematic with the passage of time. Unfortunately, deposits have a deterrent effect rather than playing the role of security for damages. It is also evident that the amount of these deposits (50,000 CZK per one petition for interlocutory injunction) cannot play the role of a security deposit for damages in excess of this amount and makes the interlocutory injunction as totally out of reach for a substantial part of people.* The law permits not to demand the deposit only in cases where it is possible to apply for waiver of court fees. This applies to cases that are actually close to the subsistence minimum, while the fifty thousand deposit is unavailable even for people with standard income. *In such case, the interlocutory injunction is an instrument that can only be used by a minority of people. The deposit and its amount has the same deterrent effect for small and medium-sized entrepreneurs in commercial cases.*

The Government Council for Human Rights recommended last year to the Ministry of Justice to reduce the amount of deposit required to be lodged by the claimant filing a petition for interlocutory injunction under Section 75b(1) of the Civil Procedure Code in other than commercial matters from 50,000 CZK to 20,000 CZK. The Ministry of Justice incorporated the proposed change into the bill amending the Civil Procedure Code. This bill has already been submitted to the Chamber of Deputies of the Parliament of the Czech Republic.[109] Within the context of this amendment, the Ministry of Justice also reduced the amount of deposit to be lodged by the claimant in commercial matters from the current 100,000 CZK to 50 000 CZK.[110]

As regards the right to a fair trial in its part relating to the hearing of the matter within an adequate time limit, the Ministry of Justice assessed in 2008 the performance of civil and criminal judiciary, particularly with regard to the performance of courts. The assessment was focused mainly on work arrears and delays in the proceedings conducted before district and regional courts. From the analytical perspective, undesirable phenomena were found in the administration of justice in relation to pending cases, which cause procedural delays lasting several years, where the settlement of the cases by the court lasted more than 5 years. Based on its competencies, the Ministry of Justice dealt mainly with causes of delays in proceedings and compared statistical data of the best and the worst performing courts. In particular, the undesirable phenomena relating to procedural delays appeared at the Regional Court in Ostrava, the district courts in Chomutov and Ústí nad Labem, which was also caused by the higher percentage of crime in these regions.

[108] These deposits were incorporated into the Civil Procedure Code by the amendment no. 59/2005 Coll. with the effect from 1 April 2005.
[109] Release of the Chamber of Deputies No. 559/0.
[110] See also the 2007 Report, Chapter II.2.1.1.

2.1.1. Consolidated amendment to the Civil Procedure Code[111]

The Consolidated amendment to the Civil Procedure Code is a breakthrough legislation, which represents an essential change mainly to the method of service of documents and the recording method. A priority in the area of judiciary is to introduce measures that will lead to more expedient and better decisions of the courts. The new legislation is also focused on effective prevention of procedural delays, on the limitation of the scope of reasoning of court rulings and on the enhancement of the position of a notary as the court commissioner in probate proceedings.

The document service system is one of the most serious problems of Czech judiciary. According to the new legislation, primary service will take place directly at the hearing or during another legal act. If a document cannot be served in this way, the court will serve the document through the public data network to a data box. If such method of service is also impossible, the document will be served through a service agent or the party or its representative. Of course, a person may also inform the court about another address, different from the address of record. Upon request of a party, it is also possible to use a data box or an electronic address for service purposes, provided that such address is secured by a qualified certificate. To remove and mitigate the harshness of the new document service system, particularly with regard to the increased extent of service based upon fiction, the amendment introduces an institute of ineffective service. In such case, the court will decide upon a petition filed by a party that the service is ineffective if the party or its representative could not get acquainted with the served document due to an excusable reason. *In this way, this amendment will contribute to a more effective course of the judicial process.*

The amendment is designated to improve the court recording system. *Under the current legislation, court recording is a factor of procedural delays, a source of inaccuracies, of possible distortion of information and a burden to judges.* The deficiencies of this system will be removed and the judicial process will be expedited by making audio or audio video records of civil proceedings, which will not be principally transcribed. It is a computer-processed audio (or audio-video) recording, which facilitates transcription, as well as retrieval of testimonies and other taken evidence. The record, which will be kept on a permanent data carrier, will contain the entire court hearing, except for tribunal meeting.[112] The court may decide that a written record will be made simultaneously with the recording.[113] In case of a discrepancy between the written record and the recording, the recording will prevail.

The Consolidated amendment restricts the scope of reasoning of court rulings. The former legislation distinguished between the full and the abridged reasoning of the judgments. The law forbids the court to copy factual presentations of the parties and substantiated evidence from the file to reasoning of the judgment. Despite the foregoing, reasoning of judgments is often lengthy, descriptive and incomprehensible for the parties. The reason for the change of the current legislation is the fact that it burdens judges, is a source of procedural delays and

[111] Act No. 7/2009 Coll. will become effective as of 1 July 2009.

[112] A transcript of the recording or it parts in the form of a court record will be made at all times in proceedings relating to the judicial care for minors, if a regular or extraordinary remedy on the merits of the case has been filed, or if so determined by the court. The transcript will be also made upon request of a party; making of such transcript is subject to a fee. The price is 100 CZK per each commenced page the transcript (120 CZK with certification); the price for the electronic format is 10 CZK per each 10 MB of data. See items 24a and 24b in the tariff schedule attached to Act No. 549/1991 Coll. on Court Fees.

[113] A written record must be always made e.g. in case of a compromise, in the determination of contacts with a minor child or in settlement of inheritance.

some types of decisions do not require reasoning. The new legislation stipulates that the reasoning incorporated in the written counterpart of the judgment must comply with the declared reasoning. Many rulings need not contain reasoning, particularly rulings of a procedural nature and rulings that do not decide on the merits of the case. The verdict of these rulings will always contain a reference to the legal provisions that have been applied and the reasons of the decision.

2.1.2. System safeguards of availability of legal aid – material intent of the Act on Free Legal Aid

The Ministry of Justice prepares a material intent of the Act on Free Legal Aid. Two variants of factual solution of this issue were reviewed in 2008:
1. the "court variant" where the provision of extended free legal aid (i.e. legal advice and counselling that will exceed the time allocated for the basic level of legal aid and particularly representation before the courts or other bodies) would be decided by the court or by a higher court clerk; and
2. the "Legal Aid Centre", which will be established under the law, probably as an organizational and budgetary component of the Ministry, which would provide, besides deciding on granting free legal aid, also basic legal advice.
With regard to the possibilities of the state budget, the "court variant" was preferred. According to the proposed court variant, the provision of extensive level of free legal aid will be decided by the court or by a higher court clerk. Granting of the basic level of legal aid will then be decided directly by providers of free legal aid. This provision will replace a power of attorney and will relate to all subsequent proceedings.

Works on the Act should also take into account the motion of the Government Council for Human Rights filed in February 2008 relating to system safeguards of availability of legal aid.[114] *The Council's motion referred to the existing system's failure to ensure availability of legal aid to people in need. Statistics indicate that, due to its setup, this system is little use by those to whom it is designated; it delegates the state's obligations to other entities (solicitors, non-governmental organizations) and suffers from lack of transparency and fragmentation of laws. As a response to these problems, the motion proposed the adoption of a comprehensive legal aid act and the establishment of the Legal Aid Centre which would manage the legal aid system.*

2.2. Alternative dispute resolution – mediation

The Ministry of Justice prepared a bill on mediation in other than criminal matters, which incorporates into Czech law the institute of registered mediator. The parties to a dispute may try to conclude, with the mediator's assistance, a legally binding agreement convenient for all parties and to prevent a lawsuit or to terminate the pending dispute. The objective of this bill is to alleviate the court's burden and to contribution to quick and cultivated resolution of conflicts. Mediation may be used in the resolution of any dispute that does not rule out the resolution by compromise or agreement.

Mediation is principally voluntary; the parties to the dispute will decide by themselves whether the matter will be resolved with the mediator's help. Nobody can be forced to resolve

[114] Meeting of the Human Rights Council of 21 February 2008. Further details see http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-21--unora-2008-36245/.

the dispute or to conclude a compromise by mediation. In family lawsuits, the court is entitled to order the parties the participation at the first meeting with a mediator. Such meeting is free (is paid by the state up to the maximum of 3 hours). In all other cases, the mediator's fees and costs are shared equally by the parties, unless agreed otherwise by them. Until the adoption of this Act, mediation may be carried out solely as unregistered trade on the basis of a trade licence.[115]

2.3. New Criminal Code[116]

The new Criminal Code is based on the current Criminal Code adopted in 1961.[117] Certain shifts appeared in the definition of a number of grounds of criminal offence. Some of them were totally reworded, partly on the basis of the adoption of new international treaties and other documents and also with regard to changes in social relations occurring in the meantime.

The concept of the new Criminal Code is based on the conviction that the protection of the democratic state and social order, rights and freedoms of individuals and of their life, health and property has to be achieved primarily by other than criminal justice methods. Hence, means available under criminal law have to be used only in marginal cases of unlawful conduct in accordance with the subsidiary role of criminal law in the legal order and in the society. Therefore, penal policy should consist in appropriate balancing of prevention and repression.

New codification of substantive criminal law will introduce a formal definition of a crime, i.e. that *"a criminal offence is an unlawful act designated as criminal by the Criminal Code, which shows characteristics specified therein",*[118] albeit in conjunction with certain material perspective under which *"criminal liability and related consequences may only be applied in socially harmful cases where the application of liability under other laws is not sufficient."*[119] Then notion of social harm used in this provision is definitely more accurate than the existing notion of danger to the society. Stipulation of the subsidiarity principle of penal repression has also an interpretation meaning, because the characteristics of a criminal offence have to be interpreted in such manner that only a social harmful act would be considered as criminal

Under one of the key philosophical approaches of the Criminal Code, the prison sentence should be replaced by alternative kinds of punishment (e.g. by community works, pecuniary fine set in the form of daily rates, prohibition of activities and newly also by home confinement) if so permitted by the nature of the crime,

The penal sanctions system will be supplemented by home confinement, which is a kind of sanctions that allows punishing the offender without taking him out of his family and close surroundings. This is another specific manifestation of the humanizing approach of the criminal law in the area of the state sanctioning policy. Another new penalty is the prohibition of attendance at sports, cultural and other social events, which can be imposed for the

[115] As of the preparation date of this Report, the bill is being reviewed by the Government of the Czech Republic. The expected effective date has been set at 1 January 2011.
[116] Act No. 40/2009 Coll. The new Criminal Code will become effective on 1 January 2010.
[117] Act No. 140/1961 Coll. the Criminal Code, as amended.
[118] Section 13(1) of Act No. 40/2009, the Criminal Code.
[119] Section 12(2) of Act No. 40/2009, the Criminal Code.

maximum of ten years. Under this sentence, the convict is forbidden to attend certain specified sports, cultural and other social events. Stricter sanctions will be imposed in case of most serious offences against life and health (murders, intentional bodily harm and others) and some crimes against freedom and human dignity (e.g. robbery, rape).[120] Protective treatment will last a maximum of two years. This reduction results from past experience and is primarily designated to protect the rights of persons who are subjected to this restriction. For the sake of increased protection of the society, the Criminal Code counts on the expansion of the application of security detention to another group of highly dangerous drug addicts.[121] Another criminal offence that is relevant from the human rights perspective is stalking.[122]

[120] In connection with this, the general maximum duration of the prison sentence is increased from the existing 15 to 20 years, and the exceptional sentence will include, beside life sentence, also imprisonment from 20 to 30 years (15 to 25 years under the current legislation), which will make this kind of exceptional sentence closer to the life sentence.
[121] See Chapter 3 below.
[122] See Chapter 4 below.

3. PERSONS DEPRIVED OF THEIR LIBERTY

Motto:
*"Personal liberty represents one of the fundamental human rights protected by the Charter of Fundamental Rights and Freedoms and by international human rights agreements. Personal liberty is guaranteed under Art. 8(1) of the Charter. No one may be prosecuted or deprived of her liberty except on the grounds and in the manner specified by law."(*Constitutional Court)[123]

3.1 Legislation
3.1.1 New Act on the Police of the Czech Republic

A new Act on the Police of the Czech Republic was passed in July 2008.[124] According to its authors, the purpose of the new law is to create a legal framework for elimination of bureaucracy in police work, focus on the security performance, modernization of the organizational structure, subsidiarity of repression with an emphasis on preventive methods, respect to rights and freedoms, sharing responsibility for security with other public and private entities and electronization of the police work. *The new law means, to a certain extent, a shift from the older law, e.g. in connection with clearly guaranteed rights of persons whose freedom has been restricted at the police station (presence of a physician, a legal counsel),*[125] *with an emphasis on the preventive role of the Police of the Czech Republic, or with reference to the necessary cooperation between the Police of the Czech Republic with public administration authorities, legal entities and natural persons.* The basic principle of restriction of personal liberty is the prohibition to subject the person restricted in his liberty to torture or to cruel, inhuman or degrading treatment, which is taken over from the Charter of Fundamental Rights and Freedoms.[126]

As regards most institutes concerning restriction of personal liberty, the new law is based on the previous law,[127] but includes the following new provision:

- a principle of protection of a person restricted in his liberty against inhuman treatment;
- the duty to always notify a close person or another elected person of the restriction of liberty (or to inform the state attorney as a substitute solution in cases where it is impossible to notify the above-mentioned persons);
- the right of the person restricted in his liberty to arrange for legal aid at his own expense and his right to talk to his legal counsel without the presence of a third party. At the same time, this law also stipulates the duty of the police to provide promptly the required assistance to this person for such purpose, if so requested by such person;
- the express duty of the police to enable the person to be examined or treated by a physician of his choice and to allow the selected physician access to such person for such purpose;

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[123] Judgement of the Constitutional Court dated 27 November 2000, file no. IV. ÚS 289/2000, Collection of Judgements, and vol. 20, p. 249.
[124] Act No. 273/2008 Coll. on the Police of the Czech Republic and Act No. 274/2008 Coll. amending some laws in connection with the adoption of the Act on the Police of the Czech Republic. In connection with the new Act on the Police of the Czech Republic, Act No. 274/2008 Coll. relates to fifty nine acts. This Act became effective on 1 January 2009.
[125] Details see Mates, P.: Nový zákon o policii. Právní zpravodaj, no. 5/2008, available on-line at: http://www.ipravnik.cz/cz/clanky/pd_3/art_5193/novy-zakon-o-policii.aspx.
[126] Art. 7 of the Charter.
[127] Act No. 283/1991 Coll. o the Police of the Czech Republic, as amended.

- the duty to instruct demonstrably a person placed in a cell about its rights;
- an expressly guaranteed right to appropriate rest, provision of necessary medicines and medical aids and sufficient access to water and toilet;
- the right of the person placed in a cell to three meals a day.

The new law represents a positive shift from the perspective of protection of personal liberty; however, certain continuing risks can be perceived. For instance, the Human Rights League points out mainly that the law still allows a too broad scope of restriction of personal liberty, including apprehension on too generally defined grounds of "providing an explanation". The Human Rights League further pointed to an increase of the number of coercive means that can be used by the police against people (e.g. coercive means with "temporarily paralyzing effects", including electrical instruments, such as taser, whose use caused in some cases according to Amnesty International death of the affected person. It has to be emphasises that these new means are certified by the relevant authorities and have been incorporated in the new law as a means of reducing consequences of the use of firearms; however, the risks of their use still exist.

As opposed to the former law, the new Act on the Police of the Czech Republic has changed the subordination of the Police Inspection (the new name assigned by the new law to the Inspection of the Minister of the Interior), which will report directly to the Government instead of the Minister of the Interior. The director of the Inspection is appointed by the Government instead of the Minister of the Interior. However, the Inspection is still a part of the Ministry of the Interior and the state which was referred to in last year's Report continues to exist. Other changes in this respect see below.[128]

3.1.2 Bill on General Inspection of Security Forces

In the end of 2008, this bill was presented to the Government.[129] Its objective is to create a system of effective prosecution of crimes committed by members and employees of the Police of the Czech Republic, the Customs Administration, the Prison Service and the General Inspection itself, which will be independent personally and institutionally on security forces. The General Inspection is construed as an independent police force, whose members serve under the Act on Service Relation of Members of Security Forced.[130] With regard to its tasks, the inspection is to occupy the position of a police body under the Criminal Procedure Code.

The bill on General Inspection of Security Forces has to be considered as a positive change in the control of compliance of members of the Police of the Czech Republic and of other mentioned institutions with the law. However, there still remains a risk threatening a change in the right direction, which lies primarily in potential formal nature of the proposed standard. An important issue in this respect is the extent to which the current staffing of the Inspection of the Minister of the Interior (renamed as the "Police Inspection" since 1 January 2009) will be used. The independence and quality of every institution's activities depends on its staff and mainly on its management. Another important question mentioned by the Human Rights League is the participation of the new body in the investigation of disciplinary offences. There is still a risk that serious violations could be referred to internal controlling bodies of the police and of the prison service because they will not been considered as

[128] Chapter II.3.1.3.
[129] The draft was approved by the Government 2009.
[130] Act No. 361/2003 Coll. on Service Relationship of Members of Security Forces.

crimes.. According to the bill, the General Inspection is not supposed to deal with transgressions of members of security forces, but only by their crimes.[131]

3.1.3 New Criminal Code[132]

With respect to overcrowding of Czech prisons, it is necessary to appreciate the successful introduction of certain changes on the transformation of alternative punishments, parole and monetary sentences.

The probation system is to be totally refurbished. The existing legislation will remain in force only in respect of the most serious violent crimes; as regards all other offences (including non-violent serious crimes), release on probation will be possible after serving one half of the imposed sentence. The bill also provides for a new possibility of release on parole before the expiry of one half of the prison sentence term.[133]

Another new provision of the Criminal Code concerning community work stipulates that, having reviewed the circumstances of the case and the convict's personality, the court may keep the community works in force or extend the term of this sentence by a maximum of six months even if the convict causes grounds for change of the sentence. Another change relates to the regulation of pecuniary punishment. The failure to pay the penalty amount will no longer lead automatically to the execution of the substitute prison sentence, but the penalty will be enforced. Only in cases where it is evident that the execution of this sentence could be frustrated, the court will order the execution of the substitute prison sentence.

3.1.4 Security Detention Act

The new Security Detention Act, passed in March 2008, which introduced this new institute with effect from 1 January 2009.[134] Security detention is another kind of protective measures under Section 71 of the Criminal Code. The court will order security detention in case of waiver of punishment under Section 25(2) of the Criminal Code,[135] or if the perpetrator of an act that is otherwise criminal[136] is not criminally liable due to insanity, his stay at large would be dangerous and it cannot be expected that the protective treatment will be successful. The court may also order security detention of an offender who has committed a crime[137] in a state

[131] According to the Human Rights League, it is a question whether the lawsuits against police officers who have committed a crime will be still filed by the regional prosecutor or only by district prosecutors. In case of the regional prosecutor, the advantage will lie in the absence of frequent “local connections” to district police and judges.
[132] See also Chapter 2.
[133] If a person sentenced for a summary offence (i.e. a criminal offence with the maximum prison sentence not exceeding five year) has proved by his excellent behaviour and performance of his duties that no further execution of the sentence is necessary, the court may release him on parole even before he has served one half of his sentence or under a decision of the President of the Czech Republic on mitigation of the prison sentence.
[134] Act No. 129/2008 Coll. on Security Detention and on the Amendment to Certain Related Laws.
[135] Section 25(2)of the Criminal Code: The court may also waive punishment of an offender if he committed an intentional crime punished by a prison sentence with the maximum limit over five years in a state of diminished sanity or in the state evoked by a mental disorder, and it cannot be expected, within regard to the nature of the mental disorder and the possibility of influencing the offender, that the imposed protective therapy would ensure sufficient protection of the society and the court is of the opinion that security detention (Section 72a), which is imposes concurrently on the offender, will provide better protection of the society than a punishment.
[136] An act which will fulfil the characteristics of an exceptionally serious crime.
[137] In respect of a criminal offence punishable by the law by a prison sentence with the maximum limit in excess of five years.

evoked by a mental disorder, his stay at large would be dangerous and it cannot be expected that the protective treatment will be successful.[138] Under the Act, security detention will last as long as required by the protection of the society, which means that it is potentially a very long-term interference with personal liberty. Once every 12 months (or once every 6 months in case of minors), the court will examine whether the grounds for continuation of security detention still exist. The court may also change security detention to protective institutional therapy, provided that the reasons for which security detention was ordered has ceased to exist and the prerequisites for protective institutional therapy have been met.

Section 2(2) of the Act stipulates that security detention may only be executed in a manner respecting the inmate's human dignity, which is adequate to the inmate's personality and limits the effects of deprivation of liberty, but also stresses that the protection of the society may not be endangered by these respects. Details concerning security detention see Part 3.5 below).

3.2 Case law

3.2.1 ECHR's rulings against the Czech Republic

In 2008, the Czech Republic was sentenced in three cases of violation of the right to liberty and personal safety pursuant to Art. 5 of the Convention (cases of Fešar, Rashed,[139] Husák); in one case (Hýbner), the ECHR declared the complaint as inadmissible due to evident absence of grounds.

In the case of Fešar *v.* Czech Republic, the Court found that the grounds for placing the complainant in pre-trial detention stated by national authorities were sufficient in the initial phase of the proceedings; however, these grounds could not justify the entire length of almost two years of detention. This results in a breach of Article 5(3) of the Convention. Furthermore, with regard to the duration of the proceedings before the Constitutional Court, which lasted more than three years and nine months, the Court did not find the arguments pointing to the difficulties in the procurement of the court file by the Constitutional Court as sufficient and concluded that Article 5(4) of the Convention had also been breached.
The Fešar's case has also demonstrated the problem of too long process of protection of rights by Czech judiciary, which represents in case of restriction of personal liberty an especially serious intervention into fundamental human rights of the injured party.

In the case of Husák *v.* Czech Republic, the Court stated that, in connection with his detention the complainant was only heard by the judge who placed him in detention but was not heard by the court before any subsequent decision on prolongation of the detention. The Court declared that a single hearing cannot be considered as the fulfilment of the duty by the bodies active in criminal proceedings arising from Article 5(4) of the Convention. The court reminded that the guaranteed provided by Article 5(4) of the Convention apply principally to all proceedings dealing with review of legality of the detention, including proceedings on applications for release from prison, not only to proceedings on complaints against the prosecutor's decision to keep the accused in pre-trial detention.

[138] Security detention may also be imposed by the court separately, in case of waiver of punishment, or in addition to the punishment. Security detention is executed in a security detention institute with therapeutic, psychological, educational, rehabilitation and other programmes. According to the Act, the purpose of the security detention is the protection of the society on the one hand and therapeutic and educational treatment of detained persons on the other hand.
[139] Rashed's case see Chapter I.3.1.3.

The Constitutional Court expressed in a number of its judgements its opinion on hearings at the time of deprivation of persona liberty;[140] *however, only its judgement*[141] *of March 2005 led to the abolishment of Section 242(2) of the Criminal Procedure Code which excluded the participation of the accused at a closed session of the senate which decided on prolongation of the detention.*

In the case of Hýbner *v.* Czech Republic, the complainant alleged that he had been discriminated due to his status as a disabled pensioner and his right to liberty had been breached, because he had been placed in a prison facility with a stricter protection regime than the prison facility where he had to be placed under the sentencing judgment. The ECHR noted that the stricter security of the remand prison did not prevent the complainant from enjoying a certain extent of liberty enjoyed by inmates in surveillance prison, The Court concluded that the state had failed to ensure to the complainant adequate conditions allowing the fulfilment of the purpose of the sentence and achievement of adequate physical and mental well-being.

One of the important rulings of the entire ECHR's case law relating to restriction of personal liberty and prohibition of torture (Art. 5 and 3 of the Convention) was the ruling in the case of Saadi *v.* Italy, where a Tunisian citizen referred in defence against his deportation from Italy to a risk of torture and inhuman treatment that would allegedly threaten him in Tunisia. The third party intervening into this case - the United Kingdom – tried to change the long-term view of the Court (in Chahal's case) of the absolute prohibition contained in Art. 3 and the impossibility to balance it with other interests (e.g. cases of threat to national security). However, the Court upheld its established practice and stressed again the absolute prohibition of torture and inhuman treatment.

However, according to some opinions, this principal approach of the Court was weakened by its ruling in Gäfgen *v.* Germany.[142] ECHR builds its rulings on a large number of rulings relating to the absolute substance of Art. 3 of the Convention (prohibition of torture and inhuman treatment) and on the argument that even threats of torture may represent inhuman treatment. In Gäfgen's case, however, the Court somewhat mitigated its uncompromising position, not only by considering a more or less symbolic punishment of the police officers by their superiors as sufficient remedy of the breach of Art. 3 and did no require compensation for the complainant, but also by accepting certain evidence acquired in connection with Art. 3 whereby it supported indirectly the opinion that inadmissibility of evidence can be overcome in some cases by an interest in the punishment of a perpetrator of a serious crime.

Thus, it may be said that a certain shift has occurred in the case law of the Court. Although the absolute nature of Art. 3 of the Convention still persists, the Court has made use of the possibility to mitigate effects of its breach and keeping more room for assessment of specific

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[140] Judgement of 23 March 2004, file no. I. ÚS 573/02, judgement of 17 July 2004, file no.. III. ÚS 239/04, judgement of 22 March 2005, file no. Pl. ÚS 45/04 or judgement of 10 August 2005, file no. IV. ÚS 247/05. Last year, this also applied to the judgement of 21. 5. 2008, file no. IV. ÚS 2603/07 (see below).

[141] Judgement of the plenum o the Constitutional Court file no.. Zn. Pl. ÚS 45/04 dated 22 March 2005.

[142] Complaint no. 22978/05. The complainant, a German citizen, kidnapped in 2002 the child of a German banker and demanded ransom for its safe return. Before that, however, he killed the child and hid its body near a pond. The complainant was arrested while taking over the ransom and was interrogated. The police tried to find the child's whereabouts but did not know that it was already dead. Upon direct order of the police commissioner, the complainant was threatened with a painful interrogation if he did not disclose the child's whereabouts. The complainant also alleged physical contact (punching, shaking). The complainant disclosed the hiding place to the police a led it to the body.

cases. This attitude was strongly criticized in the dissenting opinion of Judge Kalaydjieva, who stated that it had cast doubts over previous ECHR's case law. According to her, this is the first case where *"the Court declared that proceedings that used evidence obtained in connection with the breach of Art. 3 of the Convention have satisfied the requirements imposed on a fair trial."*[143]

3.2.2 Constitutional Court

The Constitutional Court issued a number of rulings relating to restriction of personal liberty, which concerned mostly pre-trial detention and control of restriction of personal liberty. This case law can be essentially divided into five areas.

The first area covers the implementation of ECHR's judgment in the case Smatana *v.* Czech Republic, which was effectuated by the Constitutional Court by adopting an opinion under the Act on the Constitutional Court.[144] It is an unifying opinion of the CC's plenum on the issue of how to resolve a constitutional complaint against a decision on detention in a situation where the complainant is no longer kept in detention.[145]. *In such situations, the Constitutional Court issued different decisions in the past and the case law is not unified."*[146] *"Beginning with the judgement file no. IV. ÚS 482/03, the Constitutional Court decided principally by declaring breach of rights in the verdict of the judgement but dismissed the constitutional complaint for evident lack of grounds with reference to the impossibility of immediate and direct intervention by the Constitutional which would affect the complainant's situation …"*[147] However, this procedure had been criticized for a long time and had a number of potentially unfavourable consequences for the complainant.[148] Therefore, the Constitutional Court considered on the one hand the arguments pointing to the absence of timely intervention by a public authority and to the fact that any cassation decision of the Constitutional Court could not affect the complainant's legal status, and on the other hand the arguments relating to the necessity of objective protection of the compliance of decisions public authorities with the constitution and to the possibility of ensuring indemnification to the complainant. In this opinion, the Constitutional Court unified its approach and decided that *"the protection of the fundamental right to personal liberty … requires that an unlawful decision on detention is*

[143] Complaint no. 22978/05. Further details to Gäfgen's case see Vyhnánek, L.: Gäfgen proti Německu. Přehled rozsudků Evropského soudu pro lidská práva, Prague: ASPI, 2008, no. 5.
[144] Section 23 of Act No. 182/1993 Coll. on the Constitutional Court.
[145] Opinion of 6 May 2008, file no. Pl. ÚS-st 25/08.
[146] There are a total of four categories of rulings of the Constitutional Court:
a) judgements abolishing the contested decision, where the breach of rights and freedoms is stated only in the reasoning;
b) judgements where the breach of rights and freedoms is stated in the verdict and which abolish the decision on detention;
c) rulings rejecting or dismissing the constitutional complaint; and a
d) judgements which state in the verdict that a breach of fundamental rights and freedoms has actually occurred but rejecting the motion to abolish the contested decision. Further details see Pl. ÚS-st 25/08.
[147] Pl. ÚS-st 25/08.
[148] *"On the one hand, the Constitutional Court did not proceed in accordance with Section 23 of the Act on the Constitutional Court, i.e. by issuing an opinion of the plenum. In addition to the foregoing, it is pointed out that although the abolishment of a detention ruling at the time when the complainant already serves a prison sentence or has been released from detention cannot logically have an impact on his personal liberty, such decision has to be seen in its broader context, because the abolishment of the ruling is a prerequisite of successful claim against the state."* Further details see Pl. ÚS-st 25/08.

always abolished, even in cases where the detention no longer exists at the time of review of the matter by the Constitutional Court."[149]

Another important area covers decisions relating to extradition detention of persons extradited for prosecution abroad. First, this area includes a judgement on a decision of the Minister of Justice on postponement of extradition of a person placed in extradition detention.[150] The CC reviewed the possibility of abolishing some provisions of the Criminal Procedure Code,[151] which could represent an excessive intervention into the right to an effective protection of personal liberty. This specific case dealt with the regulation of extradition detention, which as considered by the CC as rather imperfect. Problems were found mainly in the fact that the legislation does not resolve the set-off of the period of postponement of extradition detention for purposes of criminal prosecution in the Czech Republic[152] or in the impossibility to exceed the time limit of the extradition detention while such possibility exists in the case of "pre-trial" detention.[153] The power of the Minister of Justice was seen as the key element in extradition proceedings. The Minister of Justice *"is an executive authority, which does not meet the court criteria in the material sense … However, such deficit is inadmissible under constitutional law in a situation where the Minister of Justice is to (jointly) decide on rights and the more so in decisions on fundamental rights and freedoms."* According to the Charter, the duration of detention is determined solely by the court and "*… it is not possible for the minister, as the executive authority, to decide on restriction of an individual's personal liberty and on further existence of such restriction without a possibility to have such decision subsequently reviewed by the court, even upon a petition of the person to whom such decision relates. As regards its consequences, a decision on postponement of extradition is nothing but a decision on further continuation of the extradition detention ... Therefore, such decision must be subject to an effective judicial control. …"*. Therefore, the CC subsequently repealed certain provisions of the Criminal Procedure Code.[154] This legal conclusion was subsequently applied by the Constitutional Court in its judgement of May 2008, where it ruled that detention continuing even after a decision of the Minister of Justice contravenes Art. 8(5) of the Charter.[155]

Decisions of the Constitutional Court which were important with regard to restriction of personal liberty included rulings on the right of the accused to be heard in proceedings on the

[149] The CC's decisions were affected to a considerable extent by ECHR's opinion on compensation for illegal arrest and detention based on z Art. 5(5) of the Convention for the Protection of Human Rights and Fundamental Freedoms, pursuant to which "everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation". The CC further stated that the "the construction waiving the immediate effect of the intervention must be also considered in connection with the fact that the constitutional complaint could be justified at the time of its service but could become evidently unsubstantiated by mere passage of time, without any change of the contested decision, only because the Constitutional Court did not act quickly enough." This would result in serious inequality between a complainant whose complaint was processed in time and a complainant who was not so lucky.

[150] Judgement of 29 January 2008, file no. Pl. ÚS 63/06.

[151] Section 398(6) and Section 400(1) of Act No. 141/1961 Coll. on Criminal Procedure (the Criminal Procedure Code), as amended.

[152] *"This has a practical consequence particularly in a situation where the foreigner is not finally extradited to (and sentenced in) a foreign country, e.g. due to withdrawal of the application for extradition due to subsequent domestic prosecution for an identical act."* Further details see Pl. ÚS 63/06.

[153] Under Section 71(8 of the Criminal Procedure Code.

[154] The first sentence of Section 398(6) of the Criminal Procedure Code and Section 400(1 of the Criminal Procedure Code were repealed with the effect as of 31 December 2008 to enable the legislator to better regulate in the meantime this issue. Further details see file no. Pl. ÚS 63/06.

[155] Judgement of 22 May 2008, file no. II. ÚS 732/05.

defendant's complaint against the ruling of the general court on placement in detention[156] or against a decision of exclusion of judicial review of a decision on administrative expulsion of a foreigner[157] who stays in the Czech Republic without a valid reason.[158]

Another area includes case law where the Constitutional Court expressed its opinion on reasons for pre-trial detention or its further extension. This relates to a number of decisions, e.g. the judgement of February 2008, where the CC expressed its opinion on the necessary to determine the beginning of actual restriction of an individual's personal liberty.[159] If there is a discrepancy between individual official documents with regard to the moment of detention of the accused, the general court deciding on placement in detention is obliged to sufficiently resolve the question regarding the moment since which the defendant's personal liberty was actually restricted. Any other procedure would lead to a breach of the defendant's right to judicial protection under Art. 36(1) of the Charter. Another decision within this category is the judgement of August 2008, where the CC reminded that pre-trial detention represents an enormous interference with the individual's personal liberty; therefore, the decision on detention has to consider all circumstances for and against the restriction of the individual's personal liberty. Such decision must be properly and thoroughly substantiated.[160] The courts which do not apply this procedure and fail to properly substantiate their decisions act arbitrarily in conflict with Art. 2(2) of the Charter of Fundamental Rights and Freedoms, thus breaching the right to personal liberty guaranteed by Art. 8(1) of the Charter.[161]

Finally, a separate area is comprised of rulings of the Constitutional Court on compensation for damage (and immaterial loss) for unjustified detention or in cases where the complainant himself is to be blamed for the detention.[162]

3.2.3. Supreme Administrative Court

As regards restriction of personal liberty, the SAC provided its opinions on the issue of protection of rights of foreigners in the proceedings on granting international protections.[163]The Supreme Administrative Court concluded that a foreigner placed and detained in the admission centre in the transit area of the international airport who has doubts about the legality of this situation has no other possibility of defence under the law than an action for protection against unlawful intervention by an administrative authority filed under

[156] Judgement of 21 May 2008, file no. IV. ÚS 2603/07.
[157] Judgement of 9 December 2008, file no. Pl. ÚS 26/07.
[158] This case law dates back to the judgement of 23 March 2004, file no. I. ÚS 573/02, where the Constitutional Court ruled that the resolution dismissing the defendant's compliant against the prosecutor's decision to keep him in detention and the resolution dismissing the claimant's motion for release from detention, both adopted without a hearing, are in conflict with Art. 5(4) and Art. 6(1)of the Convention, and to the judgement of 22 March 2005, file no. Pl. ÚS 45/04, whereby the Constitutional Court abolished Section 242(2)of the Criminal Procedure Code.
[159] Judgement of 19 February 2008, file no. I.ÚS 2244/07.
[160] Judgement of 12. 08. 2008, file no. Il. ÚS 897/08.
[161] Other relevant decisions in this area include the judgement of 22 May 2008, file no. I. ÚS 734/08 and the judgement of 1 July 2008, file no .lV.ÚS 104/08.
[162] Other relevant decisions in this area include the judgement of 17 June 2008, file no. lI.ÚS 590/08 on compensation for unsubstantiated detention, and the judgement of 19 March 2008, file no. II.ÚS 1856/07 on compensation for detention in relation to the right to deny testimony and the judgement of 6 February 2008, file no. IV. ÚS 1181/07 #1 as regards the duty to pay alimony to a parent of a minor child who serves a prison sentence.
[163] Judgment ref. no. Aps 1/2007-76 of 23 January 2008.

the Administrative Procedure Code.[164] According to the opinion of the Supreme Administrative Court, Section 200o of the Civil Procedure Code cannot be applied analogically to such case,[165] despite the fact that no express assurance of expedient proceedings on protection against illegal intervention by an administrative authority was given in the relevant case, which contravenes Art. 5(4) of the Convention for the Protection of Human Rights and Fundamental Freedoms. *The SAC thereby upheld its prior arguments,[166] which were also reflected by the European Court for Human Rights in the above ruling in the case of Rashed v. Czech Republic.[167]*

3.3 Pre-trial detention and imprisonment

3.3.1 Trends in the execution of pre-trial detention and imprisonment

A total of 102,052 criminal offences were sanctioned in the Czech Republic in 2008, 10,255 of them by unsuspended and 42,157 by suspended prison sentence. The year 2008 witnessed another increase in the number of persons sentenced to prison who failed to appear to commence their punishment. The total number of such people reached 7,423 as of 31 December 2008 (2005: 5,285; 2006: 5,962 and 2007: 6,273 convicts. It has to be noted in respect of the increased number of sentenced persons who did not commence their punishment that such act is considered a criminal offence[168] since 1 January 2009 (the effective date of the amendment to the Criminal Code)[169].

A number of improvements have been made in prisons. For instance, further measures for prevention and early detection of violence are implemented in prison facilities. Inmates may receive visits on workdays and weekends. The offer of activities for inmates serving life sentence has been increased.

Despite these improvements (e.g. in Valdice Prison), there is still a number of reasons for criticism similar to the criticism recorded in CPT's reports after its visits in 2006 and 2008. The Counselling Centre for Citizenship, Civil and Human Rights sees a major problem primarily in continuing isolation of inmates serving life sentences from the other prisoners, ineffective programmes of prevention of sexual and other violence against prisoners, occasional problems with visits on weekends, lack of appropriate work and the long time (sometimes even 22 hours a days) during which the prisoners are locked up in their cells. In some cases, however, the inmates are not interested in activities outside their cells.
In this respect, it is necessary to mention again the absence of an independent controlling body outside the competence of the relevant government departments, which would resolve prisoner complaints. Whilst the proposed institute of advisory commissions is a step in the right direction, the level of their dependence and the possibility to initiate changes is rather disputable in this specific case.

3.3.2 Development of the number of prisoners and use of the capacity of prisons and remand prisons

[164] Section 82 et seq. of Act No. 150/2002 Coll., the Administrative Procedure Code.
[165] Act No. 99/1963 Coll., the Civil Procedure Code.
[166] Judgment ref. no. 9 Aps 5/2007 – 63 of 15 November 2007.
[167] See also the general part of this Report.
[168] This is a criminal offence of frustration of the execution of an official decision under Section 171(1(g) of the Criminal Code.
[169] Act No. 129/2008 Coll. on Security Detention and on the Amendment to Certain Related Laws

The number of prisoners increased dramatically in 2008 by 1,601 persons to 20,502 persons. This increase corresponds to the increase that had occurred in the previous four years taken together. Moreover, the long-term decline in the number of defendants in pre-trial detention stopped in 2008. In comparison with 31 December 2007, the number of defendants increased by 148 by the end of 2008. The number of convicts continued to grow like in the previous years – by 1,453 and is the highest since 1990.

Development of the number of incarcerated persons in the last six years

Number at 31.12	2003	2004	2005	2006	2007	2008
Defendants	3,409	3,269	2,860	2,399	2,254	2,402
Convicts	13,868	15,074	16,077	16,179	16,647	18,100
Total	17,277	18,343	18,937	18,578	18,901	20,502

The accommodation capacity of prisons and remand prisons (not including prison hospitals) amounted as of 31 December 2008 to a total of 19,165 places. A total of 2,637 places allocated for pre-trial detention were used up to 90.5 %. The remaining 16,528 places allocated for the service of prison sentences were used to 109.1 %. By the end of 2008, the Prison Service lacked a total of 1,497 accommodation places for the convicts, i.e. by 1,089 more than by the end of 2007. In 2008, the Prison Service managed to increase the accommodation capacity by 221 places, which is absolutely insufficient given the ever-increasing number of convicts. The principal cause of this condition lies in limited financial possibilities of the state.

Therefore, it is necessary to emphasise repeatedly the problem of overcrowding of prisons, which would reach an unmanageable dimension if all those thousands of convicts who avoid serving the prison sentence reported to prisons to commence their sentence. Therefore, the exception from the minimum accommodation space per prisoner,[170] due to which the Czech Republic had been repeatedly criticised by the CPT, most recently in 2006, had to be applied again.

Development of the number of incarcerated persons and average use of accommodation capacity in 2008

date	Remand prisoners				Sentenced prisoners				Total
	men	women	total	use of capacity	men	women	total	use of capacity	prisoners
1.1.2008	2,117	137	2,254	80.2	15,792	855	16,647	102.5	18,901
1.4.2008	2,199	141	2,340	83.3	16,567	895	17,462	106.6	19,802
1.7.2008	2,264	159	2,423	87.0	16,885	910	17,795	108.9	20,218
1.10.2008	2,203	164	2,367	88.5	17,191	913	18,104	110.0	20,471
31.12.2008	2,214	188	2,402	90.5	17,209	891	18,100	109.1	20,502

3.3.3 Range of treatment programmes and employment of prisoners

With regard to the development of the number of incarcerated persons, it was impossible to set aside in 2008 any space from the accommodation capacity to be used for remand and

[170] Section 17(6) of the Decree of the Ministry of Justice No. 345/1999 Coll. issuing the rules of execution of imprisonment, as amended, stipulates that the minimum accommodation space per one convict is 4.0 sq.m.

sentenced prisoner treatment programmes. Compared to 2007, in 2008 there was a slight increase in the number of convicts serving prison sentences not only in standard but also in specialized wards, in drug-free zones and in 'pre-release' units. Programmes to prepare prisoners for release and the number of activities carried out under the concept of the state policy in relation to the younger generation arte gradually expanded. The continuing increase of the number of convicts leads to an increased emphasis on ensuring their basic requirements.

The number of prisons implementing the "3Z" programme was increased from three to nine in the end of 2008.[171] This programme is focused on statistically largest part of the prison population (adult men from 25 to 40 years, serving twice or three times a standard prison sentence, mostly for property crimes) and is based on a cognitive behavioural approach emphasizing the acknowledgement of own guilt and training of non-criminal behaviour. The GREPP programme of work with offenders sentences for violence against children[172] conceived as "rectification programme",[173] was implemented in 2008 in two prisons.[174] The Pardubice prison implemented a pilot programme focused on perpetrators of traffic accidents The participation in this programme offered to the convicts an opportunity to cope with (but not to forget) their problem to enable them to make use of their negative experience in favour of further problem-free driving practice.

Employment of remand prisoners is governed by the Act on Execution of Pre-trial Detention,[175] which stipulates that the defendant may be employed upon his request during the detention period. The average number of employed defendants amounted in 2008 to 26 persons, i.e. 5 persons less than in 2007. Employment of convicts is regulated by the Act on Imprisonment.[176] One of the duties of the convicts is the working duty, provided that the convict has been allocated work and has not been recognized as temporarily incapable of work. The average number of convicts employed in 2008 reached 8,233 of the total number of 13,701 employable convicts. In comparison with the previous year, the number of employed convicts increased by 496 persons. The annual real employment increased from 59.2% in 2007 to 60.1% in 2008. The average monthly work remuneration of convicts in 2008 amounted to 3,902 CZK, i.e. by 33 CZK less than in 2007. The Prison Service intends to keep real employment of convicts at a level in excess 60.0%.[177]

Long-term overcrowding of prisons means not only worsening of security of prisoners and prison staff but the Prison Service is also unable to fulfil with sufficient effect one of the key objectives of the punishment – re-education of prisoners. According to the Counselling Centre

[171] The acronym "3Z" means "Zastav se, Zamysli se, Změň se" (in English: Stop, Think, Change).
[172] Child abuse, child sexual abuse, commercial sexual abuse of children and sexual abuse of children without the commercial aspect.
[173] This is an educational programme for the above-mentioned target group of convicts. The meaning and purpose of the programme corresponds to the presumption that an initial step in treatment with any criminal offenders includes, beside motivation, the creation of an adequate insight of the offender in his own criminal activity and recognition, understanding and acceptance of specific consequences of such activity.
[174] The acronym "GREPP" means G = guilt, RE = re-education, P = psychological, P = programme.
[175] Act No. 293/1993 Coll. on the Execution of Pre-trial Detention. Employment of remand prisoners is governed by the Labour Code
[176] Act No. 169/1999 Coll. on Imprisonment.
[177] The Prison Service of the Czech Republic employs incarcerated persons in the following employment forms: internal administration and production, the Economic Activity Centre, business entities, full-time studies, therapeutic programmes and work for the prison facility without remuneration. The start-up of the operation of a new manufacturing shop in Oráčov Prison marked a success in the expansion of manufacturing premises in 2008.

for Citizenship, Civil and Human Rights, the treatment programmes for convicts are implemented to a very limited extent due to staff shortage and their purpose is not optimally fulfilled.

3.3.4 Provision of health care in the prison system

Health care provided to remand prisoners and persons serving prison sentences in the Czech Republic was also provided by the Prison Service of the Czech Republic, because it is also a medical establishment. Health care provided to insured remand prisoners and convicts is paid out of the general health insurance funds.[178] Medical interventions exceeding the scope of care paid from general insurance funds are paid by such person himself.

In its arrangements for health care, the Prison Service continued to suffer from a dearth of physicians, as this work is generally regarded as unappealing, while the pay remains markedly lower than in the private sector. This results in a situation where most doctors looking after remand and sentenced prisoners are older and may have reached retirement age. A key moment for change of this situation is the provision of funds or other motivation instruments increasing physicians' interest in work in prisons.

The level and quality of provided health care should be fully comparable with health care provided outside prison facilities, because qualification requirements applying to physicians working for the Prison Service are set by generally binding laws. Nevertheless, the shortage of physicians in the prison system gives rise to fears from decline of provided medical care. The general lack of funds and ageing of physicians working in the prison system can cause in the near future a problem that will be difficult to resolve.

According to nongovernmental organizations dealing with the situation in the prison system, health care in prisons is the object of many complaints from the part of prisoners (who describe it as inhuman and the treatment of prisoners by medical staff during examination and cure as unprofessional). Prisoners often complain of difficulties in access to or making copies from medical documentation. Another problem lies in payment of regulation fees by prisoners who are unemployed without their fault and have no income. In this situation, regulation fees lose a considerable part of their meaning. Therefore, their abolishment in respect of this part of prisoners was recommended last year by the Government Council for Human Rights.[179]

3.3.5 Sampling the DNA of remand and sentenced prisoners

Sampling the DNA of remand and sentenced prisoners was introduced by the Act on the Police of the Czech Republic in 2006.[180] Section 42e of the Act expanded the powers of the Police of the Czech Republic by performing identification acts, including taking samples of

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[178] Act No. 48/1997 Coll. on Public Health Insurance, as amended. Medical care which does not pursue a therapeutic purpose, e.g. preventive factory care, is paid out of the budget of the Prison Service of the Czech Republic, which also covers health care costs of the remand prisoners and convicts who do not have the status of insureds under Act No. 48/1997 Coll. on Public Health Insurance or are not otherwise insured, to the extent stipulated in international documents or international treaties, but at all times at least to the extent of necessary and urgent medical care.

[179] See further the Human Rights Council's website (http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-18--zari-2008-45288/).

[180] Act No. 321/2006 Coll. amending Act No. 141/1961 Coll. on Criminal Procedure (the Criminal Procedure Code) , as amended, and Act No. 283/1991 Coll. o the , as amended.

biological material for the purpose of DNA analysis even from persons sentenced finally for an intentional crime who are currently serving a prison sentence or who were ordered by a final and effective ruling to undergo protective therapy. This provision has been transferred to the new Act, i.e. to Section 65 of the Act on the Police of the Czech Republic. Another provision that has remained in the Act concerns overcoming resistance in case of taking a biological sample, when a police officer may overcome after prior futile request the resistance of the person with regard to the intensity of such resistance, except in cases of taking blood samples or any other intervention connected with the interference into bodily integrity. The Ministry of the Interior does not currently presume any legal or conceptual changes in this area. *Although no across-the-board taking of biological samples from persons serving a prison sentence to obtain DNA was carried out in 2008, this practice has to be considered as very disputable.*
Restriction of the possible scope of sampling in the new Act on the Police of the Czech Republic has to be considered as a positive change. Samples may be taken now only from persons accused of an intentional crime and no longer from those accused of a non-intentional crime.

Although no across-the-board taking of biological samples from persons serving a prison sentence to obtain DNA was carried out in 2008, this practice has to be considered as very disputable. According to the ombudsman and a number of non-governmental organizations, across-the-board DNA sampling of incarcerated persons is in conflict with the existing laws, particularly due to its inadequacy and excessiveness in respect of a major part of incarcerated persons. Without an individual legitimate justification of such sampling or without the relevant person's consent, such procedure represents an interference into personal rights of individual and the ombudsman considers it as a breach of principles set out in the Constitution and the Charter of Fundamental Rights and Freedoms, according to which the state may acts solely within the limits of the law. Serious doubts about legality are also evoked by the procedure applied by the Police of the Czech Republic, which overcame in some cases physical resistance of the convicts and remand prisoners against taking samples.[181]

Another risk is represented by the protection of such obtained DNA samples from misuse, or their storing and handling. To date, the Czech Republic has no legislation which would regulate handling these samples. A number of prisoners lodged a complaint against this procedure with the ombudsman and the Office for Personal Data Protection. Both agreed with them.

3.3.6. Motion of the Government Council for Human Rights concerning the prison system

A number of problems in the prison system are pointed out in a motion approved by the Czech Republic Government Council for Human Rights in September 2008. By this motion, the Council intended to propose such legislative and other changes that would enable the Prison Service of the Czech Republic to better implement the educational purpose of the prison sentence and would enhance human dignity standards in the prison system.

The motion concerns several key issues: reduction of the number of persons placed in prisons and remand prisons, treatment of convicts and prisoners serving the life sentence,

[181] Some of the victims of this practice turned to the ombudsman, who agreed with them. For details see the ombudsman's statement at (http://www.ochrance.cz/dokumenty/dokument.php?doc=1142).

employment and education of remand prisoners and convicts and health care provided to them, satisfaction of their spiritual requirements and maintaining their contacts with the outside world. These recommendations, which concern both the execution of prison sentence and pre-trial detention, are based on the conclusions of a working group established on the platform of the Committee against Torture and on the Report for the Government of the Czech Republic on a visit to the Czech Republic, which was made in 2006 by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and on the recommendation of the Committee of Ministers of the Council of Europe Rec (2006) 2 on European Prison Rules.

The comments procedure concerning this motion brought some disputes, which revealed the serious situation in the existing Czech prison system, particularly in connection with shortage of funds and with the anticipation of the consequences of financial and economic crisis in the USA and in Europe, which will appear in the near future. The long-term shortage of funds in the prison system has significantly limited the possibilities of implementation of the Council's recommendations. The Council's appeal for improved implementation of the education purpose of the prison sentence and enhancement of human dignity standards in the prison system is considered as hardly realisable given the savings and budget cuts. Many experts even refer in this respect to a possibility of prison riots or rebellions. Hence, it is a question whether a potential increase of funding for the prison system after the economic problems have faded away would not be too late.

3.4 Persons deprived of their liberty by police authorities

The police marshals apprehended in 2008 a total of 28,148 persons, which represents a relatively significant decline compared to 2007. On the contrary, the number of persons placed in police cells increased by more than 6,000 to a total of 29,403. The police president issued in 2008 a binding order on escorting and guarding persons.[182] New principles for escorting persons restricted in their personal liberty, including their guarding, were elaborated to unify the procedure applied by members of the Police of the Czech Republic during escorts. Another purpose of this new internal management act is to minimize the possibility of escape of escorted persons, respecting at the same time the rights and freedoms of people, and to clearly determine in case of an escape whether the relevant police officer has erred or whether there were circumstances that could not be foreseen by him.

3.5 Security detention facilities

A new Act on Security Detention came to force at the beginning of 2009.[183] Ordering security detention is regulated by the Criminal Code (see part 3.1.4.). At the same time, the Security Detention Institute in Brno with a capacity of 48 beds launched its operation. Internal security in this institute is carried out by members of the Prison Service of the Czech Republic as detention wardens. Another security detention institute with a capacity of 150 beds will be established in a facility at Krnovská Street in Opava, which is to be renovated in 2009. The first inmates are expected to come to the Brno institute in the first quarter of 2009.[184]

[182] Č. 93/2008.
[183] Act No. 129/2008 Coll. on Security Detention and on the Amendment to Certain Related Laws.
[184] See Lidové noviny, 20 February 2009 (http://www.lidovky.cz/zmlatil-matku-jako-prvni-jde-do-detence-d9c-/ln_noviny.asp?c=A090220_000018_ln_noviny_sko&klic=230148&mes=090220_0).

Balancing between the protection of the society, i.e. the isolation of inmates, and the protection of their human rights will be a key test of success of security detention in the Czech Republic. The adequacy of the current version of the Act and of the internal security detention rules is still to be demonstrated by practical operation of security detention facilities. However, the alleged medium-term intention of the Ministry of Justice to consider the security detention institutes in Brno and Opava as provisional and to build in future one large facility near the township of Vidnava at the Czech-Polish border raises some concerns. If implemented, such step would represent not only a very complicated motivation of medical and special staff to work in such a remote area but principally also depriving a number of inmates of visits of their family members. This could not only complicate proper operation of the institute but could also frustrate one of its principal purposes, which lies, beside the protection of the society, in therapeutic and educational treatment of persons held in security detention.

3.6 Facilities for the detention of foreign nationals

The Refugee Facility Administration operated in 2008 two detention facilities for foreigners where the foreigners are obliged to stay under a decision on detention for the purpose of administrative expulsion - one in Poštorná (Southern Moravian Region) and the other one in Bělá pod Bezdězem (Central Bohemian Region). The total capacity of these facilities was 484 beds. Both facilities provide standard accommodation, catering, sanitary, leisure time and social services.[185] In the year under review, a total of 688 foreigners were placed in and 698 foreigners were released from the detention facilities for foreigners.[186] A total of 225 foreigners, i.e.13.6% of the number of foreigners who applied in 2008 in the Czech Republic for international protection, filed their application for international protection in the detention facilities.

The Facility for Children – Foreigners, which exists since 2004 and is designated for minor foreigners who are not accompanied by their legal guardians or other close persons, is a part of the standard school facilities designated for institutional and protective care. It is a state contributory organization established by the Ministry of Education. Youth and Sports.[187]

3.7 Institutional medical care and social service facilities

Residential establishments providing social services that apply for registration for provision of social services are not currently obliged to prove their knowledge of protection of human rights. According to non-governmental organizations involved in this field, it would be very desirable to include this requirement in the list of requirements imposed on the licence applicants and to verify whether the authorized persons who will work in the establishment are familiar with this aspect. Cases where the facility prohibits to its client not only all visits, but also receiving correspondence and finally even outdoor exercise should not exist.

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[185] Medical services are provided in accordance with Act No. 326/1999 Coll. on the Stay of Foreigners in the Territory of the Czech Republic, as amended, i.e. to the extent of entry medical checks and urgent medical care. Clients may receive visitors. The foreigner detention facility has also created conditions for provision of legal counselling. Psychological care is available to foreigners.

[186] As regards nationality, the highest number of foreigners placed in the foreigner detention facility came from Ukraine - 217 persons (31% of the total number of foreigners placed in this facility in 2008), Vietnam - 137 persons (20%), Russia - 63 persons (9%), Mongolia - 51 persons (7%) and Moldova - 26 persons (4%).

[187] Details see http://www.ddcpraha.cz/index.php?menu=homepage_cz.

It would be appropriate for the social services inspectors to be accompanied by a physician during controls of these establishments so that they may inspect medical documentation of users of social services. The major concern in this respect is the inability of the Ministry of Labour and Social Affairs to ensure effective supervision over the observation of human rights in these establishments. This problem has been referred to by non-governmental organizations for a number of years. The Counselling Centre for Citizenship, Civil and Human Rights points out in this respect that even the current legislation grants to the Ministry of Health the authority to create controlling mechanisms by using tools offered by current laws and with correct setup of subsidiary legislation (i.e. point and framework decrees).[188] *According to this non-governmental organization, it is also possible to use the existing accreditation standards and to set a "list of points" according to them and to systematically check at the same time the scope and quality of care in each institutional care establishment in the Czech Republic.*

[188] Act No. 48/1997 Coll. on Public Health Insurance, as amended, and the Decree of the Ministry of Health No. 618/2006 Coll. issuing framework agreements.

4. TRAFFICKING IN HUMAN BEINGS, FORCED LABOUR, DOMESTIC VIOLENCE

4.1 Trafficking in human beings and forced labour

The Government[189] approved the National Strategy to Combat Trafficking in Human Beings for the Years 2008 - 2011, which is based on a number of other conceptual documents, including two previous strategies. [190] The Programme for the Support and Protection of Trafficking Victims, which has been operated until now by two non-governmental organizations (La Strada ČR, o.p.s., and Arcidiecézní charita Prague (Archdiocese Charity in Prague)) and the International Organization for Migration, continued to be successfully implemented and developed in 2008. A total of 89 victims were placed in the Programme from 2003 until the end of 2008, 24 men and women in 2008. An increase in the number of victims of trafficking in human beings for forced labour purposes was noticed. The Ministry of the Interior prepared a bilingual brochure about the Programme for the Support and Protection of Trafficking Victims, which is designated for professional and general public.

The Ministry of the Interior announces every year a subsidy programme for non-state non-profit organizations focused on trafficking in humans, called "Prevention of Trafficking in Humans and Assistance to Trafficking Victims". Funds from this subsidy programme were allocated in 2008 to La Strada Czech Republic, Arcidiecézní charita Prague and to the Organization for Aid to Refugees. The Ministry of Interior also coordinates and pays for voluntary and safe repatriation of trafficking victims, which enable them to return safely and free of charge to the countries of their origin. Ten repatriations took place until 1 December 2008 (3 to Brazil, 1 to Ukraine, 1 to Slovakia, 4 to Romania, 1 from Denmark to the Czech Republic).

The information campaign against trafficking in humans, addressing clients of prostitutes, continued in 2008. For the purpose of this campaign, partner organizations created a platform "Together against Trafficking in Human Beings" with a slogan "Don't Be Afraid to Say It on Her Behalf". The campaign uses a website in three language versions – Czech, English and German.[191] The partner organizations also established telephone lines.

Major topics implemented in 2008 included further expansion of collection of data on trafficking in human being and improvement of the system of aid to victims of trafficking in human beings. The Ministry of the Interior became involved in two international projects ("Data Collection and Harmonization of Information Systems" and the "International Reference Mechanism for Victims of Trafficking in Human Beings in Source and Target Countries"). In 2008, the Ministry of the Interior also commenced the implementation of the "Information System: Trafficked Person". This database will contain items for records on victims of trafficking in human beings held as a part of the Programme for the Support and Protection of Trafficking Victims.

In 2008, La Strada identified 14 trafficked persons who started using the offered range of social services. *Surprisingly, none of those persons was referred to the non-governmental*

[189] Resolution No. 67 of 23 January 2008.
[190] "National Strategy to Combat Trafficking in human Beings for the Purpose of Sexual Exploitation in the Czech Republic (2003-2005)" and the "National Strategy to Combat Trafficking in Human Beings (2005-2007)"
[191] www.rekni-to.cz; www.sage-es.cz; www.say-it.cz

organization La Strada in 2008 or in the previous years by the Foreign police or by the labour inspectorate. The telephone lines (INFO and SOS lines) operated by La Strada were used last year by 315 persons and 705 acts were taken in their favour. Based on a contact, this organization provided services to a total of 65 trafficked and exploited persons.

The possibility to use assistance and protection offered to trafficked persons is an indispensable part of human rights frameworks of the policy of prevention and combating trafficking in human beings. *To ensure that the trafficked person can actually obtain such aid, he/she must be first identified as a trafficked person. The opinions of the criminal police and its specialized unit for detection of organized crime as to who is a trafficked person often differ from the opinions of non-governmental organizations.*[192] *The identification of trafficked persons exploited outside sexual industry and the prosecution of offenders is complicated due to the absence of definitions of certain terms in the national legislation which are parts of the national definition of trafficking in human beings*[193]*, particularly the term "other forms of exploitation". Since trafficking in human beings for purposes of forced labour outside sex business has been gaining ground in recent year, it would be appropriate for other entities that can come into contact with potentially trafficked persons during the performance of their respective activities (such as labour inspectorates and labour offices) to get involved in the identification of trafficked persons.*

La Strada further points to a long-term problem faced by its employees in the provision of social services to clients. In particular, this problem concerns practical use of the possibility to act as secret witness in criminal proceedings despite the fact that witness secrecy is permitted by the Criminal Procedure Code. Beside secondary victimization, such measure may also motivate or enable the trafficked person to testify against the offenders.

According to La Strada, a number of problems in both criminal and civil proceedings arise in connection with providing to trafficked persons a practical possibility to obtain compensation for suffered material and immaterial loss. Another problem is to quantify lost profit in cases of exploitation by prostitution. Victims often incur debt in the trafficking process or in direct connection with it, particularly in respect of health insurance payments, fines for using public transport without a valid ticket or for breach of local ordinances restricting prostitution. The debt amounts vary from several hundreds up to several tens of thousands crowns. *In some cases, it is not realistic that such persons will ever be able to repay such debt, given the income they can earn in low-skilled professions.*

Non-profit organization point to the problems of transposition of the EU directive[194] enabling trafficked persons to obtain residence permit if they cooperate with criminal prosecution authorities. This directive has been transposed to Czech law via the provision of the Foreigners Act[195] regulating long-term residence for protection purposes. The problematic aspect of this provision lies in the fact that it is narrowing in many aspects, as compared with the directive. The most prominent aspect is the limitation of the defined group of persons for

[192] Prepared with the use of a contribution from the non-governmental organization La Strada.
[193] Section 232a of Act No. 140/1961 Coll. the Criminal Code, as amended.
[194] Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or have been the subject to an action to facilitate illegal immigration, who cooperate with the competent authorities
[195] Section42e of Act No.326/1999 Coll. on Residence of Foreigners in the Territory of the Czech Republic, as amended.

whom this legislation is designated to the detriment of the target group, i.e. trafficked persons.[196]

An important step towards the development of the human rights approach to trafficked persons would be the signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005.

As compared with traditional structure of trafficked persons, some women from relatively exotic countries, such as Nigeria and Brazil, appeared in the course of 2008 in the area of trafficking in human beings for sexual exploitation purposes. The main perpetrators of this crime are mostly foreigners, who recruit girls in home countries under the promise of work in the Czech Republic and then place girls in erotic night clubs, where they have to work as prostitutes to repay fictitious debt incurred allegedly in connection with transport and visa obligations.

Another group of persons against which such criminal activities are committed are Czech citizens exported into older EU Member States. Unlike the previous years, this does not concern sexual exploitation. The Ministry of the Interior is currently verifying information about export of homeless people and persons from socially weaker groups, who will not be missed by anyone, for manual labour purposes in the United Kingdom.

As regards slavery, serfdom, forced labour and other forms of exploitation, the Czech Republic was in 2008 a target country for persons from the former Soviet Union (Russia, Ukraine, Kyrgyzstan, Uzbekistan) and Romania. Indicators about persons from Vietnam, Mongolia and Belarus also appeared. The Czech Republic is also a transit country: after forging travel documents, persons are transported to other EU countries where they are exploited as cheap labour force. Transport of Czech citizens to England and other EU countries has also been recently documented.

Increasing problems can be expected in connection with the global economic crisis, thanks to which the factories dismiss mostly foreign manual workers, who are literally thrown to streets without any subsistence means and become more inclined to practices used by organized crime. According to labour office statistics for the first half of 2008, the most numerous group of persons employed illegally without notification came from Ukraine (829 persons) and from Slovakia (705 persons), followed by citizens of Poland, Vietnam. Bulgaria, Romania, Mongolia, Moldova, China and Russia. These results show no change in comparison with previous years' data.

4.2 Domestic violence and stalking

Members of the order police service made in 2008 a total of 6,091 official records (by 21 more than in the previous year) of dispatches showing symptoms of domestic violence. A total of 693 persons (678 men and 15 women – 97 persons less than in the previous year) were evicted.

The Ministry of the Interior established in 2008 cooperation with intervention centres in the Czech Republic which provide, as a part of their activities, assistance to persons threatened by domestic violence. A new binding instruction of the police president[197] issued in respect of

[196] Prepared with the use of a contribution from the non-governmental organization La Strada.
[197] Instruction of the Police President No. 200/2008.

dispatches showing symptoms of domestic violence defines the expulsion as a factual (and no longer as an administrative) act and grants the expelled person the right to "objections" which are submitted upon a decision of the supervisor of the expelling police officer.

The Ministry of Justice prepared an amendment to the Civil Procedure Code[198] for the purpose of further specification of individual institutes of domestic violence and eliminating difficulties encountered in the interpretation of individual provisions. Under this amendment, the court will have a new authority to enforce repeatedly, at any time and promptly upon a motion of the entitled person, the judicial decision by expulsion of the obliged person from the common dwelling in case that the obliged person has breached the prohibition to enter into and to stay in the common dwelling after being evicted from it. In case of breach of other duties, the court will impose on the obliged person, even repeatedly, based on a motion of the entitled person, a fine up to the amount of 100,000 CZK.[199] This issue is also dealt with in the draft new Civil Code,[200] which defines terms under which it is possible to restrict or exclude the other spouse's right to reside in the house or apartment. This procedure can be applied in cases when further common residence of spouses in the house or apartment becomes unbearable due to physical or psychological violence.

The new Criminal Code[201] regulates abuse of a person living in the common dwelling and punishes the person abusing another person living with him/her in a common dwelling. Offenders who have committed such crime by an especially cruel or brutal method, causing serious bodily injury, have committed it against two or more persons or have been committing it for a longer time will face stricter punishment. *This amendment differs from the existing law particularly by stricter punishment, permitting to impose a prison sentence in the range of six months to four years.* Under the existing law, it is possible to impose a prison sentence of up to three years. A specific characteristic of this crime is the existence of mutual dependence between the abuser and the abused, which results from the fact that both those persons reside in the same dwelling.

The new Criminal Code also punishes more serious cases of persecution or stalking, which cannot be punished under the existing criminal law. The applicable law punishes only a more dangerous form of such conduct – dangerous threats. Hence, the new law resolves situations where the relevant persons no longer share a common dwelling, e.g. cases when the victim escapes and is further pursued by the abuser.

[198] Act No. 99/1963 Coll., the Civil Procedure Code, as amended

[199] As of the preparation date of this Report, the amendment is being reviewed by the Chamber of Deputies of the Parliament of the Czech Republic, Release of the Chamber of Deputies No. 559/0.

[200] The draft new Civil Code was approved by the Government in April 2009 and is now reviewed in the Chamber of Deputies (Release of the Chamber of Deputies No 835).

[201] Act No. 40/2009 Coll.

5. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

5.1 Labour-law relations and employment

5.1.1 The Labour Code and judgements of the Constitutional Court

Significant changes were brought by an judgment of the Constitutional Court, which inclines to the principle of subsidiarity of the Civil Code and restricted certain powers of trade union organizations.[202] In collective bargaining, the principle has been applied again that if two or more trade unions operate in the employer's company, the employer shall negotiate with all of them about the execution of the collective agreement. Hence, it is no longer possible to conclude the collective agreement, in case of disagreements among these organizations, with only one or more trade union organizations that have the highest number of members in the employer's company. The Constitutional Court found that this represents an unconstitutional preference for a certain trade union organization over to another one. Rights of trade union bodies with respect to control of compliance with labour law regulations were also changed; in particular, their right to prohibit overtime work or night work that would threaten employee safety and health protection was abolished. The Constitutional Court found that such rights exceed by far the standards adopted by international legal document, are disproportionate and redundant.

As regards the employee's right to wage, salary and remuneration under agreements for work performed outside the employment contract, an important step towards safeguarding the right to wage is the possibility to stipulate such right by an internal regulation in case of all employers notwithstanding whether there is or is not a trade union organization operating in their company. Before this judgment, the employee right to wage or salary and other employee rights could be regulated by an internal bylaw only by an employer who did not have any trade union organization operating in his company or if it was expressly stipulated by the collective agreement. Wage and salary rights may be still agreed in the collective agreement or employment contract, or may be designated by a wage assessment. Some operative parts of wages are difficult to agree; on the contrary, determination of these rights in a wage assessment may be affected by the weaker position of the employee in the employer's company. Determination of wage rights in an internal regulation is sufficiently operative and such collective arrangement addressed to a broader group of employees limits any unjustified individual approaches to employee remuneration. *In particular, these effects of the internal wage regulation may be appreciated in case of employers where there is a trade union but no collective bargaining agreement has been concluded.*

The complicated economic situation led by the end of 2008 to an increase of number of cases of bankrupt employers failing to pay wages to their employees. *Therefore, such situations may be expected to increase with the deterioration of the economic situation.*

In March 2009, the Government approved an amendment to the Insolvency Act[203] as one of the measures against the impacts of economic crisis. The Insolvency Act, which enables the companies since the last year to resolve their problems, has significantly enhanced the position of secured creditors, mostly banks. The claims have preference as regards their satisfaction and no money is then left for funding of the operations and for employee wages. Therefore, the purpose of this amendment is to set rules to increase, under the Insolvency Act,

[202] Judgement file no. Pl. ÚS 83/06 (no. 116/2008 Coll.)
[203] Act No. 182/2006 Coll. on Insolvency and Methods of its Resolution (the Insolvency Act), as amended.

the possibility for survival and reorganization of companies or discharge of their debt, as opposed to their dissolution and sale. Under Act No. 118/2000 Coll. on Protection of Employees in Case of Employer's Insolvency, the state will pay allowance to the debtor's employees also in the preliminary moratorium and moratorium period. This will increase, among others, the extent of protection of employees from social impacts of their employer's crisis.

5.1.2 Employment Act and job applicants

The Employment Act[204] was amended in 2008 by the Act on Stabilization of Public Budgets.[205] In particular, this Act imposed stricter conditions on payment of unemployment benefit – a job applicant whose labour law relationship has been terminated within 6 months before his inclusion in the job applicants register due to a particularly gross breach of duties relating to the work performed by him is not entitled to unemployment benefits. This also applies to the termination of other work relationship for a similar reason. The Act stipulated a new maximum amount of support for employment of people with disabilities.[206] Another project implemented in respect of labour market relations regulated by the Employment Act was the implementation of the Green Card project described below.[207]

5.1.3 Employment of women after maternity/parental leave

Women on maternity/parental leave are among the groups at the labour market which show a higher extent of unemployment risk. *A major problem in respect of women's return to work after parental leave is the fact that employers do not often wish to further employ such woman (despite her legal entitlement to the job)*[208]*. This is caused by surviving gender stereotypes and also by insufficient expansion of flexible work forms (part-time employments, teleworking, shared employment, time accounts, etc.).* Flexible work arrangements are much less used in the Czech Republic than in the "old" EU countries and are concentrated into three forms: shortened working hours[209], part-time work and variable (shifted) working hours, According to the survey of the Research Institute of Labour and Social Affairs (RILSA) and Gender Studies, o.p.s., women consider as the key problem after return from parental leave the impossibility of working part time/flexible working hours, followed by insufficient services of crèches/kindergartens and other. Employment of women after maternity leave continues to be hindered by persistently low share of part-time work in the Czech Republic. The share of women working part-time amounted in 2007 to 8.6 percent (men: 2.3 percent).

These analyses indicate that, under the existing labour market developments, staying outside working activities is more advantageous for a specific group of women than part-time work. The reasons of this insufficient development of part-time work lie mostly in low real part-time wages and de-motivating setup of social allowances. On the contrary, some EU have succeeded in starting-up the growth of women's economic activity by increasing their

[204] Act No.435/2004 Coll. on Employment, as amended.
[205] Act No. 261/2007 Coll. became effective on 1 January 2008.
[206] 9,000 CZK per each person with more serious disability and 6,500 CZK per each disabled employee.
[207] See Chapter 9.
[208] Information of the counselling centre Gender Studies, o.p.s. (www.rovneprilezitosti.cz).
[209] According to the publication Employment in Europe issued by the European Commission, the share of part-time whole in the whole EU amounted in 2007 to 18.2% (women: 31.2 %, men: 7.7%) and 5.0% in the Czech Republic (women: 8.5%, men: 2.3%). Figures for 2008 are not yet available; according to the CZCO, which provides data for the Czech Republic to Eurostat, the 2008 values are as follows: a total of 4.9 % (women: 8,5%, men: 2.2%).

employment, particularly with the help of atypical employment forms, namely part-time work. [210]

The improvement of the situation of women on and after maternity/parental leave requires further development of measures focused on reconciliation of personal and working life from the part of employees, employers and the state. An appropriate step is the increase of dissemination of information and legal awareness of equal opportunities of women and man and on their positive economic and social effects. Another major handicap for women returning to the labour market is the long-term stay outside the labour marks (often up to 6 years). Beside the development of flexible working forms and promotion of various child care services, life-long education also represents a method of mitigation of these effects.[211]

5.1.4 Concept of parental leave

A weakness of the family policy concept in the Czech Republic is the fact that although the parents have an opportunity to return to work after two years, there are no establishments where to place the children. The number of crèches fell from 1,043 in 1990[212] to 48[213] in 2006 and this number continues to fall. It is true that two-year old children r may be placed in kindergartens; however, their capacity is insufficient, sometimes even in respect of three-year old children. In the school year 2005/2006, a total of 23,849 two-year olds (i.e. 25.5% of children of their age) applied for placement in kindergartens. This means that the demand for child care services for children younger than three years of age is continuously growing (from 12.2% in 1996/97).[214] It has to be mentioned here, however, that the characteristic of child care in kindergartens differs completely from the care in crèches. Primarily, kindergartens do not have the appropriate staff to enrol children who are unable to become a part of the children's collective due to their individual development level. The Ministry of Labour and Social Affairs perceives the decline in number of children in crèches as an expression of value orientation of parents, whose preferences are focused more on alternative care forms. On the other hand, 25% of two-year olds, 75% of three-year olds and 90% of four-year old children attended kindergartens in the school year 2005/2006.[215] This indicates the existence of interest in the Czech Republic in the use of kindergartens. Moreover, an increased demand for care for two-year old children may be expected with the introduction of multi-period parental leave (2, 3 or 4 years). Individual babysitting services are too expensive.

5.1.5 Pro-family package – reconciliation of family and professional life

The pro-family package[216] approved by the Government in 2008 contains support measures for families with children, particularly with regard to reconciliation of professional and family

[210] Modern Society and Its Changes: Gender in Management. Analysis of the labour market in the Czech Republic from gender perspective with a focus on description of the state and structure of women's employment in management, a partial study, Danica Krause, RILSA.
[211] Taken over from materials of Gender Studies,o.p.s., www.rovneprilezitosti.cz
[212] Network of day care establishments for preschool children in the Czech Republic, V. Kuchařová, K. Svobodová, RILSA, Prague 2006.
[213] Information update. Health care facilities in the Czech Republic in 2006, Institute of Health Information and Statistics of the Czech Republic.
[214] Network of day care establishments for preschool children in the Czech Republic, V. Kuchařová, K. Svobodová, RILSA, Prague 2006.
[215] Taken over from materials of Otevřená společnost, o.p.s., www.otevrenaspolecnost.cz and from the study Network of day care establishments for preschool children in the Czech Republic, V. Kuchařová, K. Svobodová, RILSA, Prague 2006, p. 17
[216] See Resolution of the Government of the Czech Republic No. 1451 of 19 November 2008.

life. These measures attempt to resolve the above-mentioned shortage of places for children in kindergartens and crèches. The pro-family package is a conceptual material which will be followed by the implementation of each of its measures in the form of laws. This applies specifically to registered providers of mutual parental aid, measures for support of child care services provided under a trade licence, “mini kindergartens”, tax allowances for employers providing child care for their employees, promotion of part-time work and father allowances.

A novelty is the introduction of the sickness insurance allowance for fathers which is paid for 7 days. The father may interrupt temporarily the performance of his gainful activities to take care of his newborn child together with its mother and will be paid during the above period this new sickness insurance allowance.

“Mini kindergartens” represent an expansion of child care offer for employed parents who prefer individual care. This service will be provided most frequently by the employer at the parent's workplace or by non-profit organizations, municipalities, regions and church legal entities.

Another prepared measure is the Act on Mutual Parental Aid, which is to allow more flexible return to work while keeping individual care for the child. The bill on mutual parental aid purports to minimize all administrative burden connected with the newly introduced system. *A somewhat problematic aspect is the absence of quality standards of the provided care*.

5.2. Social security

5.2.1. State social support

State social support allowances are designated to support income of families with children. Changes in the state social support system occurring since 1 January 2008 related to the public finance reform. The key common characteristic of these changes was the removal of the tie of the allowance amount to the subsistence minimum and determination of its amount by an absolute number. Adjustments of the allowances, mainly the child allowance, the childbirth grant and the social benefit, were related to an inclination to a more addressing system of payment of these allowances and to the enhancement of financial support of families with children in the tax area. Lower allowances were compensated by higher net income resulting from overall reduction of the tax burden (the lower tax right, increased tax allowances) and by a number of other modern flexible family policy measures.

The most important legislative change in family allowances that occurred in 2008 concerned the parental benefit, where the expansion of child care variants led to better conditions for reconciliation of working and family life. Since 1 January 2008, the parental benefit has been newly designed in three levels determined by fixed amounts, which also corresponds with the period of use of the benefit. The parent is entitled to elect a quicker drawing of the parental benefit up to 24 months of the child's aged in an increased amount of 11,400 CZK, the classical drawing of the parental benefit up to 36 months of the child's age in the basic amount of 7,600 CZK, or a slower drawing of the parental benefit in the basic amount of 7,600 CZK up to 21 months of the child's age and in a reduced amount of 3,800 CZK up to 48 months of the child's age. The right to parental benefit for disabled children has been kept in the basic amount up to 7 years of the child's age.

Out of all other allowances, the school aids allowance proved to be not too effective and paid to an unnecessarily large group of persons; therefore, it was abolished. The childbirth grant is provided in a fixed amount of 13,000 CZK for each newborn child. Funeral allowance was limited only to cases of funeral arranged for a parent of a dependent child or for a dependent child, i.e. in cases where the costs of such unexpected event mean a significant non-recurrent burden for budgets of families with dependent children.

5.2.2 Sickness insurance

Amendments to sickness insurance laws came into force on 1 January 2008.[217]A guard period was introduced in respect of sickness insurance payments (the entitlement to sickness insurance payments arose only from the 4th calendar day of temporary work incapacity). The protective period was shortened to 7 calendar days after termination of employment. The Constitutional Court ruled on 23 April 2008 on a motion of a group of MPs and senators for abolishment of some parts of the Act relating to the above-mentioned issues.[218] By its judgement,[219] the Constitutional Court abolished the three-day guard period with the effect from 30 June 2008. By its judgement, it determined indirectly that the entitlement to sickness insurance benefit equal to 60% of the daily assessment base also arises with respect to the first three days of the work incapacity (ordered quarantine).

In its reasoning, the Constitutional Court stated, *inter alia*, that: *"(This measure) is a somewhat self-indulgent and even arbitrary attitude from the part of the state, which affects all employee categories due to an indeterminate number of sickness allowance abusers. This results in a situation where vast majority of employees are left without any means for the first three days of their work incapacity, while their duty to pay insurance premiums remains unaffected .... It is inadmissible for the state to only demand from employees the fulfilment of their duties (in this case the payment of insurance premiums), ignoring at the same time the protection of their interests in cases when they are affected by the above-mentioned event in the form of work incapacity. This has constituted a breach of employee rights that has reached the constitutional dimension. The sickness insurance system should not serve to cover the state budget deficit."*[220] In all other contested areas, (e.g. changes of the criteria for entitlement to state social support allowances, destitution allowances, provision of social services), the Constitutional Court dismissed the MPs' complaint. *"…the rights in this (Fourth) Chapter are mostly relative in the sense that they development … depends on the situation of the national economy and mainly on its material results ... The regulation by a lower level legal norm cannot avoid being subject to changes resulting from the development of economic and living standard. Hence, binding the ordinary legislator by constitutional barriers will be out of place in this case … It is indisputable that the Charter binds the state to act positively in the area of social rights and to ensure the protection of these rights. The content of this duty imposed upon the state is to ensure to the subject of these rights certain minimal social standard and not an adequate living standard in accordance with their requirements, as it is sometimes wrongly perceived and demanded by these subjects."*[221]

[217] Act No. 261/2007 Coll. on the Stabilization of Public Budgets.
[218] Act No. 261/2007 Coll. on the Stabilization of Public Budgets. This Act concerned specifically the amendment of Act No. 54/1956 Coll. on Employee Sickness Insurance, as amended.
[219] File no. Pl. ÚS 2/08 (č. 166/2008Coll.).
[220] See the judgement of the plenum of the Constitution Court file no. Pl. ÚS 2/08 (č. 166/2008Coll.).
[221] Ibid..

Based on the Constitutional Court's judgement, the Ministry of labour and Social Affairs changed the law in accordance within the limits of the constitutional law set out by the Constitutional Court.[222] Since 1 January 2009, employees have become entitled during the first 14 days of work incapacity to a compensation of wage, salary or remuneration or to a reduced salary.[223] His compensation is paid in case of temporary work incapacity since the 4th day of its term in an amount equal to 60% of average earnings and in case of quarantine since the 1st day of work incapacity in an amount equal to 25% of average earnings.[224]

5.2.3 Pension insurance – the first stage of the pension reform

The measures[225] adopted in the so-called first stage of the pension reform are to contribute to a long-term improvement of the sustainability of basic pension insurance. Key changes include gradual extension of the insurance period necessary for the entitlement to old age pension from 25 to 235 years, continual increase of the pension age of men and women who did not take care of a child to 65 years and to 62 years in case of women who took care of at least two children, a change of disability pension to old age pension in the same amount upon reaching 65 years of age and abolishment of the period of study acquired after the effective date of the Act as substitute insurance period, except in case of assessment of the entitlement to disability pension.

The possibility to work while taking old age pension has also improved. They need no longer conclude an employment contract for a limited period of time to avoid losing their old age pension. If a pensioner works while taking old age pension, the percentage assessment of his pension also is also increased.

5.2.4 Destitution allowance

Partial legislative changes implemented in 2008 as a part of social reforms, which were important for ensuring financial sustainability of the system of assistance in destitution, imposed stricter conditions for the entitlement to destitution allowances and enhanced their motivating and activation function. Other measures were implemented to cope with the unfavourable social and economic situation of persons newly exposed to poverty and social exclusion and consisted in an emphasis on social work, social counselling and timely and coordinated intervention of all participants (municipal authorities, labour offices and social partners).

5.3. Social services

The key principle of the new statutory regulation of social services[226] consists in a more accurate definition of rights and obligations of the group of eligible persons using the care allowance and in a more effective concept of funding of social services through public budget

[222] Act No. 305/2008 Coll. amending Act No. 187/2006 Coll. on Sickness Insurance and Certain Other Laws, adjusted with the effect from 1 September 2008 the sickness benefit amount for the first three days of work incapacity or quarantine to 25% of the daily assessment based and granted the entitlement to sickness benefits also in cases of a quarantine ordered for less than 4 calendar days.
[223] Section 18(8)(b) of Act No. 187/2006 Coll. on Sickness Insurance.
[224] Section 192(2) of the Labour Code.
[225] The Parliament of the Czech Republic passed on 17 July 2008 Act No. 306/2008 Coll. amending Act No. 155/1995 Coll. on Pension Insurance, as amended, Act No. 582/1991 Coll. on the Organization of Social Security, as amended, and Certain Other Laws. This Act will become principally effective since 1 January 2010.
[226] Act No. 261/2007 Coll. on the Stabilization of Public Budgets.

subsidies. The regulation affected primarily the situations where the care allowance cannot evidently fulfil its purpose, i.e. mainly cases where the comprehensive are is provided under another title (e.g. the hospitalization period). At the same time, the regulation also took into account situations where there is a serious doubt about the correct use of the care allowance, i.e. if the eligible person fails to specify despite repeated requests the manner in which he uses the allowance, the allowance payment will be suspended but the entitlement to the care allowance will not be affected. The responsibility for ensuring the necessary social services network in accordance with the local needs to provide social service to individuals or group of persons was delegated to regions.

As stated in the previous Report, the regulation of means to restrain movement of persons in the Social Services Act does not cover sufficiently all aspects that are closely related to the issues of risk and safeguarding the right of users with a focus on free movement.[227] The amendment deals primarily with the provider's duties to ensure a detailed analysis of the situation and the related circumstances, expansion of records keeping, expansion of the category of persons authorized to inspect the records to the person himself and the person designated to supervise him, the notification duty to the supervisory authority, records keeping and the mechanism of participation and summoning a physician, who has to be consulted only in case of administration of a medicine. All other cases are governed by the general rule according to which the restraint measures are to be used only in most urgent cases.[228] *This amendment took into account, among others, a motion of the Government Council for Human Rights concerning the statutory regulation of the use of measures restraining movement of patients during administration of medical care.*[229]

5.4 Housing

5.4.1 Apartment lease

A change of lease law can be still deemed necessary, because the existing arrangement does not fully cover current needs, particularly with regard to the newly conceived equality principle, because the law provides tenant protection irrespective of the period within which the acquired their user rights.[230] However, there may be some tenants who should enjoy increased protection in his relation with the landlord, because they are somewhat disadvantaged due to their social status (age, disability, etc.). This means that such tenant does not enjoy an equal position in his relationship with the landlord, and failure to provide increased protection to such persons may ultimately lead to their social exclusion, or to a "fall" to the system of social benefits, etc. It has to be noted, however, that, pursuant to Art. 30(2) of the Charter of Fundamental Rights and Freedoms, the responsibility for social protection of tenants (like any other persons in a socially difficult situation) is borne fully by the state. Therefore, this responsibility cannot be transferred to the landlord or to any private parties.

According to the new draft Civil Code, the tenant should have a guaranteed right to invite to his household any person to live with him and the landlord would not be entitled to prohibit, even under the lease agreement, moving the close family members (such a children and the spouse) together with the tenant. However, the landlord should be entitled to request that the

[227] Act No. 108/2006 Coll. on Social Services, as amended.
[228] See Release of the Chamber of Deputies No. 659/0, currently under the second reading.
[229] See the Resolution of the Government of the Czech Republic No. 290 of 26 March 2008.
[230] This concerns mainly tenants living in apartments with regulated rent although their social situation does not always require such regulatory protection.

number of persons living in the apartment is appropriate to ensure their dignified and sanitary living conditions.[231] *The current law does not contain the possibility to limit the number of persons living with the tenant in the apartment; however, a provision limiting this right is often stipulated in the lease agreement or is required by the landlord (beyond the scope of the law and of the lease agreement). Hence, the new Civil Code should strengthen the tenant's legal certainty in this respect.*[232]

The draft new Civil Code transfers the active role in case of termination of apartment lease from the landlord to the tenant. The automatic court review of termination of apartment lease is abandoned in certain cases.[233] The tenant has either three months to vacate the apartment or to file within two months of the service of the termination notice a petition for invalidity of termination of the lease. Certain protection of the tenant is his right to damages in the case that the landlord wants back the apartment for his own needs or for the needs of a close person and then fails to use it for such purpose. *Another disputable provision of the new Civil Code is the provision stipulating a possibility to termination the lease without a notice period, i.e. an "immediate termination of the lease", based on a presumption that the tenant has committed an especially gross breach of his duties.* [234] In these cases, the Civil Code does not count on mandatory court review and the tenant has only two months to file a petition for judicial review of the termination. *With regard to some experience with landlord practices, there is a justified fear that this provision could be misused by landlords to terminate leases for fictitious breach of the tenant's duties. The new law still offers both parties the possibility to contest the termination before the court, but the access of some groups of tenants to judicial protection of their rights may be hindered by their overall social situation. Therefore, such groups will need to be offered adequate legal aid, preferably free or for reduced costs.*

On the other hand, the draft new Civil Code introduces some amendments in the tenants' favour, such as the "prescription of the right to the lease", i.e. automatic constitution of the lease in cases where the tenant has been using the apartment even without a lease agreement for at least three years in good faith that he is his rightful user.[235] This provision will reinforce legal certainty of tenants who do not posses for any reason a written lease agreement or any other legal title guaranteeing to the legitimate use of the apartment.

5.4.2 Housing of socially weaker and disadvantaged population groups

The Czech Republic lacks legislation concerning social housing for low income households. Social housing is to respond to difficult housing situation of pensioners, socially excluded persons, young families with children, people with disabilities and other population groups.[236]

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[231] See Section 2112 of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.

[232] The draft amendment to the Civil Code described in Chapter 2 contains a similar provision which is more restrictive for tenants because they have to report to the landlord the specific identity of persons living with him, including their names and dates of birth. This also represents a major difference from the current Civil Code (Section 689).

[233] Section 2127 2112 of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic

[234] Section 2130 2112 of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.

[235] Section 2077 2112 of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.

[236] The policy statement of the Government of the Czech Republic declares that "the government will further specify the definition and delimitation of social housing support and will push through the expansion of financial assistance to municipalities in the field of social housing with an emphasis on responsibility of municipalities".

Housing protection within the state social support system is safeguarded by the housing supplement,[237]which assists people in destitution in overcoming insufficient income to cover justified housing costs.[238] *On the contrary, practical experience indicates that the very construction of the housing allowance and the housing supplement is not a systemic resolution that would prevent social exclusion. In accordance with the ombudsman's opinion, it is necessary to adopt a Social Housing Act, which would specifically define the role of the state, regions and municipalities and of individual institutions in this respect.*

The social housing issue in the Czech Republic affects all low income population categories, including pensioners, people with disabilities and young families with children. The low number of social apartments together with insufficient construction of apartments for social purposes by municipalities leads, for instance, to the fact that the entire groups of the population that have never needed any social assistance find themselves after retirement in a situation where they are unable to pay out of their pension the rent in apartments with gradually deregulated rent, or to resolve their situation by relocation to smaller apartments (available are only apartments with non-regulated rent, which is even higher). A number of lone pensioners are not eligible for the housing allowance because they exceed standardized housing costs and cannot obtain the housing supplement (an allowance provided in destitution), because they are not found destitute.[239] *It is possible to fully share the recommendation of the Public Protector of Rights submitted in 2005 to the Chamber of Deputies to order the Government to prepare a concept of "housing for the socially weak", i.e. housing* in low-cost apartments ensuring at least basic living conditions for their inhabitants.

There are minimum dwellings built for persons threatened with social exclusion. The issue of adequacy in relation to costs or size of the apartment or the living space for destitution allowances has not been defined as well.[240] *Hence, it is necessary to unify the conditions for providing housing to persons threatened with insufficient income and to define in such manner the adequacy of housing in respect of the dwelling size (according to the number of persons or for an individual) and to the amount of housing costs. This also relates to the motivation to use housing methods by these persons. It is necessary to seek a relation between the determination of housing adequacy (size and payment) and safeguarding fundamental human rights relating to the person's privacy, life quality, etc.*

The material intent of the new law regulating the provision of social housing as a service of general economic interest was to be presented to the Government by 30 April 2008; the bill was to be presented by 28 February 2009. However, the government approved at its meeting of 28 May.2008 a change of the form of performance of the programme objective by cancelling the legislative task to prepare a social housing bill (Resolution of the Government of the Czech Republic No. 643 of 28 May 2008). Two government regulations are to be prepared in support of the construction of social apartments and on the operating support of landlords.

[237] Eligibility to the housing benefit arises to the owner or tenant of an apartment who is registered there for permanent residence in case that 30% of the family income (35% of the family income in Prague) is not sufficient to cover housing costs and such 30% (35%) of the family income is less than the relevant standard housing costs defined by the law and re-calculated depending on the housing type, size of the municipality and number of household members.

[238] Eligibility to the housing supplement arises to the owner or tenant of an apartment whose income after payment of justified housing costs becomes less than the subsistence amount. Justified housing costs include rent up to the target rent (set by a notice of the Ministry for Regional Development) and payments for services and necessary utilities.

[239] Prepared with the use of materials provided by Otevřená společnost, o.p.s. www.otevrete.cz

[240] See Section 4(2) of Act No. 110/2006 Coll. on Subsistence and Existence Minimum, as amended.

5.5 Rights of people with disabilities

5.5.1 Statutory regulation of means of communication

The Sign Language Act was updated in 2008.[241] The amendment ensures communication needs and means of deaf and blind people at the same level as those of the deaf. The Act newly defines 7 other communication systems for deaf and deaf and blind people that are most frequently used in practice, which include: visualisation of spoken Czech, written recording of spoken language, Lorm's alphabet, dactylography, Braille alphabet with the use of tactile form, tactile lipreading and Tadoma vibration method. The term "sing language" used to date has bee replaced by a new, more accurate term "communication systems of deaf and deaf and blind persons". The approved Act contains a new provision which expressly constitutes each deaf or deaf and blind person's right to elect at his own discretion the communication system corresponding to his needs.

5.5.2 Deprivation and restriction of legal capacity[242]

5.5.2.1. Current situation

The Report on the State of Human Rights in the Czech Republic in 2007 referred to the excessive use of deprivation and restriction of legal capacities and pointed to judicial decisions issued in this respect by the courts on the basis of frequently poor quality psychiatric expert evaluations and to insufficient judicial control of legal guardians. Despite the criticism from the part of the Constitutional Court and non-governmental organizations, the negative tendency towards increase of the number of persons deprived of or restricted in their legal capacity has deepened significantly in recent years, including 2008. As of this date, a total of 24,182 persons were deprived of their legal capacity and 4,058 people had their legal capacity restricted. Seen in the context of the past years, these figures indicate that the ratio of the people deprived of their legal capacity to the number of people who have had their legal capacity restricted has been increasing. The number of people who were totally deprived of their legal capacity in 2008 was six times higher than the number of people with restricted legal capacity.

5.5.2.2 New statutory regulation in the draft Civil Code

The new Civil Code introduces the principle of subsidiarity, under which a person's legal capacity may be restricted only if more moderate and less restrictive measures are required in respect of his interests.[243] Hence, the Act creates a base for the existence of alternatives to guardianship and substitute decisions. This is represented by the institute of preliminary declarations, assistance in decision-making, representation by a household member and guardianship without restriction of legal capacity.[244] The draft no longer counts on the existence of full deprivation of legal capacity, because it is an institute that is being abandoned in reformed legal systems due to its inadmissible infringement on fundamental

[241] Act No. 155/1998 Coll. on Sign Language and on the Amendment to Other Laws. The amendment was enacted by Act No. 423/2008 Coll.
[242] Prepared with the use of materials provided by the Human Rights League, www.llp.cz .
[243] See Section 56nn of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic..
[244] See Section 46nn of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.

rights and freedoms of individuals. The European Court for Human Rights has reviewed several cases where it has decided that the complainant's deprivation of legal capacity represented an interference with his right to respect of private and family life because such measure was disproportionate given its aim.[245] A court that restricts a person's legal capacity will have to expressly state the extent to which that person's capacity to take legal acts has been affected.[246] A decision to restrict legal capacity may never affect the ability to act independently in ordinary matters of everyday life.[247] The restriction of legal capacity is newly taken as a temporary measure. If the legal capacity is restricted in connection with a specific matter, it may only be restricted for a period necessary for the settlement of such matter. [248]

Unlike the existing law, the draft contains some new provisions concerning guardians and their duties towards their charges. In addition to the foregoing, the bill also defines basic prerequisites for the assumption of the guardian office.[249] According to the new law, it should be also possible to appoint two or more guardians to a single person, each of whom may be specialized on certain areas and may thus better perform his tasks. The draft Civil Code also establishes a new body to supervise guardians – the guardians board, whose tasks will include reviews of reports on guardians' activities and granting consent to come serious acts enumerated in the law.[250] The bills also presumes the ward's involvement in the guardian control mechanism and, subject to the compliance with certain specific conditions, also the involvement of some legal entities (e.g. non-government organizations) engaged mainly in the care for people with disabilities and in protection of their interests.

The draft Civil Code also further specifies details concerning an interference with bodily and mental integrity of an individual[251] and sets forth three basic rules relating to the constitutional principle of personal integrity: first, it is principally impossible to interfere with another person's integrity without his consent except in cases expressly enumerated in the law[252]; second, the human body or its parts may not be, as such, a source of material benefit[253]; third, the human body is protected by the law even after the person's death.[254] At the same time, nobody can be killed even upon his own request. A new provision of the Civil Code regulates issues concerning the protection of human body after death. According to this

[245] Decision of the European Court for Human Rights in *Shtukaturov v. Russian Federation* of 27March 2008 (complaint no. 44009/05) and in *X. v. Croatia* of 17 July 2008 (complaint no. 11223/04).
[246] See Section 58(1) of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[247] See Section 64 of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[248] See Section 60 of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[249] See Section of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[250] See Section 444nn of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[251] See Section 91nn of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[252] See Section 93(1) of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[253] See Section 110nn of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[254] See Section 92(1) and Section 112nn of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.

provision, every person is entitled to decide how he wishes to be buried.[255] However, specific details are governed by public law, particularly by the Act on Undertaker Services.[256] The new Civil Code also presumes the establishment of a special register for persons who do not wish to have their body dissected after their death.[257] The Civil Code also resolves basic issues relating to the disposal of human body parts. In particular, it establishes the right to know how a part taken from a person's body has been disposed of.[258]

The new Civil Code contains completely new provisions concerning the rights of a person placed in a medical establishment. A person may be confined to a medical facility only for reasons stipulated by the law and if his care cannot be provided for by any other means. The confined person's legal representative or close person must be immediately notified of the confinement, unless it is against the confined person's wish. The confined person has the right to be informed about reasons for his confinement and to contact his legal representative or a trustee of his choice and may also apply for an independent review of his condition by another medical establishment.[259]

5.6 The status and rights of older people

The Government has adopted the National Programme of Preparation for Ageing for 2008 - 2012,[260] a strategic document setting objectives and measures that have to be adopted in specific areas in the context of demographic ageing and social changes. The Programme is based on the presumption that an increase of the quality of life in old age and successful coping with challenges connected with demographic ageing requires a focus on the following priorities: active ageing, an old-age friendly environment and society, improvement of health and medical care in old age, support of the family and caregivers, promotion of participation in the life of the society and protection of human rights. The Programme follows UN recommendations in this area, particularly the International Action Plan on Ageing (UN, Madrid 2002) and UN Principles for Older People (1991) and puts a special emphasis on protection of dignity, human rights, prevention of discrimination on the grounds of age and all forms of abuse and violence, and social inclusion of older people in most risky and disadvantaged situations.

Older people are one of the groups that may be really threatened by social problems in connection with de-regulation of rent, as indicated by experience of non-governmental organizations. The civic association Iuridicum remedium implemented in 2008 a project called “Legal aid to seniors during de-regulation of rent”, within which it found out from feedback that the tenants, particularly those from threatened social categories, who often find themselves in social isolation due to lack of access to electronic communications, were not informed at all about their obligations and rights.

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[255] See Section 113 of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[256] Act No. 256/2001 Coll. on Undertaker Services, as amended.
[257] See Sections 114 and 115 of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[258] See Section 110nn of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[259] See Section 104nn of the draft new Civil Code, as approved by the Government and submitted to the Parliament of the Czech Republic.
[260] See Government Resolution No. 8 of 9 January 2008.

The pending "rent de-regulation" process[261] causes a number of social problems to older people. *A potential solution to prevent negative social consequences of the de-regulation consists in measures taken by municipalities where these people reside (building of special housing for seniors or social apartments in general, establishment of a database of offers to exchange apartments), or in the resolution of the financial situation of older people by means of a state guaranteed system of social allowances, since a number of tenants – seniors are currently ineligible for state social support benefits, particularly for the housing benefit due to exceeding the standardized housing costs.*

It has to be considered that the tenants- seniors are not properly informed about the de-regulation process, which substantially hinders their awareness of their rights and obligations, including the enforcement of their rights. A major problem is the absence of communication channels beside mass media (of which only TV and radio) and personal contacts of the affected tenants. The resolution of this situation requires primarily an increase of information and legal awareness of all participants to lease relations (tenants and landlords) and the creation of a functioning system of socially affordable housing for low-income people.[262]

5.7 Rights of access to education

Most foreigners from third countries who legitimately reside in the territory of the Czech Republic, have been granted since 1 January 2008 access to preschool, primary artistic, language and special interest education and school services under the same conditions as citizens of the Czech Republic.[263] Nevertheless, the educational system has not been fully opened under the same term to every foreigner. Stricter conditions of access to preschool, primary artistic, language and special interest education still apply to foreigners who are not citizens of the European Union. Moreover, primary education has become also available to illegal immigrants in accordance with the Convention on the Rights of the Child.

The reform of primary, secondary and university school system has had a major impact on multicultural (intercultural) education of children and pupils, because it changes the general attitude to education and focuses it on the acquisition of key competencies and offers to more autonomy to schools. For instance, multicultural education provides to pupils basic knowledge of various ethnic and cultural groups living in the Czech and in the European society, develops their ability to recognize and to tolerate differences of other national, ethnic, religious and social groups and to cooperate with members of different socio-cultural groups, develops the skill necessary to recognize manifestation of racial intolerance and help preventing xenophobia. Results of such education are directed to teach the children to recognize threats to human rights and to be able to seek ways to prevent such threats, or to know where to find help in protection and promotion of human rights.

5.7.1 ECHR's judgment in D.H. *v.* Czech Republic and the Czech Republic's response

The judgment of the European Court for Human Rights relating to discrimination of Roma children in education was described in the previous Report. Analyses commissioned by the

[261] Act No. 107/2006 Coll. on Unilateral Increase of Apartment Rent and on the Amendment to Act No. 40/1964 Coll., The Civil Code, as amended.
[262] Prepared with the use of the contribution of Iuridicum Remedium, www.iure.org
[263] Act No. 343/2007 Coll.

Ministry of Education, Youth and Sports also indicate that school success rate of Roma children is often low. This applies primarily to Roma children living in socially excluded localities or in an environment threatened by social exclusion. The Government considers education of Roma children as one of the key issues of social inclusion of the Roma.

One of the priorities of the ministry of education is to increase inclusiveness of the educational system, i.e. also in relation to children from different social and cultural environment. The key activities in support of inclusive education and improvement of the situation of Roma children, pupils and students include the elaboration of a National Action Plan of Inclusive Education, which will paid increased attention to the care for and education of Roma children from socially excluded localities and to the creation of inclusive mechanisms focused on children with special educational needs. Another measure of this kind is the transformation of the counselling system – the setup of a process of socio-culturally sensitive counselling, diagnostic and intervention care focused mainly on the identification of special needs and support of pedagogues and their use of appropriate equalizing measures. A very important issue is the provision of information to the child's legal guardians of all aspects resulting from partial conclusions of investigations of counselling establishment, which will ensure a really informed consent with the conclusion of counselling investigation and will clearly define consequences of the recommended measures.

Early comprehensive care focused on support of full development of the children's potential, concerning both their personality and social behaviour, has to be ensured in preschool age. This requires, in particular, the creation of conditions for high-quality preschool preparation of children threatened with social exclusion in the direction of compensating their disadvantage before the start of compulsory school attendance. These measures are also focused on increasing the number of Roma children in mainstream education and on the support of their school success rate at all educational levels. Major attention in respect of individual steps is paid to the work with families of such pupils to enable the parents to create support for the education of their children – involvement of high-quality pedagogic assistants in the educational process at all school levels and types, development of specific programmes focusing on direct support of children, programmes of support of pedagogues, setting work standards for pedagogic assistants and creation of their guidance system.

5.7.2 Rights of children with disabilities to education

The Czech National Disability Council points to the situation concerning the provision of pedagogic assistants in education of children, pupils and students.[264] The School Act stipulates the right of children with special educational needs to the content, forms and methods corresponding to their educational needs and possibilities, to the creation of conditions necessary for such education, to counselling assistance provided by the school and the school counselling establishment. This Act introduces the term “special educational needs”, meaning the needs of pupils with disabilities, health and social disadvantage. Furthermore, the Act provides a possibility to establish a post of a pedagogic assistant under the requisite recommendation of the school counselling establishment. The extent of special educational needs and the scope of educational support, including support services provided by the pedagogic assistant, is determined by school counselling establishments. *It appears,*

[264] This possibility is provided for by school legislation, particularly by Act No. 561/2004 Coll. on Preschool, Primary, Secondary, College and Other Education (the School Act), as amended, and Act No. 563/2004 Coll. on Pedagogues and on the Amendment to Other Laws, as amended (including implementing regulations).

however, that the effective operation of this system would require a more detailed classification of these needs in the law.

A decree issued by the Ministry of Education, Youth and Sports[265] makes the education of pupils with special needs at the attraction school of the place of their permanent residence dependent not only on their personal situation but also on the possibilities and conditions of the relevant school.[266] If the school principal does not enrol such pupil, he will notify his legal guardian, the municipality where the pupil permanently resides and the regional authority to which he reports.[267] The regional authority is responsible for granting consent with the establishment of a post of pedagogic assistant.[268] *However, the law does not set any other procedure of further providing for other educational needs of such pupil or of the implementation of his right to education. Thus, everything depends on school principals. In some cases, a pupil with disability is "enrolled" to the relevant school with an educational programme for this group of pupils but after identifying financial requirements of his support, the pupil is "refused", the number of hours for which the school is "willing" to educate him is reduced, etc.*

Another problem is the establishment of the post of pedagogic assistant for work with pupils with special educational needs. The law only stipulates the particulars of the application for consent with the establishment of such post, which is filed by the relevant school principal.[269] The School Act only provides for the possibility to establish a post of pedagogic assistant, which requires only an opinion of the school counselling establishment.[270] The Act does not provide for situations where the assistant should be allocated on a mandatory basis and does not clearly define who is responsible for his funding and who decides on his appointment. *It is this insufficient definition of substantive and procedural prerequisites for the establishment of the pedagogic assistant post that causes the above-described situation where the allocation of assistant is based almost exclusively on the availability of funding. This leads to a situation where the overall number of pedagogic assistants has increased*[271] *but their numbers in individual regions are rather different.*[272] *Some parents have to resolve this situation by hiring a "personal assistant" who provides support services for the education of their children and to pay his wage costs out of the care allowance under the Social Services Act*[273]*, which often represents a considerable financial burden for them. Such situation may be considered as dissatisfactory.*

In response to this problem, the Ministry of Education, Youth and Sports prepares an amendment to the relevant decree[274], which presumes the provision of all support services in education of pupils with disabilities by a pedagogic assistant, including an improvement of

[265] Decree of the Ministry of Education, Youth and Sports No. 73/2005 Coll. on education of children, pupils and students with special educational needs and of exceptionally gifted children, pupils and students.
[266] Section 3(4) of Decree No. 73/2005 Coll.
[267] Section 9(4) of Decree No. 73/2005 Coll.
[268] Section 16(10) of the School Act.
[269] Section 7(2) of Decree No. 73/2005 Coll.
[270] See Section 16(9) of Act No. 561/2004 Coll., the School Act.
[271] There are currently a total of 3,450 pedagogic assistants operating in the Czech Republic and their numbers are increasing continuously (source: Institute of Information in Education. figures as of 30 September 2008).
[272] According to the Czech National Disability Council, some regions have up to 250 assistants while the other have a shortage of them.
[273] Act No. 108/2006 Coll. on Social Services, , as amended.
[274] Decree of the Ministry of Education, Youth and Sports No. 73/2005 Coll. on education of children, pupils and students with special educational needs and of exceptionally gifted children, pupils and students.

wage conditions of assistants.[275] This amendment should come into force on 1 January 2010. In this way, the Ministry tries to contribute to the implementation of a model of education of such pupils in ordinary schools with the provision of necessary support services.

[275] The same purpose is followed by the amendment or expansion of the Government Order No. 469/2002 Coll.- Catalogue of Works. The current placement of pedagogic assistants in the 4th to the 8th wage category will be expanded by adding the 9th category for pedagogic assistants with university education.

6. HUMAN RIGHTS AND BIOMEDICINE

6.1 Health care reform legislation

The reform legislation was to transform many areas of health care in the Czech Republic.

6.1.1. Bill on medical services

The Healthcare Services Act was to replace the provisions of the Act on the Care for Health of the People, but was withdrawn by the Government from the agenda of the Chamber of Deputies.[276] According to the Ministry of Health, the principal difference between the Healthcare Services Act and the Act on the Care for Health of the People was to consist in the change of the patient status. The patient was to become the centre of provision of medical services and emphasis was to be put on his rights and individual needs. The right of the people was to be replaced by the right of the patient. This Act is supposed to better respond to the obligations of the Czech Republic under the Convention on Human Rights and Biomedicine. However, no legislative schedule or intent for the preparation of a similar legislation has been set after withdrawal of governmental drafts of the Healthcare Services Act and of the Specific Healthcare Services Act from the Chamber of Deputies. Hence, the Act on the Care for Health of the People is still in force.

Although the bill on medical services was a step in the right direction, it is possible to consider certain objections and supplements to ensure a more detailed and broader protection of patient rights.[277], As regards the international legal protection of human rights, the key source of medical law in the Czech Republic has been represented since 2001 by the Convention on Human Rights and Biomedicine, whose Art. 9 contains the notion of previously expressed wishes. This institute was newly introduced in the bill on medical services; it is, however a question to which extent such brief provision (a single section) may fulfil its purposes, In this respect, the Human Rights League proposes to add a "possibility to designate a person who will decide on the patient's treatment in case of his incapacity …and the establishment of a unified electronic register of previously expressed wishes, because the patient may give his instruction in one hospital but may be then placed for various reasons in another hospital."

Another problem is the ensuring of effectiveness of informed consent in dealings with a foreign patient. The law should clearly define in this case that the medical service provider is responsible for the compliance with the institute of informed consent as well.

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[276] The Act was to have the form of a code containing general statutory regulation (definition of new terms, setting basic conditions of provision of medical services, definition of the position of the state, the medical service provider and the patient and their relations). The bill also regulated the conditions of provision of medical services, patient rights and obligations and the rights and obligations of the medical staff. However, the Government expressed at its meeting on 20 April 2009 its consent, *inter alia*, with the withdrawal of the government draft of the Act on Healthcare Services and Conditions of Their Provision (the Healthcare Services Act) – Release of the Chamber of Deputies No. 688 – and the government draft of the Specific Healthcare Services Act – Release of the Chamber of Deputies No. 689.

[277] Some proposals are included in the analysis "Legislative Protection of Patient Rights", prepared by the lawyer team of the Human Rights League, which is available on-line at (http://www.llp.cz/_files/file/analyza_zdravotnicke_zakony_fin.pdf).

Yet another issue is the resolution of disputes between the patient and the medical service provider. Clause 18 of the material intent of the Healthcare Services Act supported mediation; however, the articulated wording of the Act presumed only settlement of complaints by a special commission where the patient will only provide explanation and will not be more actively involved in the resolution of the dispute. The out-of-court settlement (mediation) could be much more open to the protection of patient rights and could prevent a number of conflict that have to be resolved by the court.[278]

6.1.2. Bill on specific medical services

The purpose of this bill was to unify procedures applied in the provision of specific medical services (sterilization, castration, psychosurgical interventions, abortion, change of sex in case of transsexuals and others) with an emphasis on the patient's free choice, the right to detailed information about the performed intervention, its results and consequences, with a special protection of minors and persons deprived of their legal capacity. Beside the consent of the legal guardian of such persons, also the consent of an expert commission and the court is required. The Act was also supposed to regulate the issue of protective therapy and to determine where such therapy can be provided, by which providers, what the rights and obligations of such providers and patients in excess of the general provisions of the Healthcare Services Act. The bill also defines the system of administration of protective therapy in prisons and outpatient and inpatient medical establishments. The bill on specific medical services was withdrawn by the Government from further review by the Chamber of Deputies of the Czech Republic and no legislative plan or intent for the preparation of a similar legislation has been set to date.

The absence of a comprehensive statutory regulation of protective therapy is problematic due to lack of unified equipment and the absence of the possibility to provide protective therapy in psychiatric hospitals. Legal uncertainty in this matter is very undesirable. Invasive interventions (such as sterilization) require further review of the time limits between the provision of information to the patient and the performance of the intervention. With regard to the protection of the patient's rights, it is essential for the patient to have "enough time to familiarize himself with risks arising for him from the relevant intervention, to think over all aspects and to ask supplementary questions to medical staff. Except for urgent situation, the minimum time limit should be at least 48-24 hours."[279] *This issue is very important given the history of unlawful sterilizations in former Czechoslovakia and in the Czech Republic.*

6.2 Case law

The Constitutional Court issued in 2008 several important decisions concerning medical care or health care in general. These issues included, for instance, the access of the deceased's relatives or of a court-appointed expert to the patient's medical documents,[280] judicial decisions on the physician's liability for his error[281] or mandatory membership of physicians

[278] Further questions see the analysis of the Human Rights League at (http://www.llp.cz/_files/file/analyza_zdravotnicke_zakony_fin.pdf).
[279] Details see the analysis of the Human Rights League (http://www.llp.cz/_files/file/analyza_zdravotnicke_zakony_fin.pdf).
[280] Ruling III. ÚS 245/06 of 3 April 2008 and judgement I. ÚS 1589/07 of 9 April 2008.
[281] Ruling I. ÚS 1919/08 of 12 August 2008 (judicial decisions on compensation for damage caused by the physician's error, the requirement to prove the existence of a causal chain) and ruling I. ÚS 519/04 of 8 January 2008 (criminal prosecution of a physician in case of a wrong entry in the medical documents due to which the patient suffered damage to his health).

in the Czech Medical Chamber.[282] The most discussed issues included the judgement relating to health care fees paid under the Act on Stabilization of Public Budgets, whereby the plenum of the Constitutional Court dismissed a motion of MPs and senators criticizing the public finance reform.[283] As regards the compliance of the content of the contested part of the health care reform with the constitutional order, the CC expressed its opinion on the nature of social rights. The CC stated that while the legislator must not deny the existence and exercise of this right, he has a broad space to apply his own discretion with regard to their exercise. A law regulating social rights must follow primarily a legitimate objective in a manner that can b viewed as a legitimate means for its achievement (which need not be the best or most effective means).[284] In this judgement, the Constitutional Court expressed its opinion on the question whether the introduction of regulatory fees did not change free health care pursuant to Art. 31 of the Charter into paid health care. The CC did not consider as proven that by payment of a regulatory fee, the patient pays directly and exclusively for health care or medical aids. The Constitutional Court designated the regulatory fee as a certain kind of patient's payment to the medical establishment, and did not find it unconstitutional.[285]

6.3. Implementation of informed consent

6.3.1 Compulsory vaccination

Under the Public Health Protection Act,[286] vaccination against selected infectious diseases is compulsory in the Czech Republic. The vaccination schedule is set by the implementing regulation to this Act.[287] According to experts, vaccination against infectious diseases is one of the most effective preventive measures, both from the medical and economic perspective.

However, the existing system does not allow sufficiently individual approach to each case. Even parents who only ask for postponement of vaccination due to bad experience with vaccination (the child's reaction, previous reaction of an older child, etc.) are sanctioned.[288] *The compulsory vaccination issue and adequacy of the interference into parents' right has been recurrently pointed to by the ombudsman in his reports and by non-governmental organizations. Another issue is the compliance of compulsory vaccination with the Convention on Human Rights and Biomedicine, which grants parents the right to decide freely and in an informed manner on medical care for their children.[289]*

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[282] Judgement Pl. ÚS 40/06 of 14 October 2008. Another important CC's decision is the judgement Pl. ÚS 11/08 of 23 September 2008 on court review of industrial medicine reports.

[283] Judgement Pl. ÚS 1/08 of 20 May 2008. Act No. 261/2007 Coll. on the Stabilization of Public Budgets. As regards the issue of constitutionality of the legislative process of adoption of the Act on the Stabilization of Public Budgets, the Constitutional Court referred to its conclusions in its judgement dated 31 January 2008, file no.. Pl. ÚS 24/07. At that time, the CC did not find grounds to grant the motion in relation to those objections.

[284] The statutory regulation of social rights (Art. 41 of the Charter) need not be strictly proportional with regard to the objective followed by the regulation.

[285] In case regulatory fees paid for days during which the insured in provided institutional or other specified care in a medical establishment, such care was not considered medical care with reference to arguments contained in the dissenting opinion of judges in the judgement file no. Pl. ÚS 14/02. The CC did not also find any conflict with the constitution in the case of supplementary payment for medicines and imposing a sanction on the medical facility for failure to collect the fees.

[286] Section 46 of Act No. 258/2000 Coll. on Protection of Public Health and on the Amendment to Certain Related Laws.

[287] Decree No. 537/2006 Coll. on vaccination against infectious diseases.

[288] The information was provided by the Human Rights League.

[289] Details see e.g. Candigliota, Z.: Compulsory vaccination in the Czech Republic – Incongruity with the Convention. Via Iuris, available on-line at: http://www.viaiuris.cz/index.php?p=msg&id=236.

It is appropriate to deal individually with each case of vaccination refusal, to provide to parents qualified information about the issue, to analyze the reasons leading them to such decision and to consider granting an exception in justified cases. Only evidently unsubstantiated parents' failure to comply with this duty should be sanctioned by an appropriate fine as the sole possible sanction in case of failure to agree with the parents.

6.3.2 Obstetrics[290]

Even in 2008, some non-governmental organizations received complaints against the failure to respect informed consent in obstetrics. Parents who wish to leave the maternity hospital only several hours after childbirth are still threatened that the child will be taken away from them. It has to be noted that if the child is in goods health and without complications, nothing should prevent the fulfilment of the parents' wish to leave the maternity hospital. However, the guideline[291] under which some medical facilities refuse to release the mother with the newborn child earlier than 72 hours after childbirth is still in force. *However, this guideline cannot impose duties upon parents and any steps towards preventing parents with the child to leave the maternity hospital earlier may be taken only in case of serious danger to the child's life or health. The Human Rights Leagues is of the opinion that this guideline should be abolished because it only causes legal uncertainty of the medical facilities and parents.*

In connection with obstetrics, there is also a problem of obtaining licence to perform midwife's activities as a non-state establishment. According to information provided to non-governmental organizations, Czech authorities put administrative obstacles in the face of midwives to prevent women to give birth at home.[292] *An expert discussion is to be carried on about this issue.*

6.4. Restraint means used in the administration of medical care

The Government Council for Human Rights adopted in 2007 a motion for statutory regulation of the use of restraint means in administration of medical care, which suggested taking into account several CPT's recommendation in the prepared Act on Healthcare Services and Conditions of Their Provision.[293] However, the Government withdrew the bill from the Chamber of Deputies' agenda and further development of healthcare legislation is thus uncertain.[294]

The bill on healthcare services was to regulate the use of restrain means without the patient's consent if so required by his health condition, and stipulated certain conditions of use of restraint means, which will be decided by the physician who is to promptly record such fact in medical documents and shall state the reason why such means has been used. During the use

[290] This chapter was prepared on the basis of the contribution provided by the Human Rights League.
[291] The guideline "Procedure applied by medical establishments in case of release of newborns to home care" published in Release 7/2005, Bulletin of the Ministry of the Interior.
[292] Specifically, the authorities deciding on a midwife's registration as a non-state medical facility require the fulfilment of conditions stipulated in the Bulletin of the Ministry of Health of the Czech Republic No. 2/2007 (specification of a basic obstetric facility). In fact, it is required from the midwife to have the same equipment as an obstetrics clinic and to have a physician available. These requirements cannot be fulfilled in case of childbirth outside maternity hospital.
[293] Further details see the Report for 2007, available on-line at (http://www.vlada.cz/scripts/detail.php?pgid=302).
[294] Further details see footnote above.

of the restrain means, the health care provider is to ensure surveillance by medical staff to the extent corresponding to the seriousness of the relevant patient's medical condition and measures preventing damage to the patient's health should be adopted. Human dignity and privacy should be respected during the use of restraint means. The health care provider should keep records on the use of means of restraint during the provision of healthcare services.

However, the bill still did not consider the administration of psychopharmaceutical drugs as a means of restraint, although it is the most frequently used means to restrain the patient's activity. Some modifications of the bill adopted during the comments procedure (further specification of the definition of healthcare service, protection of foreigner rights, protection of the rights of persons deprived of legal capacity, reflection of CPT's recommendation or further specification of some provisions with regard to the wording of the Convention on Protection of Human Rights and Biomedicine) have to be viewed as positive.[295] *On the other hand, the withdrawal of the bill from the agenda of the Chamber of Deputies must be also viewed as a frustration of an opportunity to improve legal certainty of patients and to enhance the protection of their rights.*[296]

6.5 Unlawful sterilization

The issue of sterilizations performed in the past in conflict with the law, which were referred to for the first time by the ombudsman in 2005, has not yet been satisfactorily resolved. In this respect, further postponement of the healthcare legislation reform is alarming.[297]

Details of issue of sterilizations was to be regulated in the bill on specific healthcare services,[298] which put a special emphasis on protection of rights of patients deprived of legal capacity and patients with restricted legal capacity.[299]

The High Court in Olomouc upheld in 2006 the judgment of the Regional Court in Ostrava, according to which the sterilization had been unlawful but the claim to satisfaction in money was statute-barred. In 2007, the Regional Court in Ostrava awarded damages for unlawful sterilization in the amount of 500,000 CZK. Based on the decision of the Supreme Court College, the "Green Collection" of key rulings that are to unify the case law of Czech court published in 2008 a ruling of the High Court in Olomouc, under which the right to satisfaction in money in case of interference into the right to protection of personality is subject to the general three years' limitation period. The willingness of the courts to follow this opinion was manifested in November in the above-mentioned case adjudged in 2007 by the Regional Court in Ostrava, where the High Court in Olomouc upheld the unlawful nature of the

[295] Notice of the Ministry of Foreign Affairs No. 96/2001 of the Collection of International Treaties on the adoption of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine).

[296] The psychiatric society Czech Medical Society of Jan Evangelista Purkyně (ČLS JEP) prepared guidelines for the use of restraint means, which are to be reviewed at the next psychiatric conference (to be held in November 2009 in Karlovy Vary) and if accepted, they should be incorporated into "*lege artis"* procedures.

[297] Further details see the above footnote.

[298] Submitted to the Government for approved at the time of preparation of this Report.

[299] Sections 6 to 9 of the bill contain the following definition of sterilization and the rules for its performance. "*Sterilization for medical reasons may be made only with the patient's written consent. … Sterilization of a patient who has been deprived of his legal capacity in a manner making him unable to grant consent with the medical intervention (hereinafter the "patient deprived of legal capacity") or of a minor patient may only be made on medical grounds on the basis of a) a written consent of his legal guardian, b) an affirmative opinion of the expert commission and c) the court's consent.*"

sterilization and the right to apology but declared as statute-barred the right to satisfaction in money, where the first instance court awarded half a million crowns.

The ombudsman recommended, among others, indemnification of victims of this practice (particularly in the years 1973-1991), when he confirmed by his investigation the eugenic context of the sterilizations. According to the ombudsman and other organizations, unlawful sterilizations also occurred after 1991 and the risk of this discrimination approach has existed to present.[300]

By the end of 2007, the Government Council for Human Rights approved a motion in the matter of unlawful sterilizations. According to the Council, the Czech Republic should implement the recommendations of the Final Opinion of the ombudsman, the Final Recommendation of the UN Committee for the Elimination of Discrimination of Women of August 2006 and the Final Recommendations of the UN Human Rights Committee of July 2007 and to adopt on their basis measures necessary to implement these recommendations in practice. *Despite this motion of the Government Council for Human Rights, the recommendations of international bodies and calls of the civil society, the Government did not deal in 2008 with the issue of unlawful sterilizations.*

6.6 Surgical castrations

The therapeutic testicular pulpectomy – i.e. the removal of only hormonally active tissue where the rest of testicles is preserved (the "surgical castration"), which is performed in the Czech Republic, may only be performed upon written request of an adult man. These interventions are performed in accordance with the Act on the Care for Health of the People,[301] following an approval by an expert commission comprised of a lawyer, at least two physicians specialized in the relevant field and two other physicians who are not involved in the performance of the medical intervention. Before the submission of his application, the patient has to be duly informed about the nature of the medical intervention and warned about risks and any related negative consequences. Surgical castration may be considered in case of men who are unable to manage their sexual instincts, are sexually aggressive and all other therapeutic possibilities have been used up.

Chemical castrations are also performed in the Czech Republic, however, their consequences are reversible and the sexual function returns to normal within three months after the interruption of administration of the medicine. On the contrary, surgical castration leads to a permanent reduction of the testosterone level. Appetence falls to a minimum, which is, according to the Ministry of Health, the most effective form of prevention of recidivism. According to the Ministry of Health, patients are released within half a year after the surgical intervention and integrate successfully and very quickly into the society.[302]

The bill on specific healthcare services that was withdrawn from the agenda of the Chamber of Deputies was to provide comprehensive regulation of the performance of castrations.[303] Castration should be performed only on a patient older than 18 years of age who is dangerous to other persons due to his medically verified inclination to commit sexually motivated crimes

[300] The ombudsman's report see http://www.ochrance.cz/dokumenty/dokument.php?doc=329.
[301] Act No. 20/1966 Coll. on the Care for Health of the People.
[302] According to the Ministry of Health, none of the persons who have applied for castration in the last thirty years has re-offended.
[303] Details see the footnote above.

or who suffers from a sexual deviation tendency and in whose case all other therapeutic methods have been used, provided that two independent medical reports have proved that such person is very likely to commit in future a violent sexually motivated crime.

Surgical castrations were criticized by the CPT during its last visit to the Czech Republic in 2008.[304] During this visit, the CPT's delegation interviewed 18 convicted sexual offenders[305] and reviewed 41 records of persons who subjected themselves in the past eleven years to surgical castration. CPT stated that Czech authorities consider surgical castration and an exceptional measure and the legal procedure is strictly adhered to.[306] The CPT was told that surgical castration is not offered to first offenders, unless they have committed the most serious offences and all other therapeutic methods have failed and that the surgical castration is not performed in prisons or to persons deprived of their legal capacity. Furthermore, the CPT delegation was informed that the effectiveness of surgical castration is strongly supported by scientific research.[307] *However, the CPT challenged most of these conclusions in its report, including compliance with the legal procedure, composition of expert commissions, the informed and free consent of persons having their freedom restricted or assessment of the effectiveness of castrations.*[308]

The Government's response to the Report rejected some objections raised by the CPT with respect to the practical performance of surgical castrations. In particular, the Ministry of Health disagreed with the general allegation that the medical staff imposes treatment variants upon patients in mental hospitals. On the contrary, the Ministry of Health states that a free informed consent of the patients with medical interventions that are to be performed on him represents the essence of Czech legislation. According to the law, castration cannot be performed if the essential prerequisite, i.e. the patient's request, has been met, or without the approval by an expert and independent commission. The Ministry of Health insists that in case of prohibition of these surgeries, many of those patients will end in detention institutions because it will not be possible to cure them. In order to permit the transformation of a court-ordered cure into an outpatient treatment, the law requires minimizing the danger represented by such person to the society.

The Government response reflected the provisions of the bill on specific healthcare services, which has to ensure to every patient with a tendency to undesirable sexual behaviour a high level of protection from an inappropriate intervention (information, a written request, the opinion of experts and the court).

The reasons for long-term application of "harming" methods to patients in Czech medical facilities and prisons may lie not only in the Czech psychiatric tradition but also in the

[304] See also the general part of the Report on CPT's visit.

[305] Nine of these 18 prisoners underwent surgical castration. Out of the remaining nine prisoners, three were in the preparatory phase for castration (to one of whom the castration was recommended by his sexologist) and the applications of two of them had already been approved. Eight prisoners received medicine to suppress their libido.

[306] It was allegedly specially emphasised that the patient must give his free and informed consent with the castration and the application must be approved by an expert commission.

[307] The CPT was informed about the recorded very low or zero level or re-offending of sexual offenders who have underwent surgical castration.

[308] Further details see the Report for the Government of the Czech Republic on the visit to the Czech Republic made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT(between 25 March and 2 April 2008 - http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/dokumenty/zpravy-plneni-mezin-umluv/evropska-umluva-o-zabraneni-muceni-a-nelidskemu-nebo-ponizujicimu-zachazeni-nebo-trestani-17701/.

financial demands of treatment by chemical preparations- androgens. However, such "economical" approach is inadmissible from the human rights perspective. While assessing the castrations issue, we have to take into account particularly the victims' rights. If the surgical intervention causes trauma to the patient, which may lead to further violence, it is necessary to consider another treatment method. In case of provably comparative effects of both methods, chemical treatment is definitely more humane, because it does not lead to permanent mutilation of patients. On the other hand, it would be inappropriate to prohibit surgical castration if the patient himself applies for such intervention and if it is to improve the quality of his life and prevent him from endangering other people.

7. EQUAL TREATMENT AND DISCRIMINATION

7.1. Antidiscrimination legislation

The Parliament of the Czech Republic approved the bill on equal treatment and protection against discrimination (the Antidiscrimination Act).[309] During the vote on the bill, the Senate adopted a complementary resolution[310] where it stated that it does not endorse "*.... the character of the regulation, which intervenes artificially into the natural development of the society, does not respect cultural differences of Member States and ultimately elevates the requirement for equality above the freedom of choice."* In this resolution, the Senate also called upon the Government not to approve the adoption of further antidiscrimination laws at the EU level.[311] For comparison with the Senates' disapproval of the elevation of equality above "freedom of choice", we note in accordance with the philosopher I. Berlin that equality and freedom are indeed two most important, although often contradictory values. "*Freedom and equality belong among primary aims towards which the mankind has been striving for a number of centuries. However, absolute freedom for wolves means death to lambs; absolute freedom for the powerful and gifted is incompatible with the right to decent existence of the weak and less gifted."* [312]

The resolution of the Senate can be thus qualified as problematic. The purpose of Antidiscrimination Act is to secure adequate protection to especially weak and vulnerable groups of people. The principle of freedom is certainly as important as the equal treatment principle. We believe that the Antidiscrimination Act appropriately balances these two values, none of which is absolute.

The approved bill was vetoed on 16 May 2008 by the President of the Czech Republic. In the course of 2008 the Chamber of Deputies did not take a decision concerning the presidential veto, because the bill was repeatedly not included in the agenda of autumn meetings of the Chamber of Deputies. *Apart from exceptions resulting specifically from the procedural provision of Section 133a of Act No. 99/1963 Coll., victims of discrimination still lack sufficiently secure protection against discrimination.*[313]

In addition, the Czech Republic did not implement a number of EU directives which concern equal treatment and protection against discrimination. The European Court of Justice has already issued its first judgment[314] where it states that the Czech Republic failed to meet all requirements resulting from its membership in the EU. Specifically, it concerns the failure to implement the directive which refers to equal treatment between men and women in employee

[309] Release of the Chamber of Deputies No. 253.
[310] Senate resolution adopted at its 13th meeting on 23 April 2008.
[311] Details oft the EU new initiative of the EU are described in the general section.
[312] Isaiah Berlin: „Four essays on liberty", quoted from from: Fredman, S.: „Discrimination law", published in Czech by Multikulturní centrum Praha, 2007. I. Berlin is considered as one of the most significant liberal philosophers in the 20th century. Among others, he addresses in his writings the relation between freedom and other values.
[313] Ibid.
[314] Judgment of the Court of Justice (Fifth division) of 4 December 2008 (case C41/08) - The Commission of the European Communities *v.* Czech Republic.

social security systems.[315] The Czech Republic was "only" ordered to pay legal costs. In January 2009, the Czech Republic was served another action of the European Commission. [316]

Beside the foregoing, a legal vacuum persists in labour law relations, because the Labour Code refers to the nonexistent Antidiscrimination Act.[317]

7.2 Employment and business under a trade licence

Findings of non-government organizations indicate that persons who do not have a clear criminal record are often disadvantaged in practice in respect to their access to employment. Employers often demand a clear criminal record even from job applicants in cases where the requirement to submit an excerpt from the Criminal Register is irrelevant. For example, employers require a clear criminal record from workers who are to perform unskilled manual labour (e.g. excavation). This approach hinders severely or even blocks completely the possibility of persons returning from prison to find a job and return to normal life, or to begin paying back the costs of their imprisonment. These persons can neither acquire a trade licence if they were convicted of a premeditated criminal act for which they were given at least a one-year unsuspended prison sentence, or for a premeditated criminal act related to entrepreneurship.[318]

The Regional Court in Plzeň has recently submitted a proposal to abrogate Section 6(2)(a) of the Trades Licensing Act[319] (stipulating a clean criminal records as one of the general conditions for carrying on a trade) for a possible contradiction with the constitutional order of the Czech Republic, or with Art. 26(1) in conjunction with Art. 4(4) of the Charter of Fundamental Rights and Freedoms. In this case, the claimant was convicted for a premeditated criminal act and sentenced to imprisonment for a term exceeding one year. After the release from prison after serving his sentence, he tried hard to find a job but was rejected by all employers with reference to the entry in his criminal record. Subsequently, he applied to the Trades Licensing Office for extension of his trade licence (he was promised a job which was conditional upon his having a trade licence). Based on the presentation the excerpt from the Criminal Register, the Trades Licensing Office dismissed his application and initiated proceedings for withdrawal of his trade licence which he had acquired before being convicted, because he had breached a general condition of carrying on trade – a clean criminal register. The claimant then appealed this decision with the Regional Authority, but the appellate body upheld the decision. With the help of the non-governmental organization Counselling Centre for Citizenship, Civil and Human Rights contested the above-mentioned decisions before administrative courts. An action was filed whereby the claimant seeks the abolishment of the above decisions of the administrative authorities. The Regional Court in Plzeň suspended the

[315] Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes and the Council Directive 96/97/EC of 20 December 1996 amending the Directive 86/378.

[316] This action refers to the Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. In the action, the European Commission proposes the European Court of Justice to order the Czech Republic to pay legal costs.

[317] See Section 17 of Act No 262/2006 Coll., the Labour Code, as amended: *"Legal remedies concerning protection against discrimination are regulated by a special law."*

[318] Act No 455/1991 Coll. on Trades (the Trades Licensing Act), as amended. According to the relevant Section a person who was lawfully convicted for a premeditated criminal act, for which he/she was sentenced to imprisonment for at least one year is not considered to have a clean criminal record.

[319] Contribution of the non-governmental organization Counselling Centre for Citizenship, Civil and Human Rights.

proceedings stating that: "The Regional Court has come to the conclusion that Section 6(2)(a) of the Trades Licensing Act, which is to be applied in the resolution of the matter adjudged by the Regional Court in Plzeň, contravenes the constitutional order, or Art. 26(1) in conjunction with Article 4(4) of the Charter of Fundamental Rights and Freedoms, due to which the court referred the matter to the Constitutional Court in accordance with Article 95(2) of Constitution of the Czech Republic. The Constitutional Court will thus assess possible discrimination of applicants for a trade licence in relation to the requirement relating to clean criminal record set forth in Section 6(2) of the Trades Licensing Act.[320]

In particular, non-profit organizations point to systemic breaches of employee rights and discrimination in chain stores, as well as to problems concerning employment procured by employment agencies and the activities of Labour Inspection and labour offices.

Control of compliance with labour laws and violations identified by labour offices (source: Ministry of Labour and Social Affairs)

Act No. 435/2004 Coll. on Employment	Type of discrimination	Total number of cases	Direct - women	Indirect - women	Direct - men	Indirect - men
Section 4(1)	Unequal treatment	14	6		6	2
Section 4(2)	Sex	24	5	3	15	1
	Sexual orientation					
	Racial or ethnic origin	4	1		3	
	Nationality					
	Citizenship					
	Social origin					
	Birth					
	Language					
	Health	2				2
	Age	20	7	2	6	5
	Religion or belief					
	Property					
	Marital or family status or family duties	2		2		
	Political or other opinions					
	Membership of, and involvement in, political parties or political movements					
	Membership of, and involvement in, trade unions or employer organizations	2	1		1	
	Section 4(2) -total	54	14	7	25	8

[320] Contribution of the non-governmental organization Counselling Centre for Citizenship, Civil and Human Rights

Section 4(9) (harassment)	discrimination on grounds of sex					
	discrimination on grounds of sexual orientation					
	discrimination on grounds of racial or ethnic origin					
	discrimination on grounds of disability					
	discrimination on grounds of age					
	discrimination on grounds of religion or belief					
	Sexual harassment					
	Section 4(9) -total	0	0	0	0	0
Section 12(1)(a)	Sex	3	1	1	1	
	Sexual orientation					
	Racial or ethnic origin					
	Nationality					
	Citizenship					
	Social origin					
	Birth					
	Language					
	Health					
	Age	5		3	1	1
	Religion or belief					
	Property					
	Marital or family status or family duties					
	Political or other opinions					
	Membership of, and involvement in, political parties or political movements					
	Membership of, and involvement in, trade unions or employer organizations					
	Section 12 - total	8	1	4	2	1
Employment Act - total		138	36	22	60	20

Discrimination	1st half-year 2005	2nd half-year 2005	1st half-year 2006	2nd half-year 2006	1st half-year 2007	1st half-year 2008	2nd half-year 2008
Direct	29	68	143	40	40	27	29
Indirect	7	2	3	21	92	18	4
Total	36	70	146	61	132	45	33

Discrimination	1st half-year 2005	2nd half-year 2005	1st half-year 2006	2nd half-year 2006	1st half-year 2007	1st half-year 2008	2nd half-year 2008
Men	17	48	65	28	59	22	24
Women	19	22	81	33	73	23	9
Total	36	70	146	61	132	45	33

7.3 Discrimination on grounds of sex

In the Czech context, gender inequality at the labour market is manifested, in particular, in the field of remuneration. According to data published by Czech Statistical Office, the average wage of women in 2008 reached 75.2% of the men's average wage and the median of the women's wage reached 80.2% of the median of men's wage. Hence, women's earnings are currently by 24.8% lower than men's.[321]

Non-profit organizations point to the fact that despite the high rate of their economic activity, the Czech women face a long-term disadvantage at the labour market. The attitudes of employers to parental leave are rather rigid and women with preschool children, older women and women after maternity leave form three out of five most disadvantaged groups at the labour market. The so-called pro-family package, which was mentioned above, should help resolve this situation.[322]

Elections into regional assemblies were held in October 2008. The number of women rose from 15% in the previous term to 17.6%. After 2006 elections, 25% of members of municipal assemblies are women. *Thus, the representation of women in politics remains low.*

7.4 Discrimination on grounds of sexual orientation

7.4.1 Opinions of international authorities in relation to the Czech Republic

European Court of Justice (ECJ) issues in April 2008 an important judgment concerning the entitlement of a registered partner's claim for a widower pension after the deceased partner. The ECJ decided in this case on a preliminary question submitted by the Bavarian Administrative Court (Bayerisches Verwaltungsgericht). The Bavarian Court decide on lawsuit between T. Maruko (as the claimant) and the Charitable Institute of German Theatres (Versorgungsanstalt der Deutschen Bühnen, hereinafter "VddB") concerning the payment of a widower pension after a deceased (registered) partner of the claimant.

[321] Source: Czech Statistical Office.
[322] See Chapter 5.

Tadao Maruko concluded in 2001 a registered partnership with one of the creators of theatrical costumes. The latter had been insured from 1959 with the VddB and had paid insurance premiums to this institution. T. Maruko's registered partner died in 2005. Subsequently, T. Maruko applied to VddB for a widower pension, which was denied to him under the grounds VddB's statutes do not permit payment of such the benefit to surviving registered partners. T. Maruko thus addressed the Bavarian Administrative Court, claiming that he had been discriminated on the grounds of his sexual orientation (the benefit is paid to survivor spouses), which is in conflict with the directive 2000/78/EC that bans discrimination in employment and occupation.[323]

Firstly, the ECJ stated that the directive 2007/78 applies to the survivor benefit granted under the employee pension system (which is administered by the VddB). The entitlement to this benefit results from the employment of the deceased registered partner and can be therefore qualified as an "award" according to Art. 141 of the EC. *This legal qualification was the key factor for the assessment of the case. If the benefit system governed by VddB was considered as a state social security system, then the Directive (and thus also the ban on discrimination stated therein) would not apply to it, because the family status and benefits depending on it fall within the competencies of EU Member States*

According to German law, the registered partnership is regarded as marriage for the purposes of widow (widower) pension. The registered partners are thus in a comparable situation as spouses. Based on this presumption, the ECJ stated, that Directive 2000/78 prohibits an arrangement according to which the survivor benefit corresponding to the survivor benefit provided to survivor spouses is not paid to the surviving registered partner after the death of his partner, although the registered partnership concluded under German law grants to persons of the same sex a status comparable to the status of spouses in reference to the survivor benefit that is the subject matter of the primary proceedings.

Hence, the judgment in Tadao Maruko's case would be applicable in the circumstances of the Czech Republic only if the Czech law knew a similar parallel between the registered partnership and marriage in connection with survivor benefits. For the time being, this is not the case.

In its resolution about the state of fundamental human rights in the EU[324], the European Parliament pointed at first to some gaps in the legal protection of the LGBT persons. In connection with the new equal treatment directive, the European Parliament appealed to the European Commission that this directive should conform to the existent case law concerning LGBT persons, especially with the Maruko judgment. The Parliament welcomed the framework Council decision on combating certain forms and expressions of racism and xenophobia by means of criminal law[325] and appealed at the same time to the Commission to propose an analogical legislation for combating homophobia. Furthermore, the European Parliament appealed to the EU Member States which adopted laws concerning the registered partnership of persons of same sex to acknowledge an analogical regulation adopted by other Member States. Furthermore, the states should create rules for mutual recognition of these laws in order to guarantee the right to freedom of movement of partners of same sex within the European Union on an equal basis with heterosexual partners. The Parliament also

[323] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
[324] See the general section.
[325] See the general section.

appealed to the European Commission to propose a concept of mutual recognition of bonds of persons of same sex (spouses or registered partners), particularly in the exercise of their right to freedom of movement according to EC law. The Parliament also appealed to the Commission to ensure granting asylum in EU Member States to persons fleeing from persecution because of their sexual orientation.

The European Union Agency for Fundamental Rights released a report in June with the title "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States, Part I - Legal Analysis". The report addresses the subject of homophobia in EU Member States. As indicated by the title, it is the first part of a two part study (the second part - sociological - was published at the beginning of 2009) which was elaborated upon request by the European Parliament.[326] The report identifies the differences of treatment and protection of LGBT[327] persons in EU Member States (in areas of the operation of EC law), particularly with regard to partnerships of persons of same sex. It deals mainly with the rights of married couples/ partners to freedom of movement of persons and unification of families. The report identifies the so-called homophobia hate crime (public display of hatred towards LGBT persons) and hate speech (criminal activity committed on the grounds of the victim's sexual orientation) as one of the barriers to the freedom of movement of persons. One of the conclusions of the report is that an efficient fight against homophobia requires the approximation of criminal law standards at the EU level. The report emphasizes the need for a more comprehensive legal framework of combating discrimination and the necessity to expand competencies of equality bodies. Therefore, it supports the adoption of a new directive unifying the protection against discrimination.

According to the European Commissioner responsible for Justice Jacques Barrot, registered partners the most problematic group from the perspective of free movement of persons. The reason lies in unequal protection provided by EU Member States. The Czech Republic as one of the states which have enacted registered partnership should recognize partnerships closed abroad to the extent granted by the relevant law of the Czech Republic. However, no rules required by the European Parliament in this respect have been established yet.

7.4.2 The formation of a Committee for Sexual Minorities within the Government Council for Human Rights Council

The Government Council for Human Rights approved by its resolution of 21 February 2008 the establishment of a Committee for Sexual Minorities. The Committee follows up on the activity of the Working Group for Sexual Minorities, which have been operating since 2007 at the Office of the Minister for Human Rights and Minorities.[328]

Persons with a minority sexual orientation, including transsexuals (i.e. the LGBT people,) are one of the minorities that are protected by the ban of discrimination expressed in Article 13 of the Treaty Establishing the EC. The ban of discrimination on the grounds of sexual orientation is also expressed in the prepared Antidiscrimination Act, which the Government undertook to push through. The establishment of the Committee as a platform for discussion between the state and the civil society is therefore a step forward and a sign that the Government is paying attention to all groups of its citizens.

[326] See the Report for 2007, Chapter II.7.4.1.2.
[327] The acronym LGBT used in this Report is understood to mean lesbians, gays, bisexuals and transgender persons.
[328] See the Report for 2007, Chapter II.4.2.1.

7.4.3 Registered partnership and the draft a new Civil Code

The Registered Partnership Act[329] was amended in 2008 by Act No 239/2008 Coll., amending certain laws related to registered partnership.[330] The amendment resolves substantive and legislative and technical insufficiencies of the Registered Partnership Act. The amendment also enumerates the data drawn by civil registers from the informative system of population records with respect to persons who intend to conclude the partnership.

In connection with the legislation on registered partnership, we cannot ignore the draft new Civil Code, which has been mentioned on several occasions in this Report. The institute of "registered partnership" was a part of this Code even before the distribution of the draft Civil Code for the comments procedure. Later on, this institute was struck out from the bill by the Ministry of Justice. *This step cannot be approved, not only from the human rights perspective, but also from the perspective of the systematics of the legal order. If the re-codification of the civil law purports to create a "general code of private law",[331] it is non-systematic not to include in such code the institute of registered partnership with its indisputable private nature.*

The explanatory report concerning the proposed re-codification states, by itself, that "*The objective of an adequate modification of the status of partnership of two persons of the same sex is to fulfil the state's task to take equal approach to all its citizens and to provide to every citizen a possibility to spend his life in a legally protected covenant enjoying a status comparable with any other another citizen, or any other human being, the task to offer the homosexually oriented persons an adequate legal institute making their status equal to the status of persons of heterosexual orientation. Hence, it is not an above-standard improvement of the position or granting of any special advantages, but the granting of the same advantages – i.e. the right to share with another person a companionship recognized by the state with the relevant status implications - that have been granted to all others. We cannot overlook that, by denying the institutionalization of partnerships between two persons of the same sex, the state penalizes, both de facto and de iure, the persons with an inborn variant of the so-called ordinary sexual orientation.*"[332]

Separating the registered partnership in a special law outside of the Civil Code thus contradicts the text and the aim of the new Civil Code. The registered partnership institute is firmly tied to a number of other civil law notions, such as the protection of personality, rental housing, inheritance or the notion of close person. Separation of the registered partnership in a special law contradicts the purpose of the unified civil law codification and will cause unnecessary legislative technical problems, such as mutual references contained in these two acts. The practical result of such modification is the continuous absence of a very necessary institute of common property for registered partners. Finally, we have to realize that the Civil

[329] Act No 115/2006 Coll. on Registered Partnership, as amended.
[330] This Act came into force of 1 July 2008.
[331] Cf. Explanatory Report to the draft Civil Code draft of June 2008, http://portal.justice.cz/ms/soubor.aspx?id=66428, p. 19.
[332] Cf. the draft new Civil Code, consolidated version of the whole draft (articulated wording + explanatory report), explanatory report to Section 836, http://zcu.juristic.cz/download/rekodifikace/obcan/OZ_konsolidovana_verze_duben_05.zip).

Code should survive for decades and should be therefore a modern code reflecting current trends, and not a return into the past, not respecting not even the existing legal situation.[333]

7.4.4 March for the rights of LGBT persons

The first annual event called "Duhová Vlna" (Rainbow Wave) was held in 2008. A march conceived as a parade of gay pride is also known under the name queer parade. The event, which culminated by a rally and a march on Saturday 28 June 2008, was held under the auspices of the Minister for Human Rights and Minorities. The assembly held on Náměstí Svobody in Brno was attended by over 500 people and by an additional thousand of observers.

A protest against this event was attended by more than 160 of neo-Nazi supporters and ultranationalists, who had prepared it long ago and had established for such purpose an unusually close cooperation against the "common enemy". The protest led to several minor bodily assaults against the participants of the gay parade, carried out in the "black block" style, but no one was seriously injured.[334]

The general objectives of queer parades include a proud admission of sexual orientation, promotion of tolerance and diversity and mitigation of homophobic attitudes. They are thus manifestations for promotion of tolerance and the colourfulness of the society and for its multicultural character. The march in Brno called Duhová vlna (Rainbow Wave) acceded to these aims and pointed also to some special legal and social inequalities, represented in the Czech Republic, for instance, by the issues of gay and lesbian parenthood and the legal uncertainty of same sex couples with regard to child care, the absence of a common property of the partners, the invisibility of LGBT seniors, bullying of LGBT youth or children of same sex couples in schools or the violation of transsexual people's rights.[335]

7.5 Discrimination on grounds of race

Racial discrimination in the conditions of the Czech Republic concerns mostly the Roma. Reports of non-governmental organizations and regional authorities document[336] that cases of discrimination really exist. They are most visible in the access to employment and housing.

In May 2008, the District Court in Ostrava decided on an action[337] whereby the claimant sued the Statutory City Ostrava for smart money and compensation for aggravation of social status related to a diagnosis of asthma bronchiale and allergic rhinoconjuctivitis. The judgment indicates that the city discriminated Roma families during the allocation of substitute housing after the 1997 floods. The apartment where the claimant had lived with his mother became in a state of disrepair after the floods, and the claimant's mother repeatedly applied to the city as the landlord for a healthy apartment. According to the judgment, however, "The defendant did not sufficiently resolve the claimant's housing problem, did not carry out the necessary

[333] Opinion of the Working Group for Sexual Minorities on the elimination the institute of registered partnership from the prepared draft Civil Code, available at: http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rlp/sexualni-mensiny/pracovni-skupina-pro-otazky-sexualnich-mensin-24225/.
[334] Drawn from the Strategy on Combating Extremism.
[335] Drawn from the website of the organizers of the event - www.queerparade.cz.
[336] For example the contributions of the Moravian-Silesian and Olomouc Region.
[337] Ref. No. 62 C 291/2002 – 240 of 27 May 2008.

technical upkeep of the apartment and failed to provide a healthy housing substitute, although he received a state subsidy for the construction of apartments for citizens affected by floods, whereas he moved into these apartments also citizens who did not come from apartments affected by floods, thus discriminating against tenants by allocating such apartments in accordance with an ethnic key." The Statutory City of Ostrava did not appeal the District Court's judgment, which thus became final and effective. This judgment is the first in the post-communist era where a causal connection between the damage to the claimant's health and the "ethnical rules" for the allocation of apartments adopted by certain municipalities was judicially ascertained.[338]

In 2008, the Czech Trade Inspectorate investigated in 2008 6 motions concerning racial discrimination. Discriminatory conduct was ascertained in two cases (advertisement of a real-estate agency "… no foreign nationality" and the refusal to sell a mobile telephone to a Roma without presentation of a certificate of income). In both cases, a sanction was imposed in administrative proceedings.

7.5.1 Extremism and neo-Nazi concerts

A massive flood of new members into the Workers' Party[339] occurred at the beginning of 2008. These new members came from ultra-right and neo-Nazi organizations, especially from Národní odpor (National Resistance) – Autonomous Nationalists. This was due to the legal operation of the Workers' Party (a properly registered subject) and other policies directed against the existing system – neo-Nazis as Workers' Party candidates in regional elections. The Workers' Party can be generally identified as an ultra-right, antidemocratic and anti-Semitic political party with markedly xenophobic opinions. This party uses in its publicity material motives that were used by the Nazi propaganda of the 3rd Empire in World War II. All activities of this party are presented on its website and also on the website of the neo-Nazi organization National Resistance, which attests to their mutual links.

The public paid special attention to the assembly and march of the Workers' Party in Litvínov and Janov (17 November 2008), where the extremists became involved in violent conflicts with the police while trying to penetrate into neighbourhood inhabited mostly by the Roma. *During the clashes, a part of the inhabitants supported the Workers' Party; probably because they believed that a radical approach would help resolve the problems encountered by them in their coexistence with the Roma.* According to political scientists, the wave of violence at demonstrations is the strongest in the whole post-November history of the extreme right.[340] The cause of such radicalization is seen by them in the failure to resolve coexistence between the Roma and the Czechs.[341]

[338] Contribution from the non-governmental organization Counseling Centre for Citizenship, Civil and Human Rights.
[339] Details see Chapter 2.
[340] Czech News Agency, 18 November 2008
[341] On the other hand it can be said that major sums from the state budget are annually spent on the support of the integration of Roma and the resolution of social exclusion problems. Beside the independent advisory authority of the Government – the Government Council for Roma Community Affairs - the so-called Roma issue is also addressed by a number of the relevant ministries. The solution of some problematic issues - such as the housing issue - falls within the competencies of municipalities. The cooperation of the involved entities, which is still insufficient, should be initiated a newly established Agency for Social Inclusion in Roma Localities. See also the general part of this report.

Negative tendencies at the extremist scene, or rather in its extreme-right spectrum, which were recorded in 2007, carried intrinsic security risks. These risks began to amplify at the beginning of 2008, which fully confirmed these risk trends. The Ministry of the Interior responded by the preparation of a Strategy of Combating Extremism,[342] the main purpose of which is to redefine anti-extremism policies so that it can face effectively and flexibly the newly emerging problems. The aim is to add to the permanent measures some new measures, focused primarily on prevention, which represents the most important and most efficient instrument of combating extremism. The Government endorsed the strategy in May 2009.[343]

Neo-Nazi concerts are held in a variety of places in the Czech Republic, mostly under the guise of birthday parties or a similar excuse and in a closed space. Another feature of these concerts is its scattering into smaller-scale events, which has resulted from pressure of the Police of the Czech Republic in the past years. The average attendance at these events ranges from 50 to 150 person. An exception was the concert held on 2 August 2008 in the municipality Ochoz, which was attended by 300 persons. Another similar exception was the Ian Stuart Donaldson's Memorial held on 27 September 2008 in Šardice (district of Hodonín) which was attended by more than 200 persons.

The persons standing behind the organization of these concerts have been always linked to the National Resistance or to the Autonomous Nationalists. A new trend that is increasingly applied in relation to the organization of neo-Nazi concerts is the assistance of legal counsel at the place where the concert is held. Such lawyer is already involved in the preparation of the events, where he drafts in a professional manner various contracts concerning the preparation of the event in order to avoid its prohibition or imposing very unfavourable financial terms. Such legal counsel serves the organizer as a protection against the alleged police persecution and as a protection against the entry of the Police of the Czech Republic into the place where the event is held. With the help of such lawyer, the organizer has a feeling of "legal distribution of Nazism".

7.5.2 Criminal activity with extremism implications[344]

From the total of 343,779 detected criminal offences committed in the territory of the Czech Republic, 217 were registered as criminal acts with extremism implications, i.e. 0.06% from the total volume of the detected criminal acts. The share of this type of criminal activity has increased by about 10% in comparison with the previous (21 offences). The most pronounced increase of criminal activity of this type was registered in the North Bohemian Region (+52.2%), in Southern Moravia (+48.3%) and Central Bohemia (+45%). Most of these offences were registered in the South Moravian Region (ca 20%).

The criminal activity with extremism implications registered in 2008 did not deviate in any way from trends of the previous years. However, the registered criminal activity with extremism implications cannot be understood as an indicator of the extent of extremism, racism, anti-Semitism or general xenophobia manifested in society. The long-term trend of

[342] On the basis of the Government Resolution No. 1506 of 24 November 2009 regarding the Government motion to the Supreme Administrative Court to dissolve the Workers' Party. The resolution ordered the Minister of the Interior to create with the participation of representatives from Ministry of Education, Youth and Sports, the Ministry of Labour and Social Affairs, the Ministry for Regional Development and the Minister for Human Rights and Minorities a working group addressing the issue of extremism and to present a basic document with the analysis of causes of increasing extremism and proposals for its solution.
[343] Government Resolution No. 572 of 4 May 2009.
[344] See also the above text regarding the Strategy of Combating Extremism.

low share of criminal activity with extremism implications in the total volume of criminality registered in the territory of the Czech Republic cannot be overestimated, because this criminal activity brings along considerable latency. Criminal offences motivated by hatred can blend in the "grey zone" of violent crime and their actual grounds need not be identified. Cases occurred where the victim was attacked without a single word being uttered. According to information provided by police specialists and non-governmental organizations, the Roma community is still the most vulnerable in the Czech Republic. However, physical attacks can be turned at an increasing pace in future against foreigners and migrants, as well as against the homeless or members of the homosexual community.

7.6. Discrimination on grounds of age

A survey[345] which concerned discrimination on grounds of age and ageism was carried out in 2008 by the non-governmental organization Life 90. The authors of the survey state that they do not use the term discrimination in the narrow sense of its general definition (i.e. unequal treatment of persons substantiated by one of the so-called discrimination grounds, but in a much broader sense perceived by seniors, i.e. rather as the so-called ageism.

"The leitmotiv for the search of the discrimination/ageism definition is an idea that it is something that occurs to you when you can no longer defend yourself, because you are alone and/or dependent on a low pension, and/or you are endangered by social exclusion. These factors can be of course interrelated and can be associated with higher age. But the results of our research indicate that the "age discrimination" is a problem of these "implications" rather than a problem of age".[346]

The survey identified several causes of discrimination and ageism. As an example of all these causes, we may refer to the problem of values in the society (insufficient education towards respect for old age and the resulting disrespect of the society towards seniors, physical distance of families, individualism as the source for lack of interest of others, absence of solidarity). Apart from that a number of seniors who took part in the survey stated that they see the causes also in themselves ("it is our fault...", "...we did not have time for our children..."[347]).

The report presents examples of age discrimination and ageism. Very important is the field of employment and social care - cases of seniors who lost their employment several years before retirement speak about prejudice rooted in the society. The report questions even some age limits established by the legislature as limits for certain legal entitlements or duties (e.g. the entitlement to a free mammography examination is limited by the age of 70 years, compulsory medical examination of drivers older than 60 years). A major obstacle for the seniors preventing them to live a full-fledged life in modern society is represented by modern IT technologies and their increasing use in all walks of life. The need to seek information on the Internet is perceived as an obstruction particularly in dealings with the authorities. The seniors participating in the survey stated that they are exposed to discrimination because they do not have access to the internet. *So much as it can be controversial to speak about discrimination in such cases, it is clear that seniors are a group (and not the only one) whose access to*

[345] Vidovićová, Gregorová: "We did not cause the old age, it awaits everyone ..." – the survey report entitled "The nature and prevention of senior discrimination in the Czech Republic". Brno 2008.
[346] Survey, p. 50.
[347] Survey, p. 18.

information is hindered instead of being facilitated by modern technologies. This should be taken into account at least in the approach of public officials to senior.

The age discrimination is not only perceived as a problem of the seniors. Some opinions speak about a salary discrimination of young persons in the state administration, where the bonus is counted among others by the number of years worked.

The report results in a number of recommendations of systemic character, which could be identified as follows: the care for the old age in the broadest sense should become the social priority, seniors should guaranteed the right to barrier-free, comprehensible and adequate information, the need to begin using part-time employment, etc.

7.7 Discrimination on grounds of disability

As regards disability issues, the problems of public transport of people with disabilities have not yet been resolved. In 2008, there were repeated cases[348] where a public transport authority charged persons on wheelchairs a fee for train delay.[349] Moreover, this fee was demanded by the transport authority before the sale of the ticket.

The fee for a permitted stop or delay of an express train is stipulated in internal regulations of the transit company.[350] These regulations do not explicitly express who and in which situations has to pay the fee. These are subsidiary rules, which have to respect the provisions of the Railway Act[351] and the decree the Ministry of Transport.[352] If we inspect this decree, we will find that a person whose wrongful acts causes the train delay is violating the transit terms by interrupting *"... fluency of public passenger transport..."*.[353] Thus, it has to be emphasized that the delay has to be caused by a wrongful act. The term "wrongful act" is however understood as illegal conduct (in accordance with the common legal interpretation of an intent or negligence as two components of the subjective relationship of the malefactor (perpetrator) to his own illegal conduct. *In reference to the transport of people with disabilities, we cannot speak in any case of wrongful acts. Boarding of this passenger on the train represents a natural and necessary element of the implementation of their contractual relation) (as a matter of fact, it is one of the acts which define such a relation).*

The application of the fee for the "delay of the train caused by a wrongful act" to a situation emerging from the boarding of passengers on a wheelchair (or with another movement limitation) can be identified as strongly discriminatory. It is true that people with disabilities (on wheelchairs) can in some cases need more time for boarding a train (or for loading the wheelchair). Such fact should not be resolved by sanctions but rather by the adaptation of trains and boarding areas by the carrier company to the needs of people with disabilities.

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[348] The text was compiled according to the contribution of the Czech National Disability Council.

[349] A so-called fee for permitted stop or delay of an express train. This fee is set in the Czech Railways Tariff Schedule for domestic passenger and luggage transport. The Tariff is a part of the Contractual Transport Conditions of the Czech Railways for public passenger transport. Both these documents are internal regulations of the carrier and do not expressly stipulate who and in which situation is obliged to pay the fee.

[350] In the case of the Czech Railways, it is the Czech Railways Tariff Schedule for domestic passenger and luggage transport, which is a part of the Contractual Transport Conditions of the Czech Railways for public passenger transport.

[351] Act No 266/1994 Coll. on Railways, as amended.

[352] Decree of the Ministry of Transport No 175/2000 coll., concerning the transport regulations for public railway and road personal transport.

[353] Section 15(s)(1) of the above-mentioned Decree

Another questionable aspect is making the sale of a ticket conditional upon payment of the delay charges. The decisive factor of the existence of a contractual relation with a passenger on a wheelchair is the purchase of the ticket.[354] Only this – and not any delay charges the delay – has to be paid in advance by the disabled passenger. *The conduct of the carrier who demanded payment of this "delay fee" in the relevant case – making such payment a condition for purchase of the relevant ticket - is considered as inadmissible by the Czech National Disability Council.*

[354] See Section 4(2) of the Railway Act: "A transport document is a ticket for a single journey."

8. Rights of Children

8.1. Care for children at risk

The Government took note of the Analysis of the present state of institutional provision for care for children at risk.[355] The Analysis mapped the present situation in the system of care for children at risk in the Czech Republic in light of the fragmentation of the agenda among various ministries and state authorities, and defined insufficient coordination and lack of mutual links of the activities and concepts of involved authorities as the key weakness of the existing system. *This fragmentation of the agenda concerning the care for children at risk has a negative impact on the level of child protection in the Czech Republic, which does not reach standards of advanced European countries, particularly with regard to the high number of children in institutional care and insufficient offer of alternative forms of work with children at risk and their families.*[356] A partial solution of the current fragmentation of care for children without a family and children at risk should be brought along by the Act on Infant Institutions and Foster Homes for Children up to Three Years of Age (the Act on Children Centres), which is being prepared by the Ministry of Health.[357]

In January 2009 the Government adopted a bill on the transformation and unification of the care system for children at risk in terms of resolution deficiencies of this system, which result from its division among various authorities, and ordered the Minister of Labour and Social Affairs to elaborate a National Action Plan to transform and unify the care system for children at risk. The National Action Plan should be elaborated by the end of June 2009.

In proceedings on the ordering of institutional care, which are generally initiated by a motion of a social-legal child protection authority, the court is obliged to appoint a collision guardian to the minors.[358] In most cases, the appointed guardian is the social-legal child protection authority which filed the motion that has initiated the proceedings or which has suggested to the court to open the proceedings *ex officio.* A*ccording to an opinion of the non-governmental organization Counselling Centre for Citizenship, Civil and Human Rights, this practice represents a violation of the fair trial principle.* By means of strategic litigation, this non-governmental organization succeeded in achieving a change. The first instance courts should now assess motions raised by social-legal child protection authorities which initiate the proceedings on ordering institutional care, as "a proposal for ordering institutional care for minor children, which is raised by the relevant authority as a part of its educational authorities during the implementation of the social-legal protection of children." *"As such, the authority (in its role of a petitioner) becomes a party to the guardian proceedings the subject matter of which is the assessment of conditions for the implementation of an educational measure with respect to minor children in the form of institutional care."*[359] According to the court of appeal, this situation excludes the application of common judicial practice from the selection

[355] Government Resolution No. 293 of 26 March 2008.
[356] Specific legislative, financial, organizational, administrative and other measures falling within the competencies of each public authority, which will lead to the achievement of the target state after the transformation of the system, will be resolved by the National Action Plan of Transformation and Integration of the Care System for Children at Risk.
[357] In 2009, the Government cancelled the task of the Ministry of Health to elaborate a material intent of the Act on Children Centres for children up to three years of age.
[358] Section 37(2) of Act No 94/1963 Coll., the Family Act, as amended.
[359] Ruling of the District Court in Prague ref. no. 24Co 332/2008-601 of 15 August 2008.

of a guardian ad litem for minor children. Therefore, the court of appeal appointed an attorney-at-law as the guardian in these proceedings.[360]

The proceedings in guardianship cases are finally and effectively ended by decisions of district (municipal) courts and do not provide the possibility of an appellate review with the Supreme Court, which would subsequently unify the case law. In the light of the above mentioned, it appears advisable to make a legislative change, which would allow the unification of case law in guardianship cases by allowing an appellate review with the Supreme Court. A more expedient alternative to *an appellate review* is represented by opinions referring to decision-making of courts in matters of a specific kind, which are subsequently published in a Collection of Supreme Court Decisions and Opinions. Based on the experience with court decisions, presiding judges of regional, district and higher courts may submit to the Supreme Court motions to adopt a unifying opinion. The Ministry of Justice is also obliged to file motions to issue an opinion if it learns of any differences in court decision-making.

Additionally, the non-profit organizations point out the overload of current employees of social-legal child protection authorities, who lack time for active preventive social field work which leads to the elimination of risks resulting in the taking children away from their biological parents and their placement in institutional care.[361]

In 2008 the Ministry of the Interior continued its implementation of the Early Intervention System, which permits fast transfer of information between entities caring for delinquent youth (specifically the police, social-legal child protection authorities and judicial authorities), immediate social intervention for the benefit of the client, planning of specific prevention measures in the municipality and an efficiency retroactive check of individual parts of the system where non-state non-profit organizations are also involved.

8.2. Children from socially excluded communities

The issue of education of Roma children is understood by the Government as one of the key issues for the solution of social inclusion of Roma. The Ministry of Education, Youth and Sports initiated in 2008 the elaboration of the studies "Sociological survey focused on the forms and causes of segregation of children and youth from disadvantaged social-cultural environments" and "Analysis of individual approach of pedagogues towards students with special educational needs". In connection with its response to the judgment in D.H. et al. *v.* Czech Republic,[362] the Ministry of Education, Youth and Sports is preparing a national action plan of inclusive education, where it pays increased attention to the education of Roma children from socially excluded localities. Furthermore, the Ministry is preparing the setup of processes concerning the social-cultural sensitive counselling, assessment and interventional care, and the development of a Concept of early care for children from 0 to 3 years of age at risk of social exclusion.

However, according to the Human Rights League, the segregation of Roma children persists in the form of so-called ghetto schools, and in actions that turn away these children to other than the mainstream education, which limits the application of the imperative to secure to all

[360] Counselling Centre for Citizenship/Civil and Human Rights
[361] Contribution of the Counselling Center for Citizenship/Civil and Human Rights.
[362] See Report for 2007.

children without exception the possibility to use their complete education potential, which is set forth expressly in the School Act[363]

8.3. Violence against children and commercial sexual abuse of children

The construction of special examination rooms for child victims, which began in 2007, continued in 2008. A total of 17 special examination rooms are in operation throughout the Czech Republic. Their purpose is to strengthen rights of children - victims and witnesses of criminal activity - through prevention of their secondary victimization within criminal proceedings. The examination rooms are designed to create a non-stressful atmosphere; at the same time, they allow a high-quality recording of the examination and offer a space for the prosecutor, the judge and court-appointed experts so they can watch the examination and do not disturb it at the same time by their presence. The special examination room allows establishing contact with the victim, which is very important for the interrogation tactics. There is the possibility to use a so-called playroom, where the psychosocial level of the child, his/hers communication skills, momentary feelings and relation to a stranger are assessed, where the examination is prepared and the reason of the examination is explained to the child. *In general, the project of special examination rooms is rated positively.*

The Ministry of Education, Youth and Sports specified the assessment methods for bullying and further updated the network of specialized institutions which cooperate with schools in the relevant field.[364] Every school creates its own Anti-bullying Programme (if it has not already introduced such programme) and all the pedagogues of the school participate in its implementation. The coordination of its creation falls within the standards activities of the school prevention worker. The school principal is responsible for the implementation and assessment of the Programme.[365]

The issue of commercial sexual abuse of children was included in 2008 in a broader context of violence against children. The Government adopted a National Strategy of Prevention of Violence against Children in 2008-2018", which will be accompanied by the relevant action plans, defining concrete tasks and activities of involved state administration authorities. In particular, the Strategy is focused on a change of the attitudes of the society towards zero tolerance of violence against children, and supports the broader context of primary prevention, i.e. child neglect, divorces, addiction to alcohol or drugs, forbidden possessing of weapons, poverty, unemployment, participation of children on decisions of matters that directly affect them. The aim of a national Campaign against Violence on Children, which will be implemented in 2009 in relation to the Strategy, is to point to all forms of violence against children and to emphasize their inadmissibility.

No less important are the actions towards perpetrators of violence against children (child harassment, commercial sexual abuse of children and even sexual abuse of children without a commercial aspect). The Ministry of Justice strives to continuously monitor these criminals and to assess their attitudes towards criminal activity. It is to be assisted in these activities by a new educational programme focused on these offenders.

[363] Act No 561/2004 Coll., the School Act, as amended.
[364] The Minister's of the Education, Youth and Sports guideline concerning prevention and solution of bullying among pupils in schools and educational institutions, ref. no. 24246/2008-6.
[365] The results and experience obtained by the project of the Ministry of Education, Youth and Sports will be compiled in the form of articles in special and popular journals. A book "School Programme against Bullying" is also being prepared.

In 2008, the non-governmental organization La Strada focused on obtaining information about girls who have experience with institutional care and at the same time with the provision of paid sexual services. La Strada assessed circumstances that can influence their life strategies and the possibilities of the institutional care system to prevent commercial sexual abuse of children. The conclusions of this research can be divided into several sections. The first identifies key factors which are related to the prostitution behaviour of the girls in institutional care. The second part of the research proposes on the basis of its results an original typology of prostitution, which has emerged from discussions with employees of individual facilities. Conclusions resulting from the research of current and possible forms of prevention of this phenomenon are summarized in the third section. *In particular, La Strada recommends eliminating the influence of girls with the risky experience on other girls, to include rules of safe internet use and information about risks of commercial sexual abuse in the education of the girls, and to avoid the tabooing of topics that relate to sexuality.*[366]

8.4 Child disputes and child support

In connection with the amendment of the Civil Procedure Code that became effective in 2008,[367] the Ministry of Justice prepared a list of appropriate types of environments available for child care authorities and courts. The list represents an offer of possibilities, or methodical guidance for the decision-making of judges. It should help prevent placement of children in completely inappropriate environments (for example psychiatric hospitals wards). If the court does not select an environment from the list, it can select, in justified cases, another suitable facility which will provide proper child care according to the definition stipulated by the law. The list contains contact data, founder's name, type of stay, extent and schedule of services and target user group with respect to every facility which matches the requirements set in the definition of a suitable environment.

A number of laws affecting the enforcement of child support payments were amended in 2008. These changes simplify and strengthen the position of the entitled person in the enforcement of due child support payments. The limitation period set forth in the Family Act, after the expiry of which the right to recurrent child support will expire, was extended from 3 to 10 years. The Act on Social-legal Protection of Children[368] emphasized the duty of social-legal child protection authorities to provide assistance in asserting child support entitlements and enforcing the performance of child support duty, including assistance in submission of a motion to the court. The social-legal child protection authorities have a new responsibility to report to the criminal prosecution authorities matters regarding the failure to fulfil the duty to provide child support payments (for the purpose of assessment of the possible criminal liability of the obliged person for neglect of mandatory child support). Under the Rules of Execution, entitled persons were exempt from the duty to pay appropriate advance payment to the executor for the execution costs in cases of enforcement of child support payments. This should contribute to an increased use of measures to enforce of child support payments by court executors.

Responsibilities of social-legal child protection authorities which are related to their cooperation with courts were further specified in connection with the execution of court

[366] www.strada.cz/download/files/brozura_daphne.pdf
[367] Act No 295/2008 Coll. amending Act No 99/1963 Coll. the Civil Procedure Code, as amended, and Act No 359/1999 Coll. on Social-legal Child Protection, as amended.
[368] Act No 359/1999 Coll. on Social-legal Child Protection, as amended.

decisions concerning child care. These authorities now have an express responsibility to appeal to the obliged party to voluntarily obey the court decision on child care or the arrangement of contacts with the child, and the duty to provide to the child an appropriate explanation of the situation which has occurred in connection with the enforcement of the decision, as well as the duty to provide or to mediate to the child and his parents expert assistance if they need such help in connection with the enforcement of the court decision.

The Ministry of Labour and Social Affairs published an information leaflet on the resolution of post-divorce conflicts, which contains practical information about possible post-divorce child care arrangements, including shared and alternate parenthood, about the course of the proceedings on post-divorce arrangements of child affairs, including shared and alternate parenthood, about rules related to the enforcement of the court decision, the possibilities of use of counselling and mediation services, and also about the role of social-legal child protection authorities in the protection of the child's interests and provision of assistance to parents.

The law of the Czech Republic allows entrusting the child into alternate care after divorce of its parents either on the basis of a court decision or through a parental agreement. The key aspect that is taken into account in such decision is the interest of the child. *However, the alternate care in the Czech Republic is still burdened with a number of myths and is approached with reserve. Also the opinions of psychologists differ as to what is best for the child, whether the stability of the household or the regular contact with both parents. The solution of particular cases is thus very individual and depends always on the ability and willingness of parents to come to an agreement, which is also one of the prerequisites for this type of child care.*

One of the elements, which should improve the situation surrounding family disputes, is the currently prepared Act on Mediation in Non-criminal Matters, which introduces the institute of registered mediator into Czech law.[369] In family disputes, the court will be authorized to order the parties to attend a first meeting with the mediator; the costs of such meeting (up to three hours) will be paid by the state. *Nevertheless, mediation is unsuitable in the cases where the parties act in such way that the dispute must end as a "victory" for one and a "loss" for the other, if a party is not willing to put forth all relevant information and refuses on the other hand objective examination of such information, or in cases where the parties are so passive that they are willing to resolve the problem at the price of renouncing their own rights.*[370]

In 2008, the Government Council for Human Rights adopted a motion on post-divorce child care arrangement in conformity with the Convention on the Rights of the Child.[371] On the basis of the motion, the Ministry of Justice elaborated the above-mentioned list of suitable environments for children in need of crisis intervention due to the conflicts during the divorce of parents. The topic of resolution of conflict regarding child care arrangements in the course of and after divorce will be a part of future training of social-legal child care authority employees. Experts who work with children at risk should abide in future by a code of ethic, the elaboration of which was ordered by the Government to the Minister of Labour and Social Affairs. Moreover, an assessment of all forms of provided assistance to children at risk of parental conflict is to be presented to the Government in the first half of 2009.

[369] See also Chapter 2.2.
[370] For more information see http://portal.justice.cz/ms/ms.aspx?k=4978&o=23&j=33&d=281981
[371] The Government took note of this motion by its Resolution No. 691 of 9 June 2008.

9. FOREIGNERS

9.1 Basic trends in migration in 2008

The most important migration trend in the territory of the Czech Republic in 2008 was an increase in the number of foreigners residing legally in the Czech Republic, both under a long-term or a permanent residence permit (43,144 foreigners). It can be said that illegal migration did not increase even after the entry of the Czech Republic into the Schengen Area, but a noticeable shift from illegal activities related to smuggling of human beings to assistance to illegal stay has been recorded.

The following table shows statistical data concerning the number of foreign nationals with a residence permit in the territory of the Czech Republic. The comparison of the number increase in the same time periods in 2007 and 2008 clearly indicates that this is second highest number increase in the last 10 years. This implies that the Czech Republic has become the final destination for a number of foreigners, a place where they want to live, work and fully integrate.

	as of 31 December 2007			as of 31 December 2008		
	Permanent residence	Long-term residence (temporary)	Total	Permanent residence	Long-term residence (temporary)	Total
Total foreign nationals	158,018	234,069	392,087	172,927	265,374	438,301
Thereof						
citizens of the EU*	52,977	78,580	131,557	53,897	92,645	146,542
citizens of third countries	105,041	155,489	260,530	119,030	172,729	291,759

Source: Ministry of the Interior, statistics of the Directorate of the Foreign Police Service of the Czech Republic.
Note: * Citizens of other countries to whom the same rules apply are stated together with EU citizens. This includes Norway, Island, Liechtenstein and Switzerland.

The Government approved[372] a material intent of a new Czech Citizenship Act, which will re-assess the issue of dual citizenship in relation with granting Czech citizenship. An articulated statutory text concerning the Czech citizenship was prepared at the end of 2008.

Several amendments of the Act on the Residence of Foreigners in the Territory of the Czech Republic were carried out in 2008.[373] It is no longer required to submit an excerpt from the criminal register, which used to be one of the prerequisites for the application for visa over 90 days, long-term or permanent residence permit.[374] The clean criminal record is checked by the administrative authority which decides about the granting of the residence permits. In connection with the so-called "relieving" of the Police of the Czech Republic of activities that are unrelated to the police activities, some administrative activities related to the issuing of

[372] Resolution No. 254 of 17 March 2008.
[373] Act No 326/1999 Coll. on the Residence of Foreigners in the Territory of the Czech Republic and on Amendments of Specific Acts, as amended
[374] Act No 124/2008 Coll. amending Act No 269/1994 coll. on the Register of Criminal Offences, as amended, and other special laws.

relevant residence permits to foreigners were delegated to the Ministry of the Interior.[375] Within the first stage, the Ministry of the Interior took over, with the effect as of 1 January 2009, the entire agenda concerning granting permanent residence permits; in the second stage (i.e. in 2013) it will take over the agenda concerning granting long-term residence permits.

An institute of the so-called "protective period" was established and conditions for the granting of long-term residence permits in "GREEN CARDS" regime were set. The "GREEN CARD" has a so-called dual character (i.e. it represents not only the employment permit, but at the same time residence permit). The issue of green cards is in competence of the Ministry of the Interior. The establishment of the "protective period" represents a precaution according to which the validity of a visa over 90 days granted for employment purposes of foreigners who lose their job (not by their fault) may only be cancelled in the case that a new employment permit or a new "GREEN CARD" will not be issued within a time-limit of 60 days beginning on the day after the termination of the employment (more about green cards see below).

9.2 Illegal migration

The decrease in number of illegal migrants detected in the territory of the Czech Republic continued in 2008. One of the causes of the decrease is the entry of the Czech Republic, Poland and Slovakia into the Schengen Area, after which controls at checkpoints with non-stop service where every vehicle and person were checked were abandoned and further surveillance of the "green border" was aborted. Controls are currently being carried out only at air borders (international airports). Therefore, the data concerning illegal migration across the state borders or across the external Schengen border of the Czech Republic cannot be compared.

Units of the Police of the Czech Republic reported in 2008 a total of 3,829 persons caught while illegally migrating into the Czech Republic, thereof 3,661 persons were illegally resident (domestically and within the internal Schengen border) and 168 persons were detected while illegally crossing the external Schengen border. All these persons were foreigners. Of the total of 3,829 persons, 458 (i.e. 11.9%) were detected repeatedly during illegal migration and 225 persons (i.e. 5.9%) were holders of irregular travel documents. The most numerous group of illegal residents is comprised traditionally by Ukrainians (1,547 persons), followed at a distance by the Vietnamese (316 persons) and Mongolians (269 persons). About 18% of the 168 persons detected while crossing illegally the external Schengen border were Moldavians and about 17% Syrians. Out of 3,661 illegal residents detected in the reviewed period, 3,267 were deported inland and 394 in connection with the internal Schengen border. In the same period, 168 persons were intercepted while crossing illegally the external Schengen border, 130 persons of whom were intercepted when entering into the Czech Republic and 38 persons leaving the Czech Republic.

Under the amendment of the Employment Act,[376] the maximum amount of a fine for the provision of illegal employment (for employers or brokers) was increased from 2 to 5 million CZK. The state and self-government authorities and even private persons are now obliged to report to the labour offices, among others, decisive data concerning permits to employ foreigners and the controlling activity.

[375] Act No 274/2008 Coll. Amending Certain Laws in Connection with the Adoption of the Act on the Police of the Czech Republic.
[376] Act No. 435/2004 Coll. on Employment, as amended.

Controlling activities performed in connection with employment of foreigners were intensified in 2008. In the first half of 2008, most illegal foreign workers were employed in construction, processing industry, in administration and in some areas of wholesale trade, retail trade, maintenance and repair of motor vehicles.

A major police intervention took place on 27 November 2008 at a big Vietnamese market-hall at the premises of SAPA in Prague 4-Libuš. Around 800 members of the Police of the Czech Republic and customs administration participated in the action, together with the use of heavy police equipment, then mounted police unit and a police helicopter. Several hundred foreigners were checked and some of them were found as residing illegally in the Czech Republic. *The action was criticized by the Vietnamese community, particularly due to the behaviour of members of the police, who allegedly addressed the foreigners using the familiar form of you ("ty") and committed other acts that were perceived by the foreigners as degrading.*[377]

9.3 Problems regarding health insurance of some categories of foreigners from third countries with long-term residence in the Czech Republic

The situation where, under the Public Health Insurance Act[378], only foreigners with permanent residence in the territory of the Czech Republic and foreigners who do not have a permanent residence in the territory of the Czech Republic but are employed with an employer based in the territory of the Czech Republic are included in the public health insurance system, still persists. The rest of the foreigners, except for certain small groups (asylum seekers, applicants for international protection, foreigners with a long-term residence permit for the purpose of scientific research or foreigners with a long-term residence permit for purposes of protection or foreigners residing in the Czech Republic by virtue of so-called temporary protection) continue to be excluded from the public health insurance system and rely solely on the so-called contract or commercial health insurance.

The Government Council for Human Rights adopted in February 2009 a motion of the Committee for Foreigner Rights, which tries to resolve this shortcoming.[379] *It sees the problems of the current situation particularly in deficiencies related to foreigners from third countries who are not family members of EU/Czech Republic citizens during the first five years of their residence in the Czech Republic. Thus, the same approach is used, for example, in respect of a foreigner residing for the first year in the territory of the Czech Republic on the basis of visa over 90 days for purposes of family reunification and to a person who resides in the fifth year in the territory for the same purpose based on a long-term residence permit. Another problem is the unsubstantiated disadvantaging of family members of the citizens of the Czech Republic (typically spouses) from third countries during their temporary residence in the territory, compared to family members of EU citizens residing in the Czech Republic.* The Committee proposes to include into the public health care system also other categories of foreigners, among others dependent children below 18 years of foreigners residing in the Czech Republic on the basis of visa over 90 days for family reunification/long-term residence permit purposes, who reside in the Czech Republic for the same purposes, and foreigners from third countries who have income from gainful activity in the territory of the Czech

[377] Findings of the non-governmental organization Counselling Centre for Citizenship, Civil and Human Rights.
[378] Section 2(1) of the Act No 48/1997 Coll. on Public Health Service, as amended.
[379] See http://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-26--unora-2009-54800/.

Republic within the meaning of the Income Taxes Act and in whose case three month have passed from the commencement of earning income from gainful activities in the territory of the Czech Republic. The latter proposal is also a part of the material intent of the Public Health Insurance Act.

Another problem related to the health care of some categories of foreigners is the conclusion of travel insurance abroad. According to the construction of the Foreigners Act, a foreigner wishing to obtain a visa is required to conclude travel health insurance abroad; only in exception cases, it is possible to conclude such insurance within 3 working days after the entry in the territory of the Czech Republic. The Czech National Bank maintains on its website updated lists of insurance companies providing services under the Insurance Act, which is checked by the Foreign Police Inspectorate at the time of presentation of the contract by the foreigner. According to the information of the Ministry of the Interior, cases occur where foreigners submit insurance contracts concluded with insurance companies that are accepted, but the contracts are concluded in the territory of the Czech Republic, although the provider is not authorized to do so. It is also often found that such policies are not listed in the central register of the insurance company.

The Ministry of the Interior repeatedly considered the possibility to stipulate the duty of foreigners residing on the territory of the Czech Republic to take health insurance for the period of their residence in this territory only with an entity that is authorized to do so according to the Insurance Act.[380]. The institute of the so-called travel health insurance, which can be concluded by the foreigner with any insurance entity, would be then used only in cases of residence in the territory of the Czech Republic not exceeding 3 months. The resolution of this issue will continue in 2009.

9.4 Access of foreigners from third countries to employment and gainful activity, green cards

The trend of increase of the number of foreigners who are employed in the territory of the Czech Republic in the form of dependent gainful activities performed by an employee for the employer continued in 2008 as well. Shortage of labour force, mainly of qualified experts, emerged in individual regions throughout the year. The number of foreigners in the business sphere also increased in comparison with 2007.

By the end of 2008, 361,709 foreign citizens were recorded in the territory of the Czech Republic, thereof 284,551 persons were employed under labour-law relations and 77,158 persons held a valid trade licence.

The largest representation at the labour market was recorded by Ukrainians (56.5%), Vietnamese (11.3%), Mongolians (9.1%), Moldavians (6%) and Uzbeks (2.5%). Most represented foreigners in the business sphere were the Vietnamese (52.4%), Ukrainians (34.6%), Russians (2.1%), Moldavians (1.8%), and Serbians and Montenegrins (1.2%).[381]

The most important legislative changes[382] in the employment of foreigners concern the abolishment of the system which allows recruiting employees abroad, the issuance of

[380] Act No 363/1999 Coll. on Insurance, as amended.
[381] Detailed information regarding the current legislative of foreigner employment in the Czech Republic is available on the website portal of the Ministry of Labour and Social Affairs: http://portal.mpsv.cz/sz/zahr_zam.
[382] Act No 382/2008 coll.

employment permits for the maximum of 2 years (even in the case of its renewal) and open access of students who systematically prepare in the territory of the Czech Republic for their future occupation and of graduates who acquired secondary, college and university education in the territory of the Czech Republic to the labour market. The so-called green cards were introduced, which will substitute, by a single document, both the employment permit and residence permit. From the beginning of 2009, foreigners from 12 countries have a possibility to obtain green cards – specifically from Australia, Montenegro, Croatia, Japan, Canada, Republic of South Korea, New Zealand, Republic of Bosnia and Herzegovina, Macedonia, United States, Serbia and Ukraine[383]. Mongolia and Vietnam were not included in the list. This is criticized mainly by the Czech-Vietnamese Society, which points out that *by the refusal to enlist Vietnam, the Czech Republic will breach a sixty years' tradition of mutual cooperation of both countries and it will not only damage mutual relationship, but also the Czech economy.*[384]

The so-called protective period was extended to 60 days beginning with the day after the termination of employment. This means definitely an improvement of the legal situation of some employed foreigners, because the loss of employment was connected automatically in the past with the loss of residence permit.

One of the most controversial topics regarding foreigners´ employment, a topic which persisted throughout the whole previous year and escalated recession at the end of 2008 due to the economic, was the employment through agencies, which showed a number of deficiencies. Agency employees were virtually in a position of cheap labour, which demonstrated, under the pressure of circumstances, higher efficiency and willingness to work hard even in worse conditions. This dependence on the employer was due to several factors, namely to the effort to pay back a loan which they took to be able to work at the Czech market.

In responses to the economic crisis, the Government proposed a solution of the situation of foreigners from third countries who were laid off. At the beginning of 2009, the Government approved several proposals,[385] principally to persuade these foreigners to leave the Czech Republic. The objective of the measure is to provide assistance to foreigners from third countries residing legally on the territory of the Czech Republic, who became unemployed due to the current economic situation and wish to return to their homeland but are incapable of defraying the costs. In this project, the Czech Republic offers payment of airfare, preliminary and transit assistance and even a benefit of 500€ to cover the costs of the early departure from the Czech Republic. The pilot project is purported for 2,000 persons and is to last eight months.

As regards the return of these foreigners, if they will be still interested in it after the end of the crisis, the Counselling Centre for Citizenship, Civil and Human Rights proposed a creation of a special project regarding the postponement of employment migration, where foreigners who have already arrived in the Czech Republic for the purpose of gainful activities would return to their homeland but would retain in their travel documents a valid residence permit for the

[383] Decree of the Ministry of Interior No. 461/2008 Coll. listing countries whose citizens can apply for the green card

[384] See http://www.novinky.cz/domaci/157604-zelena-karta-umozni-praci-v-cr-lidem-z-12-zemi-vietnamcum-ne.html.

[385] For example the document of the Ministry of the Interior called: "Ensuring security of the Czech Republic in connection with layoffs of foreign workers due to economic crisis".

territory of the Czech Republic and would be given priority in future granting of employment permits over other citizens from third countries.

However, the Ministry of the Interior has begun issuing to foreigners confirmations that they participated in the voluntary returns. This confirmation should ensure to them a preferential treatment in the case that they decide to return to the Czech Republic after the end of the economic crisis.

9.5. Negative phenomena associated with applications for visa and residence permits on the territory of the Czech Republic

The verification of invitations in case of applications for visa up to 90 days (visits, tourism)[386] was made more restrictive, since this type of visa is being misused for the performance of gainful activities. Such foreigners came to the Czech Republic on the basis of a short-term tourism visas, which were arranged for by their employment broker - "client", or directly by the employer. The client or the employer promises to the foreigners that he will arrange for them all permits needed for employment in the Czech Republic but does not fulfil any such promise because he cannot file any such application in the territory of the Czech Republic. Such foreigner then resides in the territory of the Czech Republic and because he has no money to return, he cannot leave the country within the specified period. Even though most of his income is given to the client, his wage in the Czech Republic is still many times higher than in his homeland and the work is thus convenient for him. These foreigners live on the edge of poverty, because they send most of their income home to their family. Most of these persons reside in the Czech Republic without a travel document, because they have surrendered in voluntarily to their client. The reason why they give their documents to the client is the above-mentioned promise concerning the arrangement of all permits.

The experience of the Ministry of the Interior confirmed that the forms on invitation to the Czech Republic are the object of a trade and are left blank to be signed, for a bribe, by people, who do not know the invited foreigners and frequently even their nationality and who do not even care what will happen with their invitation. Beside private entities, other subjects involved in this issue in invitations to the Czech Republic are companies that often respond to internet offers of business cooperation and invite to the Czech Republic "business agents", who arrive in he Czech Republic after obtaining the visa but do not contact the company and continue their journey to other countries of the Schengen area.

Other entities involved in this area of legal immigration were the so-called employment and brokering agencies, which submit to labour offices bulk lists of foreigners and obtain work permit for them. Thereafter, they send these permits to their representatives in individual countries where foreigners obtain on this basis the visa to travel to the Czech Republic, and pay for such permits and visa while still in their home country. After their arrival in the Czech Republic, these foreigners do not report to the agency which provided them with their visa but purchase a ticket and continue to travel to the older member countries of the Schengen Area. These are cases of so-called "latent" illegal immigration, whereby the foreigner enters into one of the countries of the Schengen Area legally on a valid visa, but continues his journey into a target country, claiming that he does not know that his visa is valid only in the state that has issued it. Since the only sanction that can be imposed on such a foreigner by the Foreign Police Service after his apprehension and return to the Czech Republic is the provision of

[386] The granting of these visas is fully in the competence of the Ministry for Foreign Affairs, or representative authorities.

instruction that such visa is valid only on the territory of the Czech Republic, it is logical that the number of such cases increases geometrically. *On the other hand non-profit organizations*[387] *point to cases of foreigners who travelled to the other EU Member States in good faith that they are allowed to enter their territory.*

The amendment[388] of Section 87h of the Act on the Residence of Foreigners in the Territory of the Czech Republic imposed more restrictive conditions for issuing permanent residence permits to a family member of an EU citizen. This permit can be currently issued as late as after two years of uninterrupted temporary residence in the Czech Republic, provided that the foreigner has been at least one year a family member of a citizen of the Czech Republic. The adoption of this amendment led to decrease in the number of applications for permanent residence permits, submitted after marriages concluded or relations to children established for self-serving purposes. *The amendment is considered as positive by the Supreme Public Prosecutor's Office, which points to the decrease of the number of motions to deny paternity filed with the Supreme Public Prosecutor. On the other hand it is necessary to point to problems caused by this amendment particularly in connection with health insurance of foreigner-spouses/wives of citizens of the Czech Republic. The family member of a citizen of the Czech Republic can reside in the territory of the Czech Republic for the first two years only on the basis of a temporary residence permit. Hence he/she has no access to the public health insurance system and depends therefore on commercial insurance. Essentially, this type of insurance is constituted by a contract between the foreigner and the insurance company, concluded solely under private law. The risk of such insurance consists in the fact that the insurance company is not obliged to conclude any such contract with the foreigner. These cases have already occurred, for example in respect of foreigners with a congenital physical defect.*[389] *Other problems caused by this amendment to mixed marriages concern the fact that the parent-foreigner who has given birth to a child will not be entitled in the first year to social support benefits, such as the child allowance, the social contribution, the parental contribution for the children or the housing allowance. Only the parent who is the citizen of the Czech Republic will be entitled to apply for the benefits. If a child is born to a married couple in the first year of the residence of the foreign wife, she will not be entitled to acquire the childbirth grant. Foreign spouses of Czech citizens will not be entitled to work in the territory of the Czech Republic in the first year of their residence without an employment permit, and even their waiting period for the citizenship will be extended by 2 years.*

Problems with applications for permanent residence permits filed by third country citizens for purposes of cohabitation with a citizen of the Czech Republic persisted in 2008 as well. The investigations carried out by the Ministry of the Interior revealed that some of the applications were supported by a birth certificate of a child born in the Czech Republic with an additional registration of the applicant as the father of such child (cases of determination of paternity by consensual declaration of parents). In many cases, such foreigner is a Vietnamese. The circumstantial evidence indicates the self-serving purpose of the admission of paternity, in exchange for a bribe and in order to obtain permanent residence permit. During the investigation, the mothers of the children mostly stated that the registered father is unknown to them and that they had never personally met before, not even after his registration in the birth certificate. These contacts were arranged for by other persons.

[387] Contribution of the Counselling Center for Citizenship, Civil and Human Rights
[388] Act No 379/2007 coll.
[389] Details see the above mentioned motion of the Government Council for Human Rights of the Czech Republic on health insurance of foreigners.

The Ministry of the Interior further recorded several applications for temporary residence permits filed by foreigners who are parents of children who are Polish citizens. This concerns generally Vietnamese mothers who register Polish (i.e. EU) citizens as fathers of their newborn children in the territory of Poland, and the child thus acquires Polish citizenship. The investigation did not reveal whether these Vietnamese women had ever had any residence status in the territory of Poland. This arrangement is followed by the submission of an application for temporary residence permit of the child, who is a Polish citizen (and who is less than 4 years old) in the territory of the Czech Republic, and the mother will be then "united" with him (the purpose of application stated in the section "purpose of the residence" is: Life in the Czech Republic). The verification of possible self-serving purpose of ties established in another EU country is difficult, if not impossible. The Ministry of the Interior considers these applications as potentially self-serving and considers establishing cooperation with the relevant Polish authorities in such cases.

A problem that occurs in respect of the submission of application for various types of residence permits in the territory of the Czech Republic concerns forged documents, for example civil register documents. A suspicion of forged civil register documents is investigated in many cases, particularly those of Vietnamese citizens. This applies, in particular, to birth certificates where there are doubts about parents of the child. The Foreign Police Inspectorates use the possibility to have these documents verified by the diplomatic mission of the Czech Republic in Vietnam. This way has confirmed a number of suspicions of document forgery. The Ministry of the Interior pays increased attention to documents ob health insurance submitted by foreigners together with the application for individual types of residence permits and checks them with insurance companies based abroad, where it inquires whether the health insurance concluded is legitimate.

With the entry into the Schengen Area, the neighbouring countries ceased to recognize the deportation order as a document authorizing transit through their territory.[390] According to the information of the Ministry of the Interior, Poland does not grant even transit visa to holders of deportation orders. The problem concerns mainly citizens of Ukraine who have only a limited possibility how to legally leave the territory of the Czech Republic after their termination of residence in the territory of the Czech Republic (including administrative expulsion) (only by air). This situation can lead to a substantial increase of the number of citizens who will not be able to leave the territory of the Czech Republic after the termination of their residence permit and will reside here without permission. The Ministry of the Interior attempts to resolve the problems with recognition of deportation orders as documents authorizing to enter the territory of the Schengen states by negotiations with the embassy of Poland in Prague and by a proposal to include this document into the list of residential permits. With regard to practical impacts, the Ministry of the Interior will continue to pay attention to this issue.

9.6 Administrative expulsion and related problems

This is one of the most difficult long-term problems relating to foreigners in the Czech Republic. *In particular, non-governmental organizations point to the excessive use of this measure by the foreign police, where an unintentional and negligible breach of the law results in administrative expulsion. From the foreigner's perspective, a negligible breach or mere lack of knowledge of the law is punished by a measure that interferences considerably into*

[390] Section 50 of the Act on the Residence of Foreigners in the Territory of the Czech Republic.

his/her rights and freedoms, regardless of the fact that administrative expulsion was imposed in many cases monitored last year on persons with a developed family life.[391]

In 2008, the Constitutional Court interfered significantly into the statutory regulation of the judicial review of administrative expulsion by abolishing, under its judgement[392] provisions of the Act on Residence of Foreigners,[393] which excluded some decisions on administrative expulsion from judicial review. Based on a motion of the Supreme Administrative Court, the Constitutional Court stated that: *"according to Article 36(2) of the Charter of Fundamental Rights and Freedoms, the reviews of decisions on fundamental rights and freedoms cannot be excluded from the competency of the court. The exclusion of a decision regarding administrative expulsion of a foreigner who has resided without permission in the territory of the Czech Republic, as stipulated by Section 171(1)(c) of Act No 326/1999 Coll.. on Residence of Foreigners in the Territory of the Czech Republic and on the Amendment to Certain Laws, contravenes the above-mentioned Article of the Charter, because it is an administrative decision competent to intervene into fundamental rights and freedoms, for example, into the right to life according to Article 6 of the Charter, the prohibition of torture and cruel, inhuman or degrading treatment according to Article 7 of the Charter or the right to the protection against unauthorized intervention into private and family life according to Article 10(2) of the Charter."*[394]

In the past year, the ombudsman addressed the issue of expulsion of foreigners who married a Czech citizen after the issue of the expulsion decision or to whom a child was born whose other parent is Czech citizen. The ombudsman recommended that, in cases where it is proved that such marriage /parenthood is real and functioning (and not in cases of self-serving marriages or self-serving declaration of paternity), it is necessary to initiate proceedings resulting in a new decision (since the reasons preventing the foreigner's departure occurred after the issue of the administrative expulsion order). As regards administrative expulsion, the ombudsman appealed for a consistent examination of the circumstances of the case, since it is possible to apply, on the basis of the most recent SAC's case law, the reservation of public order in cases where the foreigner applies for residence in the territory of the Czech Republic based on a proved self-serving admission of paternity, and to order his administrative expulsion.

9.7. Integration of foreigners

Based upon a Government resolution, the coordination of the Concept of Integration of Foreigners was transferred from the Ministry of Labour and Social Affairs to the Ministry of the Interior. The aim of this step was to establish efficient mutual links between the state integration policies and to efficiently manage legal immigration into the Czech Republic, including the resolution of all implications in the field of integration.

One of the most important measures implemented by the Ministry of the Interior in support of integration of foreigners in the territory of the Czech Republic is the amendment of the Act on the Residence of Foreigners in the Territory of the Czech Republic - i.e. the introduction of a

[391] Cases of foreigners who have lived their family life in the territory of the Czech Republic for even more than 5 years are not exceptional - information of the non-governmental organization Association for Integration and Migration.
[392] Judgment Pl ÚS 26/07 published in the Collection of Laws on 13 February 2009 under No. 47/2009 Coll.
[393] Section 171(1)(c) of the Act on the Residence of Foreigners on the Territory of the Czech Republic.
[394] Ibid.

condition under which the foreigner must demonstrate, with effect from 1 January 2009, the knowledge of the Czech language as a necessary prerequisite of his/her application for permanent residence permit in the territory of the Czech Republic (this condition does not apply to EU citizens, their family members and some other exceptional cases).
A System of Czech language education and examination for foreigners has been created as one of the conditions for granting permanent residence permit. This system has created prerequisites for foreigners to enable them to fulfil the condition of proving the necessary knowledge of the Czech language, which will increase their integration competencies into society and ensure successful process of their integration.

Another measure that may be considered as important and that will contribute to more successful integration of foreigners is the transfer of all competencies concerning decisions on applications for permanent residence permits from the Foreign Police Service Directorate e to the Ministry of the Interior since 1 January 2009.

10. REFUGEE AND OTHER PERSONS REQUIRING INTERNATIONAL PROTECTION

10.1. General situation and trends in the field of asylum and the provision of protection in 2008

The development of the issue of international protection in the Czech Republic in 2008 was affected by several factors. The first one related to a significant legislative change - to the implementation of the Procedural Directive,[395] which was incorporated into the Czech Asylum Act on 21 December 2007 and which abolished the previous two years' time-limit for the possibility of repeated submission of an application for international protection. This means, in practice, that the applicant may submit a new application for international protection directly immediately after the final and effective date of the decision on rejection of international protection. This change affected a number of repeated applications. A total of 596 repeated applications concerning international protection were filed in 2008, i.e. more than one third of the total number of all applications.

Beside legislative changes, the development of the international protection issue was also affected by a significant number of international protection applicants from Turkey. The high number of applicants from this country was related to the situation existing at the end of 2007 and the beginning of 2008, when mainly young citizens of Turkey applied for international protection in the transit area of the Prague Airport. During their transit through Prague, they did not continue their journey to the notified final destination - particularly the Russian Federation, Ukraine, Belarus or Serbia, but applied for international protection in the Czech Republic. Since there was a reasonable suspicion that these persons arrived with the intention to illegally immigrate into other countries of the European Union, the Czech Republic to resolved the situation by introduction airport transit visa for Turkish citizens (in April 2008).

In relation to current immigration trends, changes also occurred in relation to a group of unaccompanied minor foreigners. International protection applicants traditionally formed the largest group of unaccompanied minors. In the last two years, however, unaccompanied minor foreigners no longer appeal for international protection, but often enter the territory of the Czech Republic with a legal guardian and after residing in the territory for some time, they leave the legal guardian for various reasons or are taken away from him by a court. This concerns cases where the legal guardian passes away, becomes ills or perhaps even abandons the child and leaves him/her in the Czech territory, or more and more frequently even cases where the child commits a crime or the legal guardian does not provide sufficient care and the child is taken away from the family. *In connection with such change of the situation, the system of care for minor children has shown to be insufficiently prepared for these circumstances.*[396]

New significant problems arise in connection with the transforming trends of this migrant group. Because of the increase of children being left by parents in the Czech territory, the attention of involved authorities was shifted in 2008 to families of foreigners. In connection with the financial crisis, foreigners are laid off and some of them place their children into institutional care and leave them in the territory of the Czech Republic. Motives of these parents are various, whether it is the inability to provide subsistence to their children or a wish

[395] Directive 2005/85/EC.
[396] Contribution of the non-governmental organization Association for Integration and Migration.

to ensure a better life for them. It is necessary to point out that not all of the abandoned children are left in institutional care. Cases were found where parents left children with a friend or a complete stranger. *These children are at great risk and can easily become victims of trafficking in human beings or another form of abuse.* Last but not least, there arise problems with the identification of such abandoned children, because they frequently do not possess a birth certificate, a passport or any other proof of identification.[397] However, the Ministry of the Interior disagrees with this opinion. It has not recorded an increase of abandoned children in connection with the financial crisis, but has confirmed problems with the determination of identification. Nevertheless it is relevant that the authorities pay adequate attention to these issues.

Compulsory school attendance for minor asylum seekers, persons enjoying supplementary protection, applicants for international protection in the territory of the Czech Republic and children of foreigners who are placed in detention facilities for foreigners, is provided for by the Ministry of Education, Youth and Sports. In this respect, the Ministry bears in mind specific problems of schools educating these groups of foreigners, which are mostly situated in the vicinity of asylum facilities and have capacity to enrol children for education throughout the whole year and adapt the tuition to their needs. The Ministry of Education also organizes free introductory courses for asylum seekers and persons enjoying supplementary protection. The focus of these courses is the teaching of Czech language for a period of 10 months. Other parts of these courses include basic socio-cultural and geographic information. The language is taught by a non-traditional method and is focused on topics which the asylum seekers need to know if they wish to live in our society, on the vocabulary necessary for joining the labour market, obtaining necessary documents, shopping, habits etc.

Another change that occurred in 2008 is the placement of unaccompanied minor foreigners in the Facility for children of foreign nationals, where a closer cooperation between the social-legal child protection authority for Prague 5 and the Ministry of the Interior was established. Minors older than 15 years who express their wish to apply for international protection at the Prague International Airport are transferred to the above facility as quickly as possible after the issue of a court order and after undergoing entry medical checks. Minors younger than 15 years are handed under a court order directly into care of these facilities.[398]

Out of all of the legislative changes in the field of asylum law, we would point here to the most important ones. Under an amendment of the Asylum Act,[399] the security detention is one of the places (beside medical facilities which hospitalize foreigners, remand or serving a prison sentence) where the foreigner may express his intention to apply for international protection.

The Decree No, 198/2008 Coll.,[400] issued in 2008, amended the implementing regulation to the Asylum Act by increasing the amount of pocket money given to applicants for international protection from 16 CZK to 30 CZK per calendar day.

10.2. Problems of asylum practice

[397] Contribution of the non-governmental organization Association for Integration and migration.
[398] Details concerning unaccompanied minors se Chapter 10.
[399] Act No 129/2008 Coll. on Security Detention and on the Amendment to Certain Related Laws.
[400] Decree No. 198/2008 Coll. amending Decree No. 376/2005 Coll. which determines the amount of meal and accommodation allowance provided in an asylum facility, the amount of pocket money and date of its payment, as amended by Decree No. 174/2006 Coll.

Especially problematic is the availability of housing for asylum seekers. The possibility of accommodation in asylum integration centres is limited to 18 months. Thereafter, asylum seekers are entitled to an integration apartment under the State Integration Programme. Such apartment may be provided by municipalities from their housing fund option I.), or the asylum seekers can possibly acquire a contribution for payment of net rent of an apartment in any apartment building for the duration of 8 years (option IIa). Disabled asylum seekers can possibly acquire a contribution towards payment for residence in social service facilities, which will be granted for an indefinite period of time (option IIb). The benefit is provided in the amount of 100% of costs for the residence in the facilities. The State Integration Programme is governed by rules adopted by the Government.[401] Under option I, integration apartments are allocated by the Inter-ministerial Commission for creation of a new concept for the asylum seeker integration and for allocation of integration apartments to eligible persons (the activity of the Commission was terminated as of 31 December 2008). Based on the expression of the asylum seeker's wish, a member of the Commission will nominate him as an applicant. Integration apartments are allocated on the basis of a vote. However, the number of apartments offered under option I. is lower in the long run than demand or the interest of asylum seekers in the specific apartment offered to them. The reason of the insufficient saturation of the asylum seekers community by integration apartments under option I. is the fact that the applicants for the apartments focus almost entirely on Prague and Brno, and are not interested in apartments available in smaller cities. The provision of the contribution towards payment of rent costs was introduced in 2005 and the number of integration apartments under this option IIa has an increasing tendency.

According to opinions of some non-state non-profit organizations,[402] not all asylum seekers are capable of finding accommodation by themselves within an 18 months' period. Nevertheless, the Ministry of the Interior believes that this time-limit is sufficiently long.

In the previous year, the ombudsman dealt with the situation in the admission centre situated in the transit area of the Prague Airport. He concluded that, given its statutory regulation and structural and technical concept, the facility was designated for a short-term residence of applicants whose applications are evidently groundless. The wording of Asylum Act[403] indicates that a centre situated at another airport or another asylum centre designated by the Ministry of the Interior is also considered as an admission centre at the international airport if it is impossible to place the foreigner, due to security, sanitary, capacity or other similarly serious reasons, to the admission centre at the international airport in whose transit area the foreigner applied for international protection. The ombudsman considers the level of accommodation as inappropriate with regard to possible 4-month stay in such area in accordance with the Asylum Act. As regards the accommodation standards, the ombudsman proposed to decrease the number of accommodated persons and to shorten as much a possible the accommodation period. The ombudsman discusses this issue with the Ministry of the Interior.

10.3. Health insurance of applicants for international protection (regulatory charges paid to the physician)

[401] Government Decree No. 543 of 14 May 2008 on ensuring the integration of asylum seekers and persons enjoying supplementary protection in 2008 and the following years.

[402] Association of Citizens concerned with migrants.

[403] Section 73(2) of Act No 325/1999 Coll., as amended.

Right after the introduction of regulatory charges for medical care (i.e. beginning with 1 January 2008), the non-governmental organizations and physicians who regularly come into contact with clients from among the asylum applicants reported first significant problems regarding the availability of medical care or medicine for this group of people, who have, due to the current statutory regulation, a very limited possibility to acquire funds from legal sources to pay the regulatory charges. With regard to the above- mentioned limits of legal income, some categories of international protection applicants are simply unable to pay the medical care charges. It can be considered as unfortunate that this concerns mainly the applicants who apply for a long time increased medical care for various reasons (chronic disease, serious illness requiring hospitalization, old age, victims of violence in country of origin etc.) or applicants objectively threatened by an increased occurrence of sickness (where it is possible to generally include children attending school). A partial solution was represented by the increase of pocket money for applicants, by an amendment to the decree establishing the amount of pocket money for applicants, which was increased from 16 to 30 CZK per day (see above). Nevertheless, this measure covered only a limited part of applicants, because the pocket money is not paid to all of them.

A solution of this situation is proposed by the Government Council for Human Rights, which adopted a Motion of the Committee for the Rights of Foreigners to resolve the issue of payment the regulatory fees for medical care for international protection applicants. The motion proposes three alternative solutions. The first is the inclusion of the international protection applicants in the category of persons exempt from the duty to pay the regulatory charge. The second possibility is represented in an amendment of the Asylum Act extending payment of pocket money also to categories of applicants who do not receive it under the legislation (for example applicants living in private, who do not receive benefits). The last of the proposed possibilities considers the implementation of a legal fiction into the Asylum Act, which would grant the international protection applicants the status of insured for purposes of pay of regulatory charges, to whom a destitution allowance[404] is provided, i.e. in a category exempt from the duty to pay regulatory charges.

According to experience of the Ministry of the Interior, the applicants requiring assistance in these circumstances turn to this Ministry, or the Refugee Facilities Administration. The pocket money is not paid to persons who reside outside the residence centres, i.e. persons paying for private housing, meals etc. from their own sources. According to the opinion of the Ministry of the Interior, the payment of regulatory charges thus should not be devastating. Additionally, many of them can be covered by the system of social benefits (after one year of residence in private) and are not left without funds in the case of their bad economic situation.

10.4. Supplementary protection in practice

Housing problems may be found even in respect of persons under supplementary protection,. These persons are not entitled to the provision of an apartment under the State Integration Programme and the state did not find any place for them in the integration centres. Frequent complaints of these persons, which are addressed to non-governmental organizations, concern beside housing problems also requirements of the Foreigner Police to arrange for obtaining their travel documents at their diplomatic missions, or to possibly to acquire from these authorities a confirmation that the documents will not be issued to them. *Persons under*

[404] According to Act No 111/2006 Coll. on Assistance in Destitution, as amended.

supplementary protection are afraid of contacting their diplomatic mission (for example, a client of the diplomatic mission of the Russian Federation is to fill in a questionnaire that monitors his travels in the past 10 years and the client cannot state where he has been without mentioning that he has applied for asylum). *Besides, the information provided by the police was not only provided to a sufficient extent but it was not even provided in a manner respecting that it is often provided to foreigners who have no knowledge of the Czech language and the facts that the information provided from the side of the police was in an insufficient extent, it was not even provided in a manner, that would respect the fact, that the foreigners lack the knowledge of Czech language and of this country and to whom the Czech Republic expressed its willingness and wish to provide protection.*[405]

Nevertheless, the Ministry of the Interior does not perceive this problem as so urgent. In the past year, it did not record an increase of persons who would have problems with the foreign police due to the efforts to persuade them to obtain a national travel document. With regard to the opinion of the Foreigner Police Department for Asylum and migration policies for the foreign police concerning citizens of Iraq, who represent a major part of persons enjoying supplementary protection and who cannot provably obtain a national travel document, a more liberal approach was applied towards them.

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10.5. Integration of asylum seeker

The State Integration Programme for persons who have been granted asylum and people under supplementary was implemented in 2008 under a Government resolution[406] and in accordance with Principles for provision of state budget subsidies to municipalities. The programme focused on three fundamental integration fields (priorities): Czech language teaching, housing offers and the assistance in joining the labour market.

Compulsory school attendance of minor asylum seekers, people under supplementary protection, international protection applicants in the territory of the Czech Republic and children of foreigners placed in detention facilities for foreigners is provided for by the Ministry of Education, Youth and Sports. At the same time, it takes into account specific problems of schools educating these foreigners, which are mostly located in the vicinity of asylum facilities and have created capacities to absorb children for education throughout the whole year and adjust the teaching to their needs.[407]

In 2008, asylum seekers (job applicants) were continuously included into requalification programmes. The number of job offers increased in comparison with the same period of the previous year, and thus it was less problematic for asylum seekers to find employment in the course of 2008. To increase the employability of asylum seekers, they are continuously offered individual action plans. The purpose of this instrument is to establish active cooperation between the asylum seeker and the labour office during job search, which is the

[405] Elaborated on the basis of a contribution by Association for Integration and Migration.
[406] Government Resolution No. 543 of 14 May 2008.
[407] The Ministry of Education also provides to asylum seekers and people under supplementary protection free introductory courses, which last 600 hours for groups and 400 hours for individuals. The essential part of these courses is a 10-month intensive Czech language course. The introductory courses also include basic socio-cultural and geographic information. Language is taught by non-traditional methods as regards the selection of topics needed by the asylum seekers to live in our society, a vocabulary for joining the labour market, for obtaining necessary documents, shopping, customs of the host country etc.

basic prerequisite for increasing the asylum seeker's chances to find employment at the labour market.

III. CONCLUSION

In the first half of 2009, the Czech Republic presides over the European Union. Due to this fact, the Report for 2008 pays somewhat greater attention, as opposed to previous reports, to EU policies and legislation. From the human rights perspective, it points to the necessary to re-evaluate the Government approach to the new directive prohibiting discrimination outside employment. Transposition of directives on equal treatment and prohibition of discrimination still remains a "European commitment" that has not yet been fulfilled. The Antidiscrimination Act, vetoed by the President of the Republic in May 2008, has been waiting for almost a year for review by the Chamber of Deputies.

A number of legislative steps that had been scheduled for a long time were implemented. A new Criminal Code, superseding a law that was in force for more than four decades, will come into force next year.

The new Police Act, which came into force at the beginning of 2009, is a modern legislation also from the human rights perspective, since it clearly stipulates that the basic principle of restriction of personal freedom is the prohibition to subject the person to cruel and inhuman treatment. The Security Detention Act permitted the establishment of security detention institutes, which had been requested for a long time by experts on protective therapy. Another very important factor is represented by works on the new Civil Code, which aspires to become a concise private law code, encompassing civil, family and commercial law. The Civil Code was approved by the Government in April 2009; hence, it is still facing the legislative process in the Parliament.[408] A similar process awaits the Act on General Inspection of Security Forces, which is to contribution to more effective prosecution of crime committed by members of security forces and to mitigation of international criticism addressed until now to the Czech Republic in this area.

The health care reform and the related health care bills are closely monitored with regard to their human rights impacts. Health care is to be administered with an emphasis on the patient's rights and needs and with his full informed consent, which gains importance in case of performance of specific healthcare services, such as sterilization, abortion, change of sex in case of transsexuals or castration. In any case, the issue of castration of sexual offenders became one of the major human rights "cases" in 2008. This issue was stirred up by a visit of the European Committee against Torture (CPT) to the Czech Republic. The CPT subsequently voiced sharp criticism of the Czech practice, which gives priority to surgical castrations over chemical methods. This criticism was rejected by the Czech Government; the Ministry of Health and by the majority of experts on psychiatry insists that only surgical castration is the most effective cure for violent sexual offenders. On the contrary, human rights supports argue with comparable effect of both methods and call in such situation for more human chemical castrations, which are not so invasive intervention into the human bodily integrity.

The long-term situation of persons living in socially excluded communities is one of the causes of the activation of the extremist scene, which began to penetrate into political life. It is absolutely unacceptable that a subject whose public presentation is characterized by

[408] See Release of the Chamber of Deputies No. 835.

promotion of xenophobic opinions is a part of the political competition under a democratic rule of law.

The economic crisis resulted in the deterioration of the situation of foreigner who arrived in the Czech Republic to seek work. A number of them lost work and many of them were left without funding. The resolution proposed by the Government is the first step and facilitates return to those for whom such outcome is acceptable. Another significant aspect of the foreigner issue that was discussed in 2008 is the issue of public health insurance and its opening to a broader group of foreigners.

Insufficient protection of children against violence inspired the UN in cooperation with the World Health Organization to prepare the World Report on Violence against Children. Recommendations adopted on the basis of the results of the World Report focus on the elaboration of national strategies of prevention of violence against children, whose implementation should respect the fulfilment of children's interests. The Czech Government also adopted this strategy, particularly with the aim of changing attitudes of the society towards zero tolerance of violence against children.