



# **International Convention on the Elimination of All Forms of Racial Discrimination**

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## **Committee on the Elimination of Racial Discrimination**

### **Reports submitted by States parties under article 9 of the Convention**

#### **Eighth and ninth periodic reports due in 2010**

**Czech Republic\* \*\*\***

[28 June 2010]

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- \* This document contains the eighth and ninth periodic report of Czech Republic, due on 1 January 2010. For the sixth and seventh periodic reports and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/CZE/7 and CERD/C/SR.1804 and 1805.
- \*\* Annexes can be consulted in the files of the Secretariat.
- \*\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

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## **I. General**

1. The Czech Republic is a party to the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the “Convention”), signed by the former Czechoslovak Socialist Republic on 7 March 1966. As such, it periodically submits regular reports on the performance of obligations arising from this Convention to the Committee on the Elimination of Racial Discrimination. The Czech Republic submitted the fifth periodic report in November 2002.
2. In accordance with the Concluding Observation No 28 to the sixth and seventh periodic report, the Czech Republic presents the eighth and ninth periodic report on the performance of obligation arising from the Convention for the period from 1 April 2005 to 31 July 2009.
3. The following was taken into account in the preparation of the report:
  - General guidelines on the form and content of reports on the fulfilment of undertakings under the Convention to be submitted by the States parties (CERD/C/2007/1);
  - Conclusions and recommendations of the Committee on the sixth and seventh periodic report of the Czech Republic (CERD/C/CZE/CO/7);
  - Relevant facts and new measures taken by the Czech Republic to meet the obligations under the Convention in the reporting period.
4. The report is submitted along with the updated common core document.
5. The report, like other periodic reports of the Czech Republic concerning human rights under the UN treaty base, will be published on the website of the Government Council for Human Rights upon approval by the Government. Prior to submission to the Government, the report was consulted with NGOs members of the Anti-Discrimination Committee of the Government Council for Human Rights.

## **II. Special**

### **Article 2**

#### **Legal and administrative measures against discrimination**

6. On 21 July 2009, the Czech Republic ratified the Rome Statute of the International Criminal Court. The Statute subsequently entered into force for the Czech Republic on 1 October 2009.
7. On a nongovernmental level, the Ministry of Foreign Affairs financially and organizationally supports regular meetings geared towards the cultural and religious dialogue at the international conference Forum 2000, the patron of which is the former Czech President Václav Havel. The Ministry of Foreign Affairs also funds and, in cooperation with the Czech Development Agency, conceptually governs International Development Cooperation in the Czech Republic. Development cooperation includes support for plans contributing to the tolerant coexistence of ethnic minorities in post-conflict areas, particularly through local projects managed by Czech missions.
8. In June 2009, the Ministry of Foreign Affairs organized the Conference on Holocaust Era Assets, which was aimed, *inter alia*, at promoting education on this chapter

of European history and intensifying international and national activities targeted at preventing anti-Semitism as a specific form of racism. This conference was followed by the creation of the European Shoah Legacy Institute on 1 January 2010.

9. The International Visegrad Fund, an organization set up by the V4 States, finances projects aimed at integrating the Roma community. The current Hungarian V4 Presidency is supporting the creation of a Central European Roma Strategy. In this context, the prime ministers of the V4 countries have agreed to set up a working group consisting of government commissioners for Roma issues.

10. During the Czech presidency of the EU Council, the issue of discrimination (including racial discrimination) was discussed in human rights dialogues with third countries. This issue was discussed in detail especially in the framework of the EU – Russia and the EU – China dialogue.

11. In 2005, the Government acceded to the international initiative Decade of Roma Inclusion 2005–2015 and also adopted a National Action Plan for the Decade, which the State undertook to realize by 2015. The Decade of Roma Inclusion is an international initiative involving twelve countries in Europe<sup>1</sup> which brings together involved governments, international institutions and Roma civil society and establishes 14 principles, including respect for Roma culture and traditions, the consistent protection of the fundamental rights and freedoms of the Roma, protection against discrimination and the promotion of equal access and equal opportunities.

12. The Czech Republic actively makes efforts for the integration of the Roma throughout the European Union. In April 2009, as the country holding the EU Presidency, the Czech Republic initiated the first meeting of an integrated platform for Roma inclusion. In June 2009, the EU subsequently adopted the Common Basic Principles on Roma Inclusion.<sup>2</sup> The Common Basic Principles propose the formation of a constructive, pragmatic and non-discriminatory policy which clearly, but not exclusively, deals with issues of Roma integration into mainstream society. The document highlights the importance of an intercultural approach and consideration for the needs of Roma women. A key element is support for the implementation of new policies by means of European Community instruments. The Common Basic Principles emphasize, on the one hand, regional and local government, which plays a fundamental role in the practical implementation of policies, and, on the other hand, the involvement of civil society and the active participation of Roma in the process of social inclusion.

13. In response to Concluding Observation No 22: the Czech Republic is not currently considering accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990 (New York). This UN Convention has so far been ratified by 42 states. The Czech Republic takes the view that the subject of this international-law instrument is comprehensively and adequately covered by current national legislation in force and by the Czech Republic's existing international obligations.

14. In response to Concluding Observation No 23, further to the Durban Declaration and Programme of Action the Czech Republic considered whether to adopt a National Action Plan against Racism. After a careful analysis of legislative and non-legislative measures, the institutional organization, and existing programmes and policies already adopted and

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<sup>1</sup> Czech Republic, Bulgaria, Croatia, Hungary, Macedonia, Romania, Slovakia, Serbia, Montenegro, Albania, Bosnia and Herzegovina, and Spain.

<sup>2</sup> Under the Conclusions of the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO).

implemented by various central government bodies, it was decided not to adopt a National Action Plan against Racism. The Czech Republic is gradually fulfilling the various points of the Programme of Action and the Durban Declaration through already existing measures (as mentioned above).

15. National legislation on protection against racial discrimination has been described in detail in previous reports. Protection against discrimination is also covered by international conventions binding upon the Czech Republic.<sup>3</sup>

16. The most important law ensuring protection against discrimination is the Antidiscrimination Act.<sup>4</sup> For more details on legislative measures taken to protect against discrimination, see Article 6.

17. A new Penal Code<sup>5</sup> was adopted in 2008 and entered into force on 1 January 2010. This Code regulates and amends the constituent elements of criminal acts and penalties in relation to racial discrimination (see Article 4).

18. The principles of the long-term Roma Integration Policy were adopted by the Government in 2005 to improve the lives of the Roma in key areas such as education and labour market by 2025 so that specific measures to integrate the Roma community in the form of “affirmative action” are no longer necessary. These principles chime in with internationally accepted principles, standards of protection, and experience while taking into account projected trends resulting, in particular, from the Czech Republic’s accession to the Decade of Roma Inclusion 2005–2015.

19. Reports on the status of Roma communities in the Czech Republic annually assess the policy towards Roma integration. On the basis of these reports, medium-term concepts for Roma integration are then created, including specific tasks for individual ministries. The Government’s aim is to identify the successes and failures of measures in areas crucial to improvements in the quality of life enjoyed by the Roma, to present examples of good practice, and to outline the risks related to further developments in the situation of Roma communities if current problems are ignored.

20. The 2008–2012 Strategy for the Work of the Czech Police Force in Relation to Minorities is a strategic document laying down the principles of policing in relation to minorities. This Strategy builds on the 2006–2007 Strategy for the Work of the Czech Police Force in Relation to Minorities and the 2003 National Strategy. The Strategy concentrates on police officer training, the consistent application of antidiscrimination procedures in policing, crime prevention in minority communities, and places a great emphasis on police cooperation with local government and the nongovernmental sector. Systematic police work with minorities should result in a professional approach by the police and police officers to members of minorities in accordance with community policing principles, maximum police awareness of features specific to minorities, mutual trust between the police and members of minorities, successful import of the law and justice into the specific environment of social exclusion, and police contributions to the integration of minorities into majority society. The current Strategy is built on four cornerstones:

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<sup>3</sup> The International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

<sup>4</sup> Act No 198/2009 on equal treatment and on legal means of protection against discrimination and amending certain laws.

<sup>5</sup> Act No 40/2009, the Penal Code, as amended.

- The liaison officer for minorities is a police officer specializing in minority issues, who acts as an intermediary for contact and communication between minorities and the Czech Police Force. He also helps resolve any conflicts and serious offences and offers members of minorities assistance in dealing with specific problems.
- Assistant in negotiations with the police and other agencies. Police assistance is a social service which facilitates contact and communication with the police for those living in socially excluded localities. The clients of assistants are mainly victims and witnesses of latent crime (usury, procuring, drug distribution, trafficking in human beings, juvenile delinquency, etc.). Assistants draw on their knowledge of the social setting and the people in it to help provide better and quicker orientation in that specific environment in negotiations with the police.
- Ongoing, across-the-board training of police officers in multicultural issues.
- The introduction of community policing in policing practices.

21. The Minister for Human Rights<sup>6</sup> is a key minister responsible, *inter alia*, for the protection of minority rights. His role within the Czech Government is to address issues that affect their daily life and interpersonal coexistence, and to prepare or participate in systemic and legislative changes.

22. The Minister has been actively involved in the fight against extremism and has made a significant push for the dignified commemoration of the Roma Holocaust. His initiative has secured the investment needed to adapt pious places at Lety u Písku and Hodonín u Kunštátu.<sup>7</sup> The Minister is also actively engaged in current problems and cases. In the last year, for example, he has held negotiations with representatives of towns and villages on the situation in excluded urban locations or on problems associated with the seizure of the Roma population's social benefits. In connection with these cases, the Minister has initiated situational analyses exploring the root of current problems in cities and presenting draft recommendations intended to resolve, or at least mitigate, the effects of these current issues (see above).

23. The main task of the Agency for Social Inclusion (hereinafter referred to as the "Agency") is the inclusion of socially excluded groups in partnership with authorities, NGOs, schools and educational institutions, local employers and representatives of Roma communities at regional and local level. To achieve its goals, it implements comprehensive solutions tailor-made to local conditions using the financial flows of European Structural Funds and national grant schemes.

24. The Agency was established in January 2008, and during the pilot project featured as a department of the Office of the Government. The Agency operates directly in areas of social exclusion; its target group is defined primarily by selected locations and the social institutions assigned to them. In the pilot phase of the project, the Agency has been active in six Moravian and six Bohemian socially excluded localities.<sup>8</sup> The basic principles of the Agency's activities are its consistently anti-discrimination approach, comprehensive approach to problem-solving, the sustainable nature of the systemic changes it initiates, the mobilization of local resources, and the cooperation of local bodies contributing to local partnerships for project implementation.

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<sup>6</sup> The position of the Minister for Human Rights was established within the Czech Government in 2007. This is a minister without portfolio.

<sup>7</sup> Government Resolution No 589 of 4 May 2009.

<sup>8</sup> Brno, Broumov, Břeclav, Holešov, Cheb, the Jesenicko microregion, Most, Přerov, Roudnice nad Labem, Slezská Ostrava, the Šluknovsko microregion, Ústí nad Labem.

25. At central level, the Agency collaborates with key government departments and participates in the preparation of an individual project for a National Centre for the Support of Inclusive Education by referencing data collection from its operations at the localities. In 2009, the Agency prepared fundamental analytical materials – situational analysis of the Janov housing estate in Litvínov and a critical analysis of the practice of the seizure of material need benefits by bailiffs in Chomutov.

26. Other bodies aimed at combating racism and extremism and at protecting human rights also continued in their activities. Government advisory bodies (the Government Council for Human Rights, the Government Council for Roma Community Affairs) and the Interministerial Committee for Combating Extremism, Racism and Xenophobia (an advisory body to the Minister of the Interior), as well as their activities, have been described in detail in previous reports.

27. In addition to qualitative studies, the monitoring of socially excluded localities, and other activities related to identifying the socio-economic situation of the Roma community, the population census conducted by the Czech Statistical Office collects data on the national composition of the population by means of self-identification. The Czech Statistical Office carries out population censuses in full compliance with the recommendations and methodology of the United Nations and Eurostat, based on the principle that the citizens themselves decide whether to provide information about whether they belong to a particular national or ethnic group and to what such group they claim, of their own free, to belong. The Czech Statistical Office makes sure that all citizens are given the necessary information about the census and provides any assistance needed to fill in the census forms. This assistance focuses on people who may have difficulty filling out forms on account of their age, health status or knowledge of the language.

28. Protection against discrimination is guaranteed by the new Antidiscrimination Act,<sup>9</sup> which protects the right of all persons to equal treatment in the following matters: the right to employment and access to employment; access to a profession, entrepreneurship and other self-employment; employment, civil service positions and other salaried activities, including remuneration; membership of, and involvement in, trade unions, works councils and employer organizations, including the benefits that these organizations provide to their members; membership of, and involvement in, professional bodies, including the benefits that these public corporations provide to their members; social security; the granting and provision of social benefits; access to health care and the provision thereof; and access to goods and services, including housing, if offered to the public, or the provision thereof. In these areas, discrimination on grounds of sex, age, sexual orientation, religion, disability and race is prohibited. The Act is based on the rules of the European Communities, the Charter of Fundamental Rights and Freedoms, and international conventions which are binding upon the Czech Republic. The Act confers new powers on the Ombudsman, who is now in a position to provide victims of discrimination with methodological assistance in the submission of petitions for the initiation of proceedings related to discrimination. The Ombudsman will also carry out research in the field of discrimination and will publish reports and recommendations on this issue. An important procedural measure is the principle of the shared burden of proof, which is applied in civil discrimination disputes and provides procedural protection for victims of discrimination. For more details on the Anti-discrimination Act, see Article 6.

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<sup>9</sup> Act No 198/2009 on equal treatment and on legal means of protection against discrimination.

## Article 3

### **Prohibition of racial segregation and apartheid**

29. Social exclusion and spatial segregation is an important factor that negatively affects the situation of about one third of the Roma in the Czech Republic and thus reduces their chances of enjoying a good-quality and full life. Reports on the situation in the provinces indicate that the social exclusion and spatial segregation of Roma communities is spreading. In Gabal's Analysis of Socially Excluded Roma Localities (2006),<sup>10</sup> 310 socially excluded localities or localities at risk of social exclusion were identified. These localities are estimated to have an overall population of between sixty and eighty thousand.

30. The Czech Government's backing of solutions for deprived and socially excluded areas is not limited to legislation, the creation of strategic documents and both investment and noninvestment financial support. Thanks to the Government's efforts, numerous regions and cities can now draw on subsidies from the Regional Operational Programme and the Integrated Operational Programme to address deprived areas in their territory. In addition, they can use financial support from the State Housing Development Fund.

31. In order to obtain subsidies from the above funds, cities prepared Integrated Development Plans, in which they often included socially excluded Roma localities. These plans form an essential coordination framework built on a city's overall vision and development strategy in order to identify and address problems faced by the developing areas of the city further to the use of aid from the Structural Funds of the European Union. The aim of cities and regions is not just to renovate housing stock and revitalize public spaces. The plans have even more ambitious goals – to achieve comprehensive improvements in the living situation of inhabitants in these localities by means of soft instruments such as social services, employment services and educational activities to develop human resources in deprived areas. The Agency for Social Inclusion played an active role in the formation of plans in cities with a higher incidence of excluded sites. With a view to regional development, the Czech Republic has also adopted Act No 248/2000 on the promotion of regional development.

32. The 2008–2010 National Action Plan for Social Inclusion is another conceptual document aimed at addressing the situation of socially excluded Roma. The primary objective of this document is to promote the integration of disadvantaged groups through a wide range of measures in the field of social services, education, programmes to promote employment and programmes to promote the prevention of socially pathological phenomena.

## Article 4

### **Legislative, administrative and other measures against the incitement of racial hatred and violence against racial and ethnic groups**

33. During the reporting period, there were several legislative changes related to the issue of extremism. The Czech Government continues to monitor this issue and every year the Ministry of the Interior (since 1997) submits reports to the Government on the issue of

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<sup>10</sup> Analysis of socially excluded localities and Roma localities and the absorption capacity of organizations involved in this field, Ministry of Labour and Social Affairs, 2006.

extremism in the Czech Republic (since 2003 under the name “Information about the Problems of Extremism in the Czech Republic”).

34. The new Penal Code<sup>11</sup> has introduced certain changes related to racially motivated crimes. The offence “Violence against a group of inhabitants and against an individual”<sup>12</sup> has been amended so that this crime may be motivated by both actual and perceived racial, ethnic, national or other membership of a group of people. The offence of “Defamation of a nation, ethnic group, race and beliefs”<sup>13</sup> (now “Defamation of a nation, race, ethnic or other group of persons”)<sup>14</sup> has been amended to include a new way of perpetrating this crime – via the printed word, film, radio, television, a publicly accessible computer network or other similarly effective means. The offence of “Genocide”<sup>15</sup> has been extended to include a group of persons against whom this offence may be committed (“a class or other similar group of people”). The upper limit of the penalty of imprisonment has been increased to 20 years. Penalties for public incitement to commit this crime have also been introduced, in respect of which the offender may be sentenced to the same tariff, i.e. up to 20 years’ imprisonment. This brings the text of this provision explicitly into line with the Convention on the Prevention and Punishment of the Crime of Genocide. The Code supplements the offence “Establishment, support and promotion of a movement aiming to suppress rights and freedoms”<sup>16</sup> with a new situation where a more severe penalty is to be delivered, i.e. a situation where this offence is committed by means of a publicly accessible computer network. With this crime, the upper limit of the penalty of imprisonment has been raised from 8 to 10 years, classifying it in the category of particularly serious crimes, with all the consequences that this entails. Finally, for a number of offences,<sup>17</sup> qualifying criminal provisions which prescribe heavier penalties have been added, i.e. a situation where a person commits a crime against another person on account of that other person’s actual or perceived race, ethnic group, nationality, political beliefs, or religion or because he has no religion or appears to have no religion.<sup>18</sup>

35. In accordance with international conventions relating to crimes against humanity, the new Penal Code defines new elements constituting an attack against humanity.<sup>19</sup> An attack against humanity includes the usual crimes against humanity under international law, in particular murder, torture, the extermination of people, enslavement, deportation or forcible transfer of a population, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or other similar forms of sexual violence, the persecution of a population, apartheid, or other similar segregation or discrimination, or other inhumane acts of a similar nature, including the newly codified enforced disappearance of a person. This means the arrest, detention or abduction of persons by the State or a political organization, or carried out under the authority or with the support or acquiescence of the

<sup>11</sup> Act No 40/2009, as amended.

<sup>12</sup> Section 196 of Act No 140/1961, as amended (the Crime Act), Section 352 of Act No 40/2009 (the new Crime Act).

<sup>13</sup> Section 198 of the Crime Act.

<sup>14</sup> Section 355 of the new Crime Act.

<sup>15</sup> Section 259 of the Crime Act and Section 400 of the new Crime Act.

<sup>16</sup> Section 260 of the Crime Act and Sections 403 and 404 of the new Crime Act.

<sup>17</sup> Sections 380, 382 and 383 of the Crime Act.

<sup>18</sup> E.g. the crimes of murder, bodily injury, confinement, deprivation of liberty, torture, deportation, extortion, criminal damage, etc.

<sup>19</sup> The merits are designed to meet the requirements of Article 6(2)(c) of the Statute of the International Military Tribunal (No 164/1947), Article 7(1) of the Statute of the International Criminal Court, Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia and Article 3 of the Statute of the International Criminal Tribunal for Rwanda, because the existing rules on the criminality of conduct considered by international law to be crimes against humanity are patchy.

State or a political organization, and subsequent refusal to acknowledge that there has been a deprivation of liberty, or to disclose the fate or whereabouts of the those persons, with the intention of keeping those persons out of reach of statutorily guaranteed protection for an extended period.

36. In accordance with the International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973, the Penal Code also sets out new constitutive elements of apartheid and discrimination against groups of persons. The punishment for this offence has been set with consideration for the seriousness of this crime against humanity and is also sufficiently broad to allow courts to take into account the particular circumstances of the case and the offender.

37. Gatherings of people with an extreme right-wing mindset often take place under the pretext of the birth of a child, a birthday, etc., in restaurants, on the basis that it is a private event. When the new Act on the Czech Police Force<sup>20</sup> entered into effect on 1 January 2009, there was a change in the police's authorization to enter the trade-licensed establishments. This law now allows police to enter not only premises intended for customers, but all areas where it can be reasonably considered that individuals are present, even after business hours.

38. Those attending these gatherings often had their faces covered in such a way that identification was virtually impossible. They were obliged to reveal their faces only if the police intervened against them. An amendment to the Freedom of Assembly Act provides that participants may not have their faces obscured in a manner hindering or preventing their identification throughout the duration of the gathering. If this requirement is not respected, the gathering may be broken up.

39. On 4 May 2009, the Government approved the Strategy to Combat Extremism, which includes the Concept of the Fight against Extremism. The aim of the concept is to provide instructions that will help marginalize the extremists to the extent that they no longer pose a security risk. Its purpose is not to erase extremism from the political map of the Czech Republic completely, but to set boundaries for its existence within the democratic mechanisms of the Czech Republic.

*Total number of crimes with extremist overtones registered in the Czech Republic in the years 2005 to 2009*

| Year                         | 2005  | 2006  | 2007  | 2008  |
|------------------------------|-------|-------|-------|-------|
| Number of crimes registered  | 253   | 248   | 196   | 217   |
| Proportion of total crime    | 0.07% | 0.07% | 0.05% | 0.06% |
| Number of crimes solved      | 191   | 196   | 119   | 126   |
| Number of persons prosecuted | 269   | 242   | 181   | 195   |

*Registered crimes with extremist overtones in the Czech Republic in 2009 (1 January to 30 September)*

| PROVINCES                           | 1.1. – 31.8.2009<br>(crimes registered) | 1.1. – 30.9.2008<br>(crimes registered) | DIFFERENCE |
|-------------------------------------|---|---|------------|
| Hlavní město Praha (City of Prague) | 24                                      | 27                                      | -3         |
| Středočeský kraj (Central Bohemia)  | 17                                      | 19                                      | -2         |
| Jihočeský kraj (South Bohemia)      | 27                                      | 11                                      | 16         |

<sup>20</sup> Act No 273/2008 on the Police Force of the Czech Republic.

|                                     |     |     |    |
|-------------------------------------|-----|-----|----|
| Západočeský kraj (West Bohemia)     | 20  | 8   | 12 |
| Severočeský kraj (North Bohemia)    | 20  | 25  | -5 |
| Východočeský kraj (East Bohemia)    | 8   | 13  | -5 |
| Jihomoravský kraj (South Moravia)   | 32  | 35  | -3 |
| Severomoravský kraj (North Moravia) | 38  | 31  | 7  |
| CZECH REPUBLIC                      | 186 | 169 | 17 |

*Overview of extremist crimes involving an attack against a nation, nationality or race, or based on membership thereof, or incitement of ethnic or racial hatred*

| Year  | 2005 | 2006 | 2007 | 2008 |
|---|------|------|------|------|
| Support and promotion of a movement aiming to suppress rights and freedoms of an individual (Section 260 of the Crime Act)              | 35   | 29   | 47   | 42   |
| Public manifestation of sympathy for a movement aiming to suppress rights and freedoms of an individual (Section 261 of the Crime Code) | 73   | 72   | 63   | 68   |
| Defamation of a nation, ethnic group, race and beliefs (Section 198 of the Crime Act)   | 63   | 63   | 28   | 41   |
| Incitement to hatred against a group of persons or to restrict their rights and freedoms (Section 198a of the Crime Act)                | 14   | 23   | 13   | 11   |
| Violence against a group of inhabitants and against an individual (Section 196(2) of the Crime Act)                                     | 29   | 59   | 18   | 25   |

40. The types of perpetrators of crime with extremist overtones in the reporting period were similar to previous years. They included activists and supporters of right-wing extremist movements and members of the majority population with no apparent ties to right-wing extremist organizations; in some cases, the perpetrators were Roma. Nor were there any major changes in their educational structure. Those who had dropped out of the education system on completing primary school (i.e. at age 14 or 15) with no qualifications predominated – 63 persons (32.3%). There were 18 offenders with secondary education (9.2%) and 6 with a university education (3.1%).<sup>21</sup> The level of education of 43 perpetrators – children and foreigners was not identified (22.1%). The perpetrators also included two persons who had attended special school (1%). There were 105 first-time offenders (53.8%) and 65 repeat offenders (33.3%). The age structure of offenders also remained virtually unchanged. In 2008, as in 2007, persons aged 21 to 29 years prevailed (82, i.e. 42%), followed by persons aged 18 to 20 years (42, i.e. 22.1%), 30 to 39 years (32, i.e. 16.4%) and 40 to 49 years (11, i.e. 5.6%). The smallest groups of perpetrators were among those aged under 15 years (6, 3.1%), 15 to 17 years (9, i.e. 4.6%), 50 to 59 years (7, i.e. 3.6%) and over 60 years (4, i.e. 2.1%). In the structure of solved crimes, most perpetrators were men (182, i.e. 93.3%); there were 13 women (i.e. 6.6%).

41. In 2008, the Inspectorate of the Minister of the Interior (now the Czech Police Force Inspectorate) investigated two cases of suspected crimes by police officers with extremist overtones. Extremist overtones in the conduct of the suspects were not proven in the investigation of either case. In both cases, the investigation ended with a proposal for the initiation of criminal proceedings on suspicion of the criminal offence of hooliganism.

<sup>21</sup> Pursuant to Act No 561/2004 on preschool, primary, secondary, post-secondary vocational and other education, in line with the new terminology of primary school leavers with a vocational certificate are secondary school leavers with a vocational certificate, and offenders with secondary school education are offenders with secondary education completed with a school-leaving examination – see Section 58 of the Act.

42. In 2008, the Military Police investigated five cases of suspected unlawful activity by members of the Czech Army in connection with extremism. One case involved the suspected criminal offence of the defamation of a nation, race and beliefs by a member of the Czech Army who insulted another soldier from the same unit due to his skin colour. The case was forwarded to the Czech Police Force. In another four cases, evidence was examined in connection with one case involving the possible active participation of members of the Czech Army in an extremist movement and one case where a soldier in active service engaged in business involving the sale of clothing popular among extremists. These findings were not confirmed and the investigation was terminated. In 2007, only one case was reported which could fall within the merits of the crime with racial overtones; in 2006 there was also one case, which was investigated by the Czech Police Force without the assistance of the Military Police because it involved a career soldier off duty in a civil environment.

43. In 2008, the Czech courts in criminal proceeding delivered enforceable judgments convicting 75,751 persons, a minimal increase of just 23 persons (approximately 0.3%) on 2007. Of these, 97 were convicted of 192 crimes with racial overtones. This number represents only approximately 0.1% of the total number of persons convicted. Compared to 2007, there was an increase in the number of persons convicted of crimes with racial undertones, as 72 persons were convicted of such offences in the previous year (96 persons in 2006). A result of this growth, the proportion of such crimes rose from 155 in 2007 to the above-mentioned 192 in 2008.

44. In June 2009, an initiative of the Minister for Human Rights saw the conclusion of an “Agreement between constitutional officials, parliamentary political parties and citizens on joint action against the rise of extremism and racism”, which unequivocally condemned the spread of extremist sentiment in the Czech Republic. Constitutional officials and representatives of political parties pledged not to allow extremist views and ideas to permeate public discourse and the political wherewithal of the election battle. They called on public authorities to effectively use all available legal means to overcome extremist views and sentiment. Although this agreement is not a legally binding instrument, it can be regarded as a politically significant step.

45. The Working Group for Combating Extremism of the Visegrad Four Countries and Austria, which has been coordinated by the Ministry of the Interior since February 2002, continued its activities. The Working Group provides information on extremism and its manifestations, evaluations of security risks associated with the phenomenon of extremism in the Central European geopolitical area, the pooling of knowledge and examples of good practice and cooperation among experts dealing with this topic at various ministries and police forces.

46. During 2006, the Treaty between the Czech Republic and the Republic of Austria on Police Cooperation and on the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and the Treaty between the Czech Republic and the Swiss Confederation on Police Cooperation in the Fight against Crime entered into force.<sup>22</sup> In August 2007, the Treaty between the Czech Republic and the Republic of Poland on Cooperation in the Fight against Crime, in the Protection of Public Order and on Cooperation in Border Areas entered into force.

47. Increasing interest among Czech neo-Nazis in attending public events with a political context is evident throughout the reporting period. Although neo-Nazis continued their efforts to ensure that their actions complied with legal procedures and in spite of the

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<sup>22</sup> On 1 November 2006.

fact that their demonstrations were mostly notified duly and in good time, compared to 2006 their events in 2007 and 2008 were not without problem. In 2007, international cooperation between neo-Nazis was also reinforced, and the ever-growing importance of the Internet became apparent.

48. No far-right political party is represented in the Chamber of Deputies or in the Senate of the Czech Parliament. In the 2006 elections (i.e. the elections to the Chamber of Deputies and the municipal and regional elections), no such political parties were successful. In the elections to the European Parliament in 2009, however, the Workers Party achieved success in that it won 25,368 votes, i.e. 1.07% of the vote and enough to qualify for funding from the State.

49. The extremist scene evolved in 2008. One change in the extreme right-wing sphere was the efforts by a larger number of activists to enter the political arena; to this end, the unregistered groups National Resistance and Autonomous Nationalists began cooperating with the Workers Party, which granted asylum to most neo-Nazis and Autonomous Nationalists. The Workers Party is suspected of ultra-right, anti-democratic and anti-Semitic tendencies and strongly xenophobic views. In its promotional materials, it uses motifs that were applied by the Nazi propaganda machine of the Third Reich during the Second World War. The Ministry of the Interior launched legal proceedings to close down the party – in September 2009 it submitted proposal to the Supreme Administrative Court to dissolve it.<sup>23</sup>

50. Another current trend is the holding of spontaneous events, mostly demonstrations, where, during a relatively short period of time, a small number of participants (50–60) is activated to organize a demonstration at a pre-agreed place highlighting the goals and values they advocate. These demonstrations are never notified, there is no official organizer, and there is no mass public convening of the persons involved. During these demonstrations, the topics tend to contravene the law, and any speeches are always more aggressive than those delivered in a previously notified demonstration. The police usually learn about these events after a considerable delay, at a time when it is unable to respond accordingly; sometimes it does not learn of the event at all beforehand (subsequent reports are posted on the websites of ultra-right organizations).

## Article 5

### Rights specifically guaranteed by the Convention

#### A. Right to equal treatment before courts and all State authorities administering justice

51. There has been no change in this area.

#### B. Right to personal freedom and security and State protection against violence and bodily harm

52. See Article 4.

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<sup>23</sup> A court hearing has been set for January 2010.

53. Under applicable legislation of the Czech Republic, membership of a national minority or ethnicity is regarded as sensitive data which, outside a population census, cannot be legally collected and registered. The Ministry of Justice, by reference to the statistical sheets of public prosecutors' offices and courts, has data on the numbers of prosecuted, accused and convicted persons by citizenship, but not by national minority or ethnicity.

### **C. Political rights, in particular the right to participate in elections**

54. According to Section 10 of the Act on the Rights of National Minorities,<sup>24</sup> ethnic minorities which have lived in the Czech Republic traditionally and long term have the right to publication of the notice of the time and place of elections and other information for voters in their minority languages. Based on this requirement, before each election the Ministry of the Interior sends *Information on How to Vote* in the relevant minority languages to all municipalities where citizens claiming a nationality other than Czech account for at least 10% of the population of the municipality (in those municipalities, a committee for national minorities is set up). *Information on How to Vote* in the languages of national minorities is published in these municipalities in the place normally used for such notifications, i.e. in most cases it is displayed on the official notice board of the municipal authority, as well as in each room of the polling station in the municipality.

### **D. Other civil rights**

#### **1. The right to freedom of movement and residence within the border of the State**

55. There has been no change in this area.

#### **2. The right to leave any country, including one's own, and to return to one's own country**

56. Growing extremism and the resulting security risks that negatively affect the situation of the Roma also increase the tendency among members of Roma communities to emigrate abroad, although there are doubts as to whether the decision to leave the Czech Republic can be attributed solely to the role of extremism.

57. In 2008, the number of asylum-seekers who went to Canada and sought refugee status (asylum) there increased.<sup>25</sup> From the beginning of 2008, the Canadian Immigration Council received 853 applications; the biggest increase in applications was recorded in December 2008, when 129 applications were received. In 2008, 84 applicants were granted asylum, 5 were rejected and 746 cases were pending. At the end of 2008, the Czech Republic accounted for a record 2.45% of asylum requests in Canada. This situation endangered the visa-free regime enjoyed by Czech citizens travelling to Canada as of November 2007. Following the visa waiver, the number of asylum-seekers in Canada has repeatedly transgressed 2%. This critical situation was addressed in bilateral negotiations between the Czech Republic and Canada in November 2008, when the Czech side was assured that Canada would restore the visa requirement only if the number of applications

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<sup>24</sup> Act No 273/2001 on the rights of national minorities, as amended.

<sup>25</sup> Source: Information on the Asylum Applications of Czech Citizens in Canada, a basis for the meeting of the Government Council for Roma Community Affairs which took place on Tuesday 14 March 2009. Also, figures provided to the Government Council for Roma Community Affairs by the Czech Embassy in Ottawa.

exceeded several times the tolerable limit. Both the number of requests lodged from early 2009 and the proportion of requests submitted by citizens of the Czech Republic in the total volume continued to rise in 2009,<sup>26</sup> leading Canada to introduce the visa requirement as of 14 July 2009.

58. According to the Government Council for Roma Community Affairs, the reasons for leaving the Czech Republic are:<sup>27</sup>

- The search for better living conditions (based on improvements in the civil status of immigrants. In Canada, the Roma become an invisible minority and have the opportunity to obtain better prospects for their children in the Canadian multicultural education system, they expect to see their life improves when they are across the ocean, and they are attracted by successful asylum-seekers in recent years who share their experiences of a non-discriminatory, friendly environment);
- Economic reasons (some emigrants are motivated by the prospect of finding employment);
- Family ties (some Roma are following up on the first wave of emigrants from the 1990s. Migration takes place with the support of social and family networks).
- Discrimination and threats to personal safety (a survey by the Fundamental Rights Agency<sup>28</sup> shows that 88% of Roma believe that they are victims of discrimination in the Czech Republic, with 47% claiming to have personally encountered discrimination over the last year. Experts agree that reasons may be the fear of growing extremism, the negative public opinion of the Roma, racism and xenophobia in society. Frequent, strongly felt direct discrimination, particularly in education, access to services and in the labour market, cannot be ignored).

### 3. The right to nationality

59. During the reporting period, there were no changes concerning the right to citizenship. New legislation has been drafted on the acquisition and loss of Czech citizenship which respects the Czech Republic's commitments under the Convention on the Elimination of All Forms of Racial Discrimination and envisages the possibility of dual citizenship.

### 4. The right to marriage and choice of spouse

60. During the reporting period, there were no changes relating to protection against racial discrimination in the context of marriage. Conditions for marriage are governed by the Family Act;<sup>29</sup> the list of documents which the betrothed are to submit in order to enter into matrimony is governed by the Act on Civil Registers.<sup>30</sup> Under this Act, a fiancé who is

<sup>26</sup> In view of the growing numbers of asylum-seekers, the Canadian Council for Immigration and Refugees sent a research mission to the Czech Republic in March 2009. The purpose of this mission was to obtain information for decisions regarding the situation of the Roma and how to treat them. Over the course of the mission, lasting almost two weeks, the researchers visited a number of NGOs and public institutions (the Ministry of the Interior, Ministry of Labour and Social Affairs and the Office of the Minister for Human Rights and Minorities).

<sup>27</sup> These reasons are based on communication with the Roma in both Bohemia and Canada. According to information from the Canadian Ambassador to the Czech Republic, the most common reason cited by the Roma for emigration is discrimination and the prejudicial behaviour of Czech society.

<sup>28</sup> EU Fundamental Rights Agency – [http://fra.europa.eu/fraWebsite/home/home\\_en.htm](http://fra.europa.eu/fraWebsite/home/home_en.htm).

<sup>29</sup> Act No 94/1963, as amended.

<sup>30</sup> Act No 301/2000, as amended.

a foreigner presents the registry office, no later than the date of the marriage, with proof of the right to reside in the Czech Republic, as issued by the Czech Police Force, which must not be more than seven working days old on the day of the wedding. This provision does not apply to citizens of the European Union, citizens of another State Party to the Agreement on the European Economic Area, or their family members.

61. On 1 July 2006, the Registered Partnership Act<sup>31</sup> entered into force. Anyone may enter into a registered partnership unless prohibited from doing so by the law. A condition of such a partnership is that at least one of the persons entering into the partnership must be a Czech citizen.<sup>32</sup> As in the case of a marriage, before entering into a partnership a foreign national presents the competent registry office with confirmation, issued by the Czech Police Force, of the right to reside in the Czech Republic which must not be more than seven working days old on the date of entry into the partnership; this does not apply to EU citizens, citizens of another State Party to the Agreement on the European Economic Area or their family members.

62. As is clear from the explanatory memorandum to the Registered Partnership Act, in view of the lack of the clarification of the (especially European) circumstances in terms of the recognition a partnership and the lack of a uniform approach to registered partnerships, it is not possible for two foreign nationals to enter into a partnership with one another in the Czech Republic.

**5. Property rights, the right to acquire an inheritance**

63. There has been no change in this area.

**6. The right to freedom of thought, conscience and religion**

64. There has been no change in this area.

**7. The right to freedom of opinion and expression**

65. There has been no change in this area.

**8. The right to freedom of assembly and association**

66. Existing legislation on the right of association enshrined in the Civic Associations Act<sup>33</sup> was amended in the reporting period to unify the system for the association of Czech citizens and foreigners. This amendment created the same conditions of association for everyone, regardless of citizenship. According to the new legislation, *inter alia*, information about the personal identification numbers of members of the preparatory committee have been replaced by dates of birth in applications for the registration of civic associations. These amendments have created a level playing field for everyone, regardless of citizenship.

67. During the reporting period, the Ministry of the Interior dissolved five civic associations and one organizational unit of a civic association which had the status of a legal entity. The registration of 30 civic associations was rejected in 2005, the registration of 13 civic associations in 2006, the registration of 48 civic associations in 2007, the

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<sup>31</sup> Act No 115/2006 on registered partnership, as amended.

<sup>32</sup> Persons related in the direct line and siblings cannot enter into partnerships. Further, persons who have not reached the age of 18 years, do not have legal capacity, or have previously entered into a marriage, partnership or similar same-sex union abroad which is still valid cannot enter into a partnership.

<sup>33</sup> Act No 83/1990, as amended.

registration of 129 civic associations in 2008 and the registration of 73 civic associations as at 31 July 2009. Registration was generally refused due to efforts to form an association for gainful activity or to secure the pursuit of certain professions, or due to the intention to achieve objectives in ways that are inconsistent with the Constitution and laws.<sup>34</sup> As at 31 July 2009, the Ministry of the Interior had registered 692 civic associations focusing on national minority issues.

## **E. Economic, social and cultural rights**

### **1. The right to work**

68. According to Employment Act,<sup>35</sup> participants in employment relationships are required to ensure the equal treatment of all natural persons exercising the right to employment; distinctions made by the Employment Act or special legislation are not regarded as unequal treatment. In the exercise of the right to work, direct and indirect discrimination on grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, birth, language, health status, age, religion or belief, property, marital and family status or family responsibilities, political or other opinion, or membership and activity in political parties or political movements, trade unions or employer organizations is prohibited. Discrimination on grounds of pregnancy or maternity is considered to be discrimination on grounds of sex. Conduct including incitement, inducement or pressure to discriminate is regarded as discrimination. Differences in treatment are not regarded as discrimination if, based on the nature of the employment or the context, it follows that the reason is an essential and critical requirement for employment by a natural person and is necessary to perform the work. The objective pursued by such an exception must be justified and the requirement must be reasonable.

69. Similar provisions are contained in other legal acts, such as the Professional Soldiers Act,<sup>36</sup> the Act on the Service of Civil Servants at Administrative Authorities and on the Compensation of such Employees and Other Employees at Administrative Authorities,<sup>37</sup> and the Act on the Service of Members of Security Forces.<sup>38</sup>

70. The most significant piece of legislation in the field of labour relations is the Labour Code,<sup>39</sup> which provides that an employer must ensure equal treatment of employees and comply with the prohibition of any discrimination against employees. The concepts of direct discrimination, indirect discrimination, harassment, an instruction to discriminate and incitement to discriminate, and cases where different treatment is permissible, are set out in the Antidiscrimination Act, which also lays down legal means of protection against discrimination (see Article 6). The Labour Code handles the issue of remuneration for work separately. All the employees of an employer are entitled to the same wage, salary or remuneration specified in an agreement for the same work or work of equal value. “Equal work or work of equal value” means work of equal or comparable complexity, responsibility and laboriousness, which takes place in the same or comparable working

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<sup>34</sup> The significant increase in the number of rejected registrations in 2008 and 2009 was caused by a judgment of the Supreme Administrative Court from 2007, which had an impact on the existing application of the Civic Associations Act in terms of assessments of the proposals submitted for registration.

<sup>35</sup> Act No 435/2004 on employment, as amended.

<sup>36</sup> Act No 221/1999, as amended.

<sup>37</sup> Act No 218/2002, as amended.

<sup>38</sup> Act No 361/2003, as amended.

<sup>39</sup> Act No 262/2006, the Labour Code, as amended.

conditions, with the same or comparable work performance and work results. The complexity, responsibility and laboriousness of work is assessed on the basis of the education and practical knowledge and skills needed to perform the work, the complexity of the subject of the work and activities, the organizational and managerial demands, the degree of liability for damage, health and safety, the physical, sensory and mental stress, and exposure to the negative influences of work. Employers are required to ensure the equal treatment of employees, comply with the prohibition of any discrimination against employees, and ensure the equal treatment of all employees regarding their working conditions, remuneration for work and the provision of other cash benefits, training and the opportunity to achieve advancement or other promotion.

71. In July 2004, the Czech Government approved the National Employment Action Plan prepared for the years 2004 to 2006. In 2005, in connection with the revision of the Lisbon Strategy, the National Action Plan was replaced by the National Reform (Lisbon) Programme. This programme is based on the recommendations contained in the “Integrated Guidelines for Growth and Jobs” and includes the Government’s proposed reform steps to stimulate economic growth and employment in the three-year period from 2005 to 2008. The Employment Section of the 2005–2008 National Reform Programme pays particular attention to vulnerable groups at risk of social exclusion, as specified under the Employment Act. The measures taken thus focused in particular on addressing the lack of motivation among unskilled and low-skilled persons to find a job and stick with it, addressing the shortage of supply and scope of social services designed to integrate people at risk of social exclusion, addressing the lack of participation by women-mothers, the elderly, poorly skilled people and other disadvantaged and inactive persons in the labour market, issues regarding the level of the population’s professional and geographic mobility, and the functioning system of lifelong learning, particularly further vocational training.

## **2. The right to form and join trade unions**

72. During the reporting period, there was no change here from the perspective of the right to protection from racial discrimination.

73. Unemployment among the Roma and the generally socially excluded remains a problem, especially in this time of economic recession. The Human Resources and Employment Operational Programme,<sup>40</sup> which is generally focused on increasing the employment and employability of target groups, contains several areas that can be applied to activities conducive to the employment of the Roma. In 2009, for example, a Global Social Economy Grant was declared in a bid to promote the emergence and development of new business activities focused on social entrepreneurship, enabling socially excluded people and those at risk of social exclusion (which also includes ethnic minorities) to enter the labour market and business environment and, at the same time, facilitating their integration into society. In the future, these newly established business activities should become economically independent and able to remain competitive in the local competitive environment and thus be important players in regional development.<sup>41</sup> The support of the social economy runs parallel to support provided in the Integrated Operational Programme,

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<sup>40</sup> This is one of the programmes announced under the European Union Structural Funds for the 2007–2013 period.

<sup>41</sup> Supported activities include new business activities aimed at the employment of persons from disadvantaged target groups, provided that at least 30% of the people employed under the project are from these target groups. Support is also channelled into the new business activities of self-employed persons (without employees) who are members of a socially disadvantaged group. Also included here are new business activities for the provision/promotion of public services in the region, where at least 75% of public service users consist of the target group of disadvantaged persons.

which is aimed at investment aid for social service providers, employers and other operators in the promotion and implementation of social economy instruments.

74. One of the areas covered by this Operational Programme focuses on the integration of the Roma community. Support will be channelled in particular into the education of persons providing services, the provision of social services and other instruments promoting the social inclusion of socially excluded Roma communities, the support of the processes behind the provision of social services and the development of partnerships among all operators dedicated to the integration of socially excluded Roma communities. Support will also be directed towards programmes of motivation, labour and social rehabilitation and the acquisition of basic social and professional skills, which should enable users to enter, remain in or return to the labour market. Another area of support is aimed directly at the return of the target groups, including the Roma, to the labour market. Projects improving employability, e.g. by training the target group, are supported; jobs are also created directly for members of the target groups.

### 3. The right to housing and reply regarding concluding observation No. 16

75. In the reporting period, the Ministry for Regional Development granted subsidies to municipalities for the construction of subsidized units for people who have restricted access to housing because of their low income and other social handicaps. The “starter flats” subsidy is particularly significant as a measure preventing racial discrimination in access to housing. This programme involves social rented housing for people in adverse social situations caused by the social circumstances of their lives, such as belonging to a minority ethnic group. In addition, in the reporting period the State Housing Development Fund provided subsidies for the construction of rental housing for low-income households.<sup>42</sup> Since this subsidy was granted only to municipalities and, under Community law, constitutes State aid, in 2009 a new Government Regulation was issued governing the conditions for the granting of investment aid for the construction of social housing.<sup>43</sup> These subsidies are no longer limited to municipalities, but are also available to any natural persons or legal entities for the construction of social housing intended for low-income people at limited rents.

76. Under the Integrated Operational Programme,<sup>44</sup> being realized in the 2007–2013 period, there are two areas of intervention dealing with investment aid for the integration of socially excluded Roma communities.<sup>45</sup> The area of intervention “Social integration services”<sup>46</sup> addresses the problems faced by the most affected areas emerging from the above analysis. Assistance will focus on the emergence of social services and centres to help municipalities and regions successfully cope with the problems in the analysis of identified socially excluded localities. In this field, pilot projects aimed at Roma communities at risk of social exclusion are also supported. Pilot projects interlink housing regeneration and public space revitalization with social inclusion activities or activities covered in the Human Resources and Employment Operational Programme. The other area

<sup>42</sup> Government Regulation No 146/2003 on the use of resources from the State Housing Development Fund to cover part of the costs connected with the construction of housing for low-income persons.

<sup>43</sup> Government Regulation No 333/2009 on the conditions for the use of resources from the State Housing Development Fund to cover part of the costs connected with the construction of social housing in the form of grants to legal entities and natural persons, valid from 29 September 2009.

<sup>44</sup> This is one of the programmes announced under the European Union Structural Funds for the 2007–2013 period.

<sup>45</sup> see Article 3.

<sup>46</sup> This is area of intervention 3.1, for which EUR 19.8 million has been earmarked.

is “Improving the environment of problem housing estates” (for towns and cities with populations of more than 20,000); EUR 31.6 million has been allocated to this intervention.<sup>47</sup> Municipalities with populations of less than 3,000 and a higher concentration of socially disadvantaged Roma may, from 2009, receive aid under the “Rural Regeneration Programme”, which offers the subsidy “Support for the integration of the Roma community (socially excluded) into the life of the municipality and society”.

77. Discrimination in access to housing is prohibited under the newly adopted Antidiscrimination Act (see Article 6).

#### **4. The right to public health, medical care, social security and social services and response to concluding observation No. 14**

78. The Czech Republic has not yet taken any action paving the way for the compensation of sterilized women. Reparations in civil proceedings are impossible in most cases. In an action to protect personal rights, it is possible to seek only an apology for interference with privacy rights, which two sterilized women have achieved. Under the current unified case law of the Supreme Court, however, financial compensation is subject to a three-year limitation period. As a result, financial compensation is out of reach of most sterilized women. Until a compensation mechanism is established, hardly any victim of wrongful sterilization may receive financial reparation, because the three-year limitation period has expired or because the medical records of the sterilized women have been shredded, or due to a lack of financial means for litigation.

79. The unauthorized sterilizations were subject to a long-term discussion in the Government Council for Human Rights – an advisory body to the Government. This Council prepared an initiative proposing that the Government deplores the individual errors identified in the performance of sterilizations in contravention of the Directive of the Ministry of Health<sup>48</sup> and that it makes the commitment to take further steps to prevent such acts in the future. The initiative was submitted to the Government by the Minister for Human Rights and approved by the Government in November 2009.<sup>49</sup> The public and the sterilized women welcomed the apology and the first steps in this matter.<sup>50</sup> Under this Resolution, the Government ordered the Ministry of Health to carry out other tasks aimed at preventing a recurrence of similar cases which happened in the past. These tasks include the Minister’s obligation to provide the Government with information about the implementation of recommendations proposed by the advisory body to the Minister for Health, the incorporation of the sterilization issue into the programme of the Expert Forum for the Creation of Standards of Care and the Concentration of Selected Highly Specialized Care, and, as part of prevention and further training, contact with directly managed organizations and healthcare facilities in the Czech Republic which provide care in the field of gynaecology – obstetrics to verify and ensure compliance with legislation in the performance of sterilization.

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<sup>47</sup> This is area of intervention 5.2. For the coordination and cooperation of all stakeholders in Roma issues through the Structural Funds, the Managing Authority of the Integrated Operational Programme set up a working group composed of representatives of the Managing Authority of the Human Resources and Employment Operational Programme (i.e. the Ministry of Labour and Social Affairs), the Managing Authority of the Education for Competitiveness Operational Programme (the Ministry of Education, Youth and Sports), the Government Council for Roma Community Affairs, the Agency for Social Inclusion and representatives of towns and cities implementing pilot projects.

<sup>48</sup> Directive of the Ministry of Health of Czechoslovakia LP-252.3-19.11.71 of 17 December 1971 on the implementation of sterilization.

<sup>49</sup> Government Resolution No 1424 of 23 November 2009.

<sup>50</sup> For the reaction, see also <<http://www.ipsnews.net/news.asp?idnews=49444>>

80. Provisions on sterilization are currently enshrined in Act No 20/1966 on public health care, as amended. This law requires the informed consent or own request of the person concerned to have such surgery performed.<sup>51</sup> Another legislative measure is Decree No 385/2006 on medical documentation, which regulates informed consent in detail. The comprehensive treatment of this issue was due to be included in the new Act on Specific Health Services, but this bill was but withdrawn from debate in the Chamber of Deputies in March 2009. The adoption of this law has therefore been shelved indefinitely.

81. Helena Ferenčíková submitted a constitutional complaint concerning her case. On 23 October 2009, the Constitutional Court upheld the original court decision, in which the court ruled that the doctors had engaged in wrongful conduct by performing sterilization without informed consent, but also rejected the applicant's proposal for financial redress because the three-year limitation period for claims had expired. As such, the Constitutional Court did not uphold the complainant's claim to financial compensation, but granted her an entitlement to an apology from the hospital in which her surgery was performed.

82. An Advisory Board of the Ministry of Health was established to investigate complaints made by women regarding sterilization performed on them during the provision of health care. This board found that errors had occurred in the performance of sterilization, but in no way could they be regarded as a nationwide policy or a policy targeting race or ethnicity; rather, it was only a case of errors by individual healthcare facilities. The investigation by the Advisory Board has not shown that the errors identified in the performance of sterilization were planned, systematic and intentional. The sterilization of women in the Czech Republic was by no means ethnically or racially motivated. In all cases, sterilization was carried out on the basis of a medical indication stated by a doctor. Following its investigation, the Advisory Board was dissolved and is thus no longer active. A key problem in the sterilization of both women and men was the way the patient's informed consent was obtained before the operation in the vast majority of cases. When this issue was examined, it was found that in the past the granting of informed consent was also a major problem in other fields when operations were carried out.

## 5. The right to education and training

83. The Ministry of Education, Youth and Sports is carrying out curricular reform. This reform also has a major impact on the education and upbringing of children and pupils in the field of intercultural education, as it transforms the overall approach to education by focusing on the acquisition of key competencies and giving schools greater autonomy. Multicultural education provides pupils with basic knowledge about the different ethnic and cultural groups living in Czech and European society, develops their ability to navigate a pluralistic society and benefit from intercultural contact for the enrichment of themselves and others, develops the ability to recognize and tolerate the differences of other national, ethnic, religious, and social groups and to work together with members of different socio-cultural groups, develops the ability to recognize signs of racial intolerance and helps prevent xenophobia.

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<sup>51</sup> Section 27 of Act No 20/1966 on public health care reads: "Sterilization may be carried out only with the consent or at the request of the person on whom sterilization is to be performed, such being under the conditions set by the Ministry of Health."

84. Since 2005, framework educational programmes<sup>52</sup> have started to be applied in the Czech education system. A series of activities related to multicultural education have helped drive forward curricular reform. One example is the methodology site at [www.rvp.cz](http://www.rvp.cz), run by the Research Institute of Education.<sup>53</sup> This site provides the main methodological support for the introduction of framework educational programmes in schools. The purpose is to create an environment in which teachers will be able to inspire each other with and inform each other about their experiences.

85. The amendment to the Schools Act<sup>54</sup> ensures equal access for pupils at the age of compulsory school attendance in primary schools, the lower grades of grammar schools and the corresponding years of the conservatory to basic education, school dinners and school services, such as after-school clubs. This equal access applies to all children, regardless of what country they come from, even in cases where there is no conclusive evidence that the children are in the Czech Republic legally. Funds are allocated to schools for all students, including foreigners. Primary schools, on accepting the children of foreign nationals, no longer have the right to judge the legitimacy of their stay in the Czech Republic.

86. The reform has also abolished special schools (*zvláštní školy*). Within the scope of their compulsory schooling, pupils are educated in accordance with the Framework Educational Programmes for Primary Education, or a modified version thereof for the mildly mentally disabled. Pupils with moderate and severe mental disabilities, pupils with multiple disabilities and autistic pupils have the right to attend a special primary school (*speciální základní škola*) in accordance with the Framework Educational Programme for the Educational Field of “Special Primary School”. The Framework Educational Programme for Special Schools was used by 386 schools for 6,666 students in the 2008/2009 school year; of these, 103 schools drew on the programme with a view to the individual integration of 206 pupils with severe mental disabilities into mainstream education.

87. Progress in the transformation of the former special schools (*zvláštní školy*) into the new special schools (*speciální školy*) was examined in one part of the qualitative Analysis of the Individual Approach of Teachers to Pupils with Special Educational Needs. The results indicate that, compared with the situation before the start of school reform, nearly a third of schools following the Annex to the Framework Educational Programmes for Primary Education for the Mildly Mentally Disabled had registered a gradual change in the target group towards children with more severe disabilities.

88. Since 1998, the Ministry of Education, Youth and Sports has provided funding for teaching assistants. Teaching assistants for children from socially disadvantaged backgrounds operate mainly in primary schools, although there are also a few at nurseries and secondary schools, including private and church schools (304 schools in 2009). In recent years, the number of assistants has increased, probably because schools have become aware that this position provides significant help to the teachers and is also invaluable

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<sup>52</sup> Framework educational programmes are issued for preschool education and other fields of education. Framework educational programmes define the mandatory content, scope and conditions of education; they are binding for the creation of school curricula, and the production and assessment of textbooks and teaching texts, and are a binding basis when determining the amount of allocated funds.

<sup>53</sup> The project is co-financed by the European Social Fund and the Czech national budget. The purpose of the programme is to encourage the creation and implementation of school curricula, assist teaching staff, and respond to the current needs in practice.

<sup>54</sup> Act No 343/2007 amending Act No 561/2004 on preschool, primary, secondary, post-secondary vocational and other education (the Schools Act), as amended, and certain other laws.

where a class or school has a high number of children from socially disadvantaged backgrounds.

89. Schools have found that teaching assistants help significantly in reducing absenteeism, assist in communication between schools and families, help pupils cope with the teaching material, and often support pupils as they prepare for their lessons. As a result, after several years of pilot operation the role of teaching assistant has become firmly established in the Czech Republic's educational system. The role of teaching assistant is a means of systemically assigned "affirmative action" to provide efficient and effective assistance, where needed, to children, pupils and students hampered by social disadvantages or from a different social and cultural environment, with a view to enhancing their success in mainstream education.

90. Under the Schools Act, municipalities, associations of municipalities or provinces may open preparatory classes at primary schools for socially disadvantaged children in the last year before compulsory schooling commences, if it is expected that placement in a preparatory class will help them catch up in development. A preparatory class may be established if it educates at least seven children and a maximum of 15 children. The head teacher decides whether to place a child in a preparatory class at the request of the child's parents and on the advice of the school advisory facility. Statistical data show that in the 2008/2009 school year, 146 schools opened 166 primary school preparatory classes. This was an increase by two classes compared to the previous year, when there were 164. Of these, 106 classes were opened at mainstream schools, and 40 were opened in primary schools for children with special educational needs.

91. In the period from September 2008 to March 2009, the Ministry of Education, Youth and Sports conducted two studies at primary schools in the vicinity of socially excluded localities in the Czech Republic. The results and main findings relate specifically to schools in socially excluded localities and their surroundings, and cannot be generalized to cover the whole of the Czech Republic. On the other hand, the population in the studied localities amounts to 60–80,000, or approximately one third of the total estimated number of Roma living in the Czech Republic. The survey results show that the level of preparedness and the approaches applied to the individual learning needs of pupils with special educational needs varies considerably in the mainstream schools examined. At a third of the schools surveyed, conditions for the integration of a wide range of children with special educational needs are very good (adequate staffing, the school employs a special educator, it is experienced in integrating children with special educational needs, it has adequate facilities, the curriculum adequately reflects the needs of the target group, etc.). In contrast, at about a quarter of schools these conditions have not been fostered and the schools do not have the capacity or resources to create them (for example, there are architectural barriers to the integration of severely handicapped or visually impaired children, there are problems with professional staff capacity and availability, adequate equipment, etc.). These schools can integrate only a very limited range of categories of children with special educational needs and are consequently more pro-segregation oriented. Other schools in the sample are somewhere between these extremes.

92. Roma children who attended nursery school are clearly more successful in their educational "careers". However, a persistent problem is that nursery schools are attended by only a minor share of Roma children (approximately two-fifths). The influence of preparatory classes on improving educational opportunities is not as strong as at nursery schools, compared to which the benefits are felt only at the beginning of the compulsory schooling. Children who underwent the preparatory year gradually close the gap on their peers. Nursery schools and preparatory classes are used in advance of compulsory schooling in the excluded localities surveyed by approximately 48% of Roma children.

93. In 2008, the Ministry of Education, Youth and Sports announced a development programme to support schools providing inclusive education and education for children and pupils from a socio-culturally disadvantaged background. The target group was schools which demonstrably implement support measures for socially disadvantaged pupils. These measures include: preparatory classes; teaching assistants for socially disadvantaged children; measures enabling socially disadvantaged pupils to prepare for lessons (individual support from teachers, use of school premises for pre-school preparation outside lesson time); a specific range of leisure activities; the “reintegration” of pupils from practical primary schools (*praktické základní školy*); and cooperation with non-profit organizations and other entities actively working with children from disadvantaged backgrounds.

94. Based on the Concept for the Integration of Foreign Nationals, adopted annually by Government resolution, the Czech Government supports activities geared towards the integration of foreigners in the Czech Republic. In 2008, 13 projects received support totalling approximately CZK 1.5 million. In 2009, 31 projects received support totalling approximately CZK 4.25 million under the programme.

95. The supported projects are thematically focused on the multicultural education of children and young people; support for the teaching of Czech as a foreign language; studies on the education of migrating foreign nationals; and the organization of seminars to educate foreign nationals. The Ministry of Education, Youth and Sports lays down conditions for the basic education of minor recognized refugees, persons enjoying subsidiary protection, applicants for international protection in the Czech Republic and the children of foreign nationals placed in detention facilities for foreigners. The Ministry of Labour and Social Affairs also supports courses providing rudimentary socio-cultural lessons.

96. A group has been formed at the Ministry of Education, Youth and Sports to deal with education-related social programmes, focusing on children, pupils and students with physical or social handicaps, foreigners, refugees, minorities, the prevention of socially pathological phenomena, arts and multicultural matters, etc. In 2008, this group gave rise to the Working Group on Multiculturalism and the Education of Foreign Nationals. Its members are experts in issues of multiculturalism and the education of foreigners, representatives of non-profit organizations and organizations directly managed by the Ministry of Education, Youth and Sports, the Czech School Inspectorate, refugee camps and teaching staff. This group deals with current multicultural issues in the education system and addresses the education of foreigners.

97. The Ministry of Education, Youth and Sports also runs a subsidy scheme for the support of education in the languages of national minorities and multicultural upbringing.<sup>55</sup>

## **6. The right to equal participation in cultural activities**

98. Familiarizing the public with its own culture, history and present circumstances, as well as those of the nations and ethnicities of other countries, including outside Europe, is an integral part of universal education aimed at ethnic and religious tolerance. Museums, galleries and monuments with a specific agenda (such as the Museum of Roma Culture, the Jewish Museum, the Lidice Memorial and the Terezín Memorial) intensify this education with other supporting activities such as various seminars, workshops, lectures and meetings with living witnesses to events that not only document manifestations of racial discrimination in the recent past, but also remind and warn society of their dangers.

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<sup>55</sup> On the basis of Government Regulation No 98/2002 laying down the conditions and method for the provision of grants from the national budget for the activities of members of national minorities and for the support of the integration of the Roma community, as amended.

99. The Act on the Protection of Museum Collections<sup>56</sup> ensures equal access to knowledge and use of movable cultural heritage. The Ministry of Culture provides support for studies and educational activities related to the Holocaust. In all materials, studies and other activities on this theme, the Holocaust of the Jews is juxtaposed with the Holocaust of the Roma. This theme is systematically covered by the Terezín Memorial (an organization partly financed from the public purse, set up by the Ministry of Culture) in cooperation with the Museum of Roma Culture in Brno. The Holocaust of the Roma is revisited in an exhibition by the Terezín Memorial and in the foreign museum exhibitions managed by this organization in the former concentration camps in Auschwitz and Ravensbrück. The organization holds seminars and workshops for experts on this theme and, in cooperation with the Ministry of Education, for teachers, pupils and students. On 1 January 2010, the European Shoah Legacy Institute was formed.

100. The Government has decided<sup>57</sup> to adapt the pious places at Lety u Písku and Hodonín u Kunštátu. The Lidice Memorial, an organization partly funded from the public purse and coordinated by the Ministry of Culture, will take over the management of the site of the Roma Holocaust in Lety. The Government has earmarked CZK 21.5 million for the modification of the site in Lety u Písku in 2009, which has been entrusted to the Ministry of Culture. The Ministry of Education, Youth and Sports, in collaboration with the Museum of Roma Culture in Brno, has set up a training and conference centre in Hodonín u Kunštátu to shed light on the Roma Holocaust and racial intolerance in general.

101. In subsidy award proceedings, funds are assigned to ethnic minorities living in the Czech Republic for the development of their culture and cultural activities; a special subsidy scheme is designed to support the integration of the Roma community. The projects receiving support are mainly submitted by civic associations and encompass Czech citizens of Bulgarian, Croatian, Hungarian, German, Polish, Roma, Ruthenian, Russian, Greek, Slovak, Serbian, and Ukrainian nationality; there is also a project of Jewish culture. In the subsidy scheme, subsidies are also granted for multi-ethnic cultural events that contribute to mutual learning about different ethnic cultures, thereby trying to prevent xenophobia.

102. Great importance for the development of ethnic culture and for the education of a multicultural society, aimed at eliminating prejudice, racism and xenophobic attitudes, is attached to support for the integration of the Roma community. In this subsidy scheme, the Ministry of Culture supports projects with a thematic focus, such as artistic activities, cultural and educational activities, the study of Roma culture and traditions, documentary and publishing work, and multi-ethnic cultural events.

103. The subsidy programme “Support for the Dissemination and Acceptance of Information in the Languages of National Minorities in the Czech Republic” supports the publication of periodicals in minority languages: Bulgarian, Hungarian, German, Polish, Romani, Ruthenian, Russian, Slovak, Serbian, and Ukrainian, and a project of Jewish culture. Under this scheme, subsidies are granted for the production of television and radio programmes in these languages in order to contribute to mutual learning about different ethnic cultures and to promote understanding and greater tolerance between different ethnic groups and ethnic minorities.

104. On 13 November 2007, the Grand Chamber of the European Court of Human Rights ruled, in Application No. 57325/00, DH and others versus the Czech Republic, that the Czech Republic, in the case of the applicants, Roma children enrolled in special schools, violated the prohibition of discrimination in respect of the right to education guaranteed by

<sup>56</sup> Act No 122/2000 on the protection of museum collections and amending certain other laws, as amended.

<sup>57</sup> Resolution No 589 of 4 May 2009.

Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in conjunction with Article 2 of Protocol No. 1 to this Convention. According to the Court's findings, discriminatory treatment of the Roma children in the exercise of their right to education took the form of indirect discrimination, was associated with the ethnicity of the pupils, and consisted of their placement in special schools, which, in their educational programmes, were not intended to compensate for the initial disadvantages of these pupils. The court also noted that in the process of assigning the children to special schools, the necessary guarantees to prevent indirect discrimination were missing.

105. The court took into account the formal abolition of special schools and did not accept the applicants' argument that discrimination against Roma children had continued even after the promulgation of the new Schools Act. The court failed to identify positively which approaches to the education of Roma children are acceptable. The State has broad discretion in the development of its education system, and the Court only noted the unacceptability of a system which consists of placing a large number of Roma children in schools for the mentally handicapped where the curriculum does not seek to offset the initial disadvantages of these pupils, but renders it a permanent handicap for the prospects of these children both within the education system and on the labour market by lowering the educational goals set for these children, and by segregating the children from mainstream society, thereby stripping them of the ability to integrate into society.

106. On 16 March 2009, the Czech Government approved<sup>58</sup> the Report on General Measures to enforce this judgment and, *inter alia*, enjoined the Minister for Education, Youth and Sports to submit a draft National Action Plan on Inclusive Education, aimed at eradicating the criticized practice, to the Government by 31 January 2010. Many of the measures are already implemented and it appears that measures specifically aimed at the enforcement of the judgment require statistical and sociological surveys mapping the problems of Roma children in the education system and showing their scope. Only following these studies will it be possible to more accurately target certain measures, including the National Action Plan.

107. On the basis of a Government Regulation, the Ministry of Education, Youth and Sports annually announces a programme to promote the integration of the Roma community. Support is directed at educational activities for children and parents focusing on the preschool preparation of the children; activities to increase the participation of Roma children in preschool education; methods and forms of work to improve the efficiency of the preschool education of Roma children; the further training of teachers and assistants working with Roma children of a preschool age in the use of effective methods for the education of Roma children; activities improving the chances of Roma children for the successful commencement of compulsory schooling; activities aimed at family involvement in the preschool education of children; activities that create conditions for raising parental awareness of preschool education; the supporting activities of primary schools helping Roma children to overcome difficulties during compulsory schooling; and the creation of comprehensive training and integration projects in the preschool preparation of Roma children.<sup>59</sup>

108. There is also a programme called Support for Roma Secondary School Pupils, aiming to further the study of Roma pupils whose families are suffering financial hardship as they seek to cover the cost of secondary school studies. In 2008, approximately CZK 10 million was spent on this subsidy programme; the same amount was also used in recent years, and the programme has benefited approximately 1,285 pupils. Only pupils who

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<sup>58</sup> Government Resolution No 303 of 16 March 2009.

<sup>59</sup> Each year, approximately CZK 15 million is distributed among the above-mentioned activities.

attend school regularly, have demonstrably excused absences, and have no significant disciplinary problems qualify for the scheme.

#### **F. Right of access to any place or service intended for use by the general public**

109. The Antidiscrimination Act guarantees the right of all persons, without distinction of race and ethnic origin, to access goods and services (including housing) offered to the public or in the supply or provision thereof (see also Article 6).

110. The Czech Trade Inspectorate supervises compliance with the prohibition of discrimination in the sale of products and goods and the provision of services.<sup>60</sup> Based on notifications, it conducts inspections of the relevant enterprises; if it discovers deficiencies during an inspection, it is entitled to impose a fine. The results of the Czech Trade Inspectorate's activities are presented in the table below:

| Year | Number of complaints | Of which upheld | Description of case  | Penalty  |
|------|----------------------|-----------------|--|--|
| 2005 | 7                    | 1               | Roma refused admission to a restaurant   | Fine of CZK 10,000                               |
| 2006 | 5                    | 1               | Roma denied entry to several businesses in Krnov   | Fine of CZK 8,000 in administrative proceedings  |
| 2007 | 11                   | 2               | Roma denied entry to a discotheque operated by one and the same business entity  | Fine of CZK 20,000 in administrative proceedings |
| 2008 | 6                    | 2               | estate agency advertisement "... no non-Czechs" and refusal to sell a mobile phone to a Roma woman without proof of income | Penalties in administrative proceedings          |

### **Article 6**

#### **Protection against all manifestations of racial discrimination**

111. The primary piece of legislation providing protection against (not only) racial discrimination is the Antidiscrimination Act.<sup>61</sup> Further to the Charter of Fundamental Rights and Freedoms and international treaties, this Act specifies the right to equal treatment and non-discrimination in the areas listed above (Article 2). The Act defines terms such as direct and indirect discrimination.<sup>62</sup> Discrimination on grounds of pregnancy,

<sup>60</sup> The competence of the Czech Trade Inspectorate is regulated by Act No 64/1986 on the Czech Trade Inspectorate. This is a state administration authority subordinate to the Ministry of Industry and Trade.

<sup>61</sup> Act No 198/2009 on equal treatment and on legal means of protection against discrimination (the Antidiscrimination Act).

<sup>62</sup> Direct discrimination shall mean such an act, including omission, where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion or belief. Indirect discrimination shall mean such act or omission where an apparently neutral provision, criterion or practice would put a person at a particular disadvantage compared with other persons on any of the grounds referred to above. Where that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, this shall not constitute indirect discrimination.

maternity or paternity, or on grounds of sexual identification, is also deemed to be discrimination on grounds of sex. Conduct where a person is treated less favourably on grounds of a perceived reason also constitutes discrimination.

112. With regard to the rights arising from a breach of the right to equal treatment, if the rights and obligations stemming from equal treatment are infringed or discrimination occurs, the person affected by this conduct is entitled to take legal action to a court, in particular, to have the discrimination discontinued, to eliminate the consequences of discrimination, and to be granted reasonable satisfaction. If redress under appears to be insufficient in particular because, as a result of discrimination, the reputation or dignity of a person, or that person's standing in society, is significantly impaired, that person shall also be entitled to financial compensation for non-property loss.

113. At the same time, the Ombudsman's competence in matters concerning the right to equal treatment and protection against discrimination is defined. A person whose right to equal treatment has been infringed may, as of 1 December 2009, contact the Ombudsman with a written complaint. The Ombudsman provides guidance to victims of discrimination in the submission of proposals to initiate proceedings on grounds of discrimination – he assesses the complaint, offers a solution, and helps the victims of discrimination as they proceed further down this path. If victims of discrimination decide, for example, to bring an action in court in order to seek the end of the discriminatory conduct, the provision of reasonable satisfaction or compensation for loss, the Ombudsman may also help gather evidence. The Ombudsman, in the combating of discrimination, has concluded cooperation agreements with the Czech Trade Inspectorate, labour inspectorates and the Czech School Inspectorate. The Ombudsman also issues recommendations and opinions, conducts independent research and provides information to the public. On 1 January 2010, the Ombudsman, as an equality body, became a member of Equinet, the European network of antidiscrimination bodies.

114. Protection against racial discrimination is procedurally secured through the concept of the shared burden of proof under the Rules of Civil Procedure.<sup>63</sup> In cases of discrimination based on race or ethnic origin, sex, religion, faith, belief, disability, age or sexual orientation, the burden of proof is shared in the field of labour law. In cases of discrimination solely because of racial or ethnic origin, the burden of proof is also reversed in the provision of health care and social care, in access to education and training, in access to public contracts, membership of organizations of workers or employers, membership of professional associations and interest groupings, and in the sale of goods in a shop or in the provision of services.

115. In April 2006, the Constitutional Court ruled on a proposal of the Provincial Court in Ústí nad Labem to repeal Section 133a of the Rules of Civil Procedure, which establishes the principle of the shared burden of proof.<sup>64</sup> The proposal to repeal this provision was rejected by the Constitutional Court. On the contrary, it held that the principle of the shared burden of proof does not contradict the principle of the equality of participants, since the unequal status of the parties to proceedings is objectively and reasonably justified. The Constitutional Court also noted that person claiming to be treated in a disadvantageous manner must also demonstrate that claim. This person must also argue that the unequal treatment was based on race, but is not required to prove this. The defendant's defence

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<sup>63</sup> Act No 99/1963, the Rules of Civil Procedure, as amended.

<sup>64</sup> Finding of the Constitutional Court published under No 419/2006.

consists of the possibility of demonstrating that the difference in treatment was not racially motivated.<sup>65</sup>

116. In its finding, the Constitutional Court clarified the interpretation of the provision in question so as to better meet the purpose and significance thereof under the relevant EC directives.<sup>66</sup> It also noted that, although it is not competent to assess how well the lawmakers managed to translate the commitments arising from the directives into clear language in the Act, it is *prima facie* evident that the condition that the plaintiff present the court with facts indicating that discrimination has occurred is not sufficiently transparently expressed in the current version of Section 133a of the Rules of Civil Procedure. The Rules of Civil Procedure was subsequently amended by the Antidiscrimination Act, so the principle of the shared burden of proof is now fully comprehensible.<sup>67</sup>

117. In 2006, a new Labour Code<sup>68</sup> was adopted which provides that an employer must ensure equal treatment of employees and comply with the prohibition of any discrimination against employees. This provision is one of the fundamental principles of labour relations.<sup>69</sup> Employers are required to ensure the equal treatment of all employees with regard to their working conditions, compensation for work and other monetary considerations or considerations in kind, training and the opportunity to achieve promotion or other professional advancement. All discrimination is prohibited in labour relations. A difference in treatment is not regarded as discrimination if it follows from the nature of work activities that this difference in treatment is an essential requirement for the performance of the work; the purpose pursued by such an exception must be legitimate and the requirement proportionate. Legal means of protection against discrimination in employment relations are governed by the Antidiscrimination Act.

<sup>65</sup> The text of Section 133a, on which the Constitutional Court delivered its ruling, is as follows:

“Section 133a

(1) The facts alleged that a party has been directly or indirectly discriminated against on grounds of sex, racial or ethnic origin, religion, faith, belief, disability, age or sexual orientation shall be regarded as proven by the court in labour cases unless established to the contrary in the proceedings.

(2) The facts alleged that a party has been directly or indirectly discriminated against on grounds of racial or ethnic origin shall be regarded as proven by the court in cases of health and social care, assistance in material need, access to education and training, access to public procurement, membership of organizations of workers or employers and membership of professional associations and interest groupings, and in the sale of goods in a shop or provision of a service, unless established to the contrary in the proceedings.”

<sup>66</sup> E.g. Council Directive 2000/43/EC of 26 September 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>67</sup> The current text of Section 133a is as follows:

“Should the applicant establish, before a court, facts from which it may be presumed that there has been, on the part of the defendant, direct or indirect discrimination

a) on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in the field of employment or salaried professional activity, including access thereto, in the field of an occupation, entrepreneurship or other self-employment, including access thereto, or in the field of membership of organizations of employees or employers and membership of, and involvement in, professional bodies,

b) on grounds of racial or ethnic origin in the provision of health and social care, in access to education and vocational training, access to public contracts, access to housing, or membership of interest groupings, or in the sale of goods in a retail unit or in the provision of services, or

c) on grounds of sex in assessing to goods and services, the defendant shall prove that no such infringement of the principle of equal treatment has occurred.”

<sup>68</sup> Act No 262/2006, the Labour Code, as amended.

<sup>69</sup> Section 13(2)(b).

118. The Employment Act<sup>70</sup> considers a breach of the prohibition of discrimination to be an offence for which it is possible to impose a fine of up to CZK 1 million. The law prohibits employment offers which are discriminatory or contrary to good morals; employers cannot demand personal information that is not used to comply with their duties under special legislation.

119. The Service Act<sup>71</sup> provides obligation of the equal treatment of all public officials and prohibits discrimination in official relations for a variety of reasons. The Act also expressly regulates the right of victims of discriminatory conduct to seek the abandonment of such discriminatory conduct, the redress of the consequences of such conduct, and the right to reasonable satisfaction.

120. The Act on the Service of Members of Security Forces<sup>72</sup> prohibits, during service, direct and indirect discrimination on grounds of sex, sexual orientation, language, religion or belief, political or other opinion, membership of trade unions and other associations, family, race, colour, national origin, ethnic or social origin, etc.

121. A significant amendment<sup>73</sup> to the Schools Act<sup>74</sup> ensures equal access for pupils at the age of compulsory school attendance in primary schools, the lower grades of grammar schools and the corresponding years of the conservatory to basic education, school dinners and school services. This equal access is guaranteed for all children, regardless of what country they come from, even in cases where there is no conclusive evidence that the children are in the Czech Republic legally.

122. The new Rules of Administrative Procedure<sup>75</sup> provide for the principle of equality in public administration.<sup>76</sup> The Rules of Civil Procedure and Rules of Administrative Procedure<sup>77</sup> allow parties who claim to have been discriminated against by an administrative body to be represented by a civic association if they seek judicial protection.

123. Racial discrimination is also covered by the Offences Act within the scope of offences against civil coexistence.<sup>78</sup> Such offences are committed by those who: obstruct or prevent a member of a national minority from exercising the rights of persons belonging to national minorities; cause other injury based on affiliation with a national minority or ethnic origin, race, colour, sex, sexual orientation, language, belief or religion, political or other opinion, membership of or activity in political parties or political movements, trade unions or other associations, social origin, property, birth, health status or marital or family status. Between 2005 and 2008, there was a reduction in the number of these offences heard by municipal bodies; 146 such offences were heard in 2005, 127 in 2006, 55 in 2007 and 50 in 2008.

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<sup>70</sup> Act No 435/2004 on employment, as amended.

<sup>71</sup> Act No 218/2002 on the service of civil servants at administrative authorities and on the compensation of such employees and other employees at administrative authorities, as amended.

<sup>72</sup> Act No 361/2003 entered into effect on 1 January 2007.

<sup>73</sup> Act No 343/2007

<sup>74</sup> Act No 561/2004 on preschool, primary, secondary, post-secondary vocational and other education.

<sup>75</sup> Act No 500/2004 entered into effect on 1 January 2006.

<sup>76</sup> This is the procedural equality of parties.

<sup>77</sup> Act No 150/2002, the Rules of Administrative Procedure, as amended.

<sup>78</sup> Section 49(1)(d) and (e) of Act No 200/1990 on offences.

## Article 7

### Role of the State in education against racial discrimination

124. An important role in education geared towards combating racial discrimination and intolerance is played by the further training of teaching staff. The transfer of timely information from academic disciplines and seminars aimed at shaping attitudes and experiential workshops are important. The Ministry of Education, Youth and Sports runs a programme to promote education in minority languages and multicultural education,<sup>79</sup> for the creation of educational programmes and teaching materials in minority education to explore the history and culture of other nations, to teach about democratic citizenship, to foster mutual tolerance, and to combat racial and ethnic intolerance, xenophobia and anti-Semitism.<sup>80</sup>

125. The Ministry of Education, Youth and Sports grants and withdraws approval for textbooks and teaching texts used in primary and secondary education by assessing whether they are consistent with the educational objectives set by the Act, framework educational programmes and legislation. The publication “Probes and Analysis of Cultural Identity and Diversity, History Textbooks” (“*Sondy a analýzy ke kulturní identitě a rozdílnosti, učebnice dějepisu*”) was produced in 2008. This publication helps enhance the quality of textbooks; its aim is to provide teachers with the information they need when choosing the best-quality, most appropriate textbook, while the publishers, reviewers and authors of textbooks gain the information needed to create and review textbooks. Part of the publication is devoted to Roma and Jewish issues in history books. The aim, in addition to the above, is to improve education in schools in accordance with the framework educational programmes.

126. The system for the education of Czech Police Force officers is managed by the Department of Education and Police Education Administration at the Ministry of the Interior. The system of police training is handled by five schools with the status of “post-secondary police school” in Prague, Brno, Jihlava, Pardubice, and Holešov, and by one special-purpose educational establishment in Prague-Ruzyně; overall, the total number of graduates in all types of curricula is about 10,000 per year (416 teachers). The Police Academy of the Czech Republic – a higher education institution offering a bachelor degree programme in “Safety and Law related Studies” and “Safety Management”, also runs master’s and doctoral studies. The Czech Police Force has also eight police educational centres and four training centres. There are 542 instructors in the Czech Republic. The schools provide basic vocational training, further specialist training of police officers, and full post-secondary and secondary vocational training; to a limited extent, they train employees of the Czech Police Force and the Ministry of the Interior. They provide language lessons to police officers and other police officer training.

127. The basic principles of the police training system are equal access to the system for all police officers and the fact that the content, form and method of training is based on objectified and binding requirements established for specific activities covered by the positions held by police officers. Police officer skills obtained in basic vocational training include: ensuring compliance with laws and rules of conduct, respecting the rights and individuality of others, acting in accordance with moral principles, contributing to the values of democracy, remaining aware – within the scope of plurality – of one’s own cultural, national and personal identity, treating the identity of others with active tolerance,

<sup>79</sup> In accordance with Government Regulation No 98/2002 laying down the conditions and method for the provision of grants from the national budget for the activities of members of national minorities.

<sup>80</sup> Each year, approximately CZK 19 million is earmarked for the programme.

etc. Training programmes are developed on the basis of a graduate profile precisely defining the competencies (knowledge, skills, attitudes, habits) required by police officers.

128. The Ministry of Defence has prepared a “Concept for the Education of Personnel of the Ministry of Defence, Construction and Development of Military Education for 2006–2011”; “Organizational Guidelines for Military Schools” are approved for each academic/school year. This binding document includes “Guidelines for Schools and Educational Establishments of the Ministry of Defence on the Protection of Human Rights, the Prevention of Socially Undesirable Phenomena and Equal Opportunities”.

129. The University of Defence in Brno included racial-discrimination themes as a standard feature in the teaching of military professionals in accredited study documents used for Applied Psychology and Adult Education. Students also examined the issue of ethnic minorities, racism and xenophobia in theory subjects related to sociology and law; the teaching of those courses took place over 90 to 120 lessons in the different fields of study. This issue was also included in the subjects of communication, human resources management and military management. At the Military Secondary School and Post-secondary Vocational School of the Ministry of Defence in the Moravská Třebová, the issue of ethnic minorities (their position in society, traditions and culture) is included in the curricula of humanities subjects in the third grade. Topics in the block “rudiments of social psychology and sociology” included “social status, roles and norms”, “classification of social groups”, “problems of society, inequality and power” and “social culture”.

130. In primary prevention measures, an emphasis was placed on the education of chairpersons and methodologists of committees for the prevention of socially undesirable phenomena; part of their education was a block of lectures on the topic of racism and its manifestations in society. Overall, more than 400 chairpersons and methodologists from such committees at military units and establishments received training in primary prevention.

131. The issue of the protection of human rights in relation to national minorities is included in the training of members of the Czech Army (2 lessons) deployed on foreign military operations. Similar training of soldiers and civilian employees also took place as part of military training in organizational units of the Ministry of Defence and as part of command and operational training.

132. To tackle the complex issue of human rights protection and education, two seminars were held at the University of Defence in Brno in 2007. These seminars covered the topics of “protecting human rights at the Ministry of Defence in relation to national minorities”, “prevention of socially undesirable phenomena and equal opportunities”, “training and education in human rights for target groups of soldiers and civilian staff” and “implementation of measures in the field of human rights education (long-term vision)”. The aim of the seminars was to familiarize participants – representatives of the Inspectorate of the Minister for Defence, the Military Police, the Czech Army and military education – with the current implementation of comprehensive issues related to the protection of human rights in the defence sector, to unify views on how to perform tasks in this field, and to specify the general principles and guidelines for the application of this issue in the system for the education and training of members of the Ministry of Defence.

133. The training and further education of judges and trainee judges is provided in the Czech Republic by the Kroměříž Judicial Academy, which falls under the Ministry of Justice. Training takes place through seminars covering all areas of law. Criminal law is covered by a Seminar on Unaccompanied Underage Asylum Seekers and Foreigners; Racially Motivated Crime, Extremism and Domestic Violence; Racially Motivated Crime, Racism, Racial Discrimination, Xenophobia; and the Roundtable – Fundamental Human

Rights Training in the Judiciary, Methods for the Analysis of Judgments of the European Court of Human Rights.

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