

IHF FOCUS: judicial system, right to a fair trial; ill-treatment and other police misconduct; conditions in prisons and detention facilities; seniors' rights; rights of persons with disabilities; ethnic minorities (Roma); equal rights of women and men; migrants and refugees.

Generally speaking, human rights problems that occurred in the Czech Republic in 2005 were linked to the poor operation of public administration – including lack of qualified personnel as well as transparency, and corruption – and a standstill in administrative reforms, including legislative measures.

Additional problems were associated with the fact that senior public officials were highly dependent on political parties and individual politicians, and that leading politicians frequently interfered in the operation of public administration, including police work.

Overly lengthy judicial proceedings continued to be a problem and judicial reform remained stagnant, leaving the question of administrative self-government of the judiciary unresolved. On the positive side, courts increasingly handed down alternative punishments to prison sentences.

While some prisons improved their physical conditions and increased staff resources, conditions in most facilities continued to fall short of EU standards for penitentiaries. No new legislation was adopted to bring the operation of the police force in line with EU standards and to improve the much criticized police control mechanisms: the reform of the Law on Police Service was postponed for the third time. Reports on police abuse continued.

The integration of foreigners was seriously obstructed by poor legislation and questionable practices by authorities, making it virtually impossible for many foreigners to fully enjoy some of the basic rights such as the right to privacy and access to social care.

No notable progress was made to improve equal opportunities for women and

men and the rights of seniors. Regardless of the proclaimed government policy to bring about positive changes in both fields, progress in senior's rights would require new legal regulations, and the legislation in place to promote women's rights was not implemented.

Violations of basic human rights in Czech psychiatric hospitals and social care homes accommodating persons with mental disabilities, including the use of cage beds and other forms of restraint, overmedication, overcrowding and other physical conditions, as well as lack of privacy continued. In addition, patients in psychiatric hospitals were often denied access to their medical records. Procedural violations were frequent in both forms of institutions – the often only formally “voluntary” stay in social care homes resulted in many cases in *de facto* detention without access to justice. The system of guardianship also continued to have serious failings.

With regard to Roma rights, the Czech public defender of rights (the ombudsman) released a report in December stating that the “problem of sexual sterilization – carried out either with unacceptable motivation or illegally – exists,” terming Czech authorities' measures taken against such misconduct grossly inadequate. Meanwhile, discrimination against Roma continued in other sectors of life, most notably in education and housing.

Judicial System, Right to a Fair Trial

Unreasonable delays in judicial proceedings continued in 2005. Many civil cases lasted more than five years – some up to ten years – while criminal proceedings were

* Based on information received from the Czech Helsinki Committee, except for the section on the rights of persons with mental disabilities, which was provided by the Mental Disability Advocacy Center (MDAC, IHF cooperating organization), and the section on Roma rights, which was provided by the European Roma Rights Center (ERRC, IHF cooperating organization).

gradually processed quicker: many of them took about two years but some exceptional cases had been pending for 5 to 10 years. Judicial reform remained stagnant: no consensus was reached between the judiciary and the Ministry of Justice especially in relation to the self-government of the judiciary and the management of courts.

The Supreme Administrative Court, which was established three years ago, worked considerably well. Nevertheless, the administrative justice system requires further reforms.

Courts increasingly ordered alternative punishments in criminal proceedings instead of prison sentences and the quality of alternative programs slowly improved. However, a lot needs to be done to advance the operation of the prison service, probation and mediation service and other bodies that are involved in criminal proceedings aiming at increasing the use of alternative punishments.

Conditions in Prisons and Detention Facilities

Prisons

As of January 2006, the number of convicted prisoners in the Czech Republic was about 20,000 and that of remand prisoners (and those already sentenced but who had not yet started serving their prison terms) was about 5,000. The relative number of the Czech prison population was two or three times as high as the average in other European democracies.

While prisons largely abided by domestic laws and other regulations, international standards were nevertheless violated both in terms of physical conditions and activities available for prisoners.

Particularly physical conditions fell short of human dignity and overall budgetary constraints will likely stand in the way of short-term improvements.

Czech prison authorities failed to develop prisoner employment and other pro-

grams that would contribute to prisoners' education as well as adequate leisure-time activities. In addition, prisoners continued to be held in group cells containing usually 5-15 inmates, but sometimes up to 20.

The variety of conditions in facilities resulted in inmates serving their term (or detention) of the same sentence in incomparably different conditions. For instance, convicts from Moravia were disadvantaged by being usually located far from their families because local prisons were full. In addition, the prison system generally failed to tolerate any divergence in terms of diets and other regimens based, *inter alia*, on religious conviction or cultural customs, thereby undermining the principle of non-discrimination among inmates.

Many basic rights of prisoners and detainees were poorly protected, which was especially evident when prisoners wanted to file a complaint about their treatment. Most such cases were terminated by the complainants themselves before judicial proceedings started. The main reasons for withdrawing complaints were fear of reprisals from the prison service, which all inmates were dependent on in essentially all aspects of daily life as well as the cumbersome complaint procedure.

Moreover, inadequate legal provisions greatly diminished the prisoners' right to seek redress in courts. Courts declared inadmissible most complaints because legislation was not in place to allow courts to deal with them adequately. The only legal means of protection that was not rejected was an administrative lawsuit in the event of unlawful action, provided that such "action" was still relevant at the time of complaint, and that the lawsuit was filed within two months from the date the injured party learned about the violation of his or her rights.

Several prison control mechanisms were in place within the Ministry of Justice and the prosecutor's office, but they lacked

independence and therefore fell short of international requirements. The Czech Helsinki Committee (CHC) urged that an independent body be established to oversee the operation of prisons and to deal with individual complaints, that legal counsel to prisoners be provided and that both inmates and prison staff be advised that judicial and other legal protection of prisoners' rights must be adhered to.

Police Facilities

Conditions in police custody varied greatly, making it impossible to make generalizations about their conditions. Nevertheless, it was clear that not enough attention was paid to ensuring humane conditions to persons held in police custody in all parts of the country. Similar to control over prisons, there was no independent body to oversee the operation of and conditions in police facilities. In addition, police staff lacked regular training on the adequate treatment of detainees.

While findings of the CHC police monitoring project carried out in 2003-2005¹ served as a basis for planning improvements in police work and physical conditions in police stations, conditions in police cells in many departments remained unsatisfactory, e.g., many were still located in cellars, which were damp and provided no daylight.

III-Treatment and Other Police Misconduct

Alleged cases of abuse by the police remained a very sensitive issue in the Czech Republic. The police control bodies in the Ministry of the Interior lacked objectivity and were reluctant to pursue cases of alleged misconduct. A complaint could easily be dismissed for a technicality. The debate about moving the inspection from the ministry to an independent investigatory body wound down when the public prosecutors started supervising the min-

istry's investigations a few years ago. Yet, this initiative was largely window-dressing with no concrete impact on the practices: the investigations into alleged police misconduct continued to be carried out by fellow officers.

The inadequate control and evaluation mechanisms also had a negative effect on the performance of senior officers at all levels of police management. Nevertheless, there was little support for a long-prepared training reform scheme that would improve the quality and efficiency of police work.

The CHC police monitoring project found that both physical conditions and management qualities varied considerably from station to station, largely depending on possible pilot projects and availability of funds. Both district and local stations lacked police officers, particularly younger ones, to serve in the field. Moreover, the Police Act was outdated and the adoption of the Civil Service Act, which would be compatible with European standards, was postponed for the third time. Both facts added to the human resources crisis in the police.

Reports continued to be received of police overstepping their powers, most notably in relation to a "techno event" in summer 2005.

◆ In August, a "techno event" called the "Dance Party CzechTek" took place near Tachov (western Bohemia). After receiving complaints from local residents, about 2,000 police cleared the locality of about 5,000 participants twice during the event. During the raids, which appeared to be disproportional and allegedly lacked a legal basis, many officers used excessive force against people most of whom were celebrating peacefully. Dozens of party participants were beaten and injured. The Ministry of the Interior initiated an investigation into the incident, but did not publish its results by the end of 2005 and no officers were known to be disciplined for

overstepping their powers. By contrast, the prime minister expressed his strong support for the police operation.

Rights of Seniors

The Czech Charter of Fundamental Rights and Freedoms prohibits discrimination *inter alia* on grounds of age and is compatible with the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). However, the state has failed to adopt and apply adequate legal regulations to implement the principle of anti-discrimination. No all-inclusive anti-discrimination law was adopted by the end of 2005, the draft law was pending in parliament and it was hoped that the bill would pass in the first half of 2006.

The CHC criticized the fact that no concrete concept existed to implement the principles provided by the EU-sponsored Policy of Active Aging (PAA). The PAA emphasizes the importance of preventive medicine and adequate medical care to ensure active life for seniors. At the same time it stresses the necessity to provide qualified care for long-term ill seniors. The overall goal of this project is to redefine the status of seniors and seniority in society and to implement a reformed concept for the treatment of seniors, which no longer follows stereotypes that see elderly persons as passive and dependent on other people's help.

It appeared that Czech society was not sensitive enough to react to discriminatory behavior against the older generation and that insufficient means were available for its effective protection. In the sphere of welfare law, pensioners caring for family members were excluded from the right to financial remuneration while other family members doing the same job enjoyed this right. An example of indirect discrimination is a criminal law provision, which requires that an investigation into an assault on a

senior can be initiated only with his or her consent, while the offender is usually a family member or another person in charge of the senior's care.

Equal Rights of Women and Men

No notable progress was made in the area of women's rights and equal opportunities for women and men. Regardless of the proclaimed equal opportunities policies and existing legislation in place to ensure equal treatment of women and men, most measures taken in this sector were purely formal: in practice discrimination against women continued unabated.

As in previous years, the most significant differences between women and men in terms of equality were in the labor market and in women's representation in political life. The very composition of the governmental Council for Equal Opportunities for Men and Women (as of 14 July) was representative of the status of women in Czech society: out of 23 members of the council, ten were women (43%) and 13 men. All but one of the male members were high-ranking government or other state representatives, with the remaining member being a leading figure of Czech employers and entrepreneurs. By contrast, only two of the female council members were of ministerial level, one was a parliamentarian, one the chair of a trade union, one an independent expert, and the remaining five were chairs of NGOs.

Women's level of employment and their proportion at the higher level of education was relatively good at about 44%. With the average unemployment rate of 8.9% in the Czech Republic in 2005, 10.5% of women were unemployed while 7.6% of men were out of work.

The gender pay gap (GPG) remained considerable.² The median pay for women was about 81% of the median pay for men, which resulted in an average GPG of 19%. The most significant differences be-

tween women and men were measured with regard to completed high school education with a GPG of almost 30%, and college/university graduates (MA level and higher) with the GPG of 26%. Yet, even bigger differences were measured in specific sectors of employment: in the finance sector, the GPG was around 36%, while in managerial positions (including legislators) the GPG was at 32%.

Job segregation, both horizontal and vertical, was also an important issue in the Czech Republic: most women worked in the service sector (over 70%), which, at the same time, was the sector with a relatively low pay level. Women also made up the majority on the level of lower administrative staff (approx. 80%). When it came to managerial positions, the general rule was that women managers were again mostly found in low-pay sectors, while they made up only some 8% of top managers in the commercial sector.

The situation was similar in public and political life. Women made up about 23% of local council members (deputies) – not a single woman held highest level positions of large cities' magistrates, or as a head of regional authorities. Female mayors made up a higher percentage only in small municipalities or villages. Seventeen percent of members of parliament were women and 12% of the Senate. The government included two female ministers.

The Council for Equal Opportunities for Men and Women recommended in 2003 that the government prepare and carry out a reform of the electoral system so as to ensure a balanced participation of women and men. The government, however, failed to take any measures to that end in advance of the 2006 parliamentary elections.

Initiatives based on the governmental action plans related to equal opportunities for men and women have in many aspects been at best formal and many tasks have

remained unfulfilled, including those aimed at higher representation of women in decision-making positions. The government's reports on successes usually referred to activities and programs implemented by non-governmental organizations.

Rights of Persons with Mental Disabilities³

In 2005, the Czech Republic continued to rely largely on institutional care for persons with mental disabilities. There were two types of institutions, which accommodated persons with mental disabilities: psychiatric hospitals and social care homes. Psychiatric hospitals provided medical treatment for persons with mental health problems and were designed for short-term stay, while social care homes were long-term residential institutions, which catered to persons with mental disabilities as well as other vulnerable social groups (e.g. the elderly, orphans).

Social care homes were not medical institutions; they were custodial institutions, which hosted only "voluntary" patients. People were placed in such institutions only because there were no alternative community-based services available to them. Such reliance on institutions, combined with the lack of user-involvement in service planning, delivery and evaluation, resulted in frequent violations of basic human rights.

Common violations included the use of cage beds and other forms of restraint, overmedication and undesirable physical conditions such as overcrowding and lack of privacy, which were mainly due to inadequate resources.

Despite international and national efforts, cage beds were still widely used in Czech psychiatric hospitals and social care institutions. The use of restraints in psychiatric institutions was not regulated by law. On 5 May 2005, the Czech Senate adopt-

ed an amendment to the law on social care, legalizing the use of restraints, including cage beds, in Czech social care institutions. Yet, as stated above, these places are not medical institutions and they lack qualified medical personnel. Following the amendments, many social care residents, who had spent their entire life in these places, became subject to the legal use of restraints (e.g. cage beds, leather straps) with totally inadequate safeguards. An amendment, which may introduce some safeguards, was proposed in September 2005 and was discussed in parliament in early 2006.

The denial of patient access to their medical records was also a common problem in psychiatric hospitals and continued to be an issue. There was a considerable rise in the number of complaints, as also stated by the Czech ombudsman in his annual reports.

Procedural violations were also frequent in psychiatric hospitals and social care institutions. The civil commitment process for psychiatric hospitals often violated procedural rights. For example, it was common that the person concerned was not allowed to attend the commitment hearing; there was a lack of adequate representation; she or he was not informed about the decision and consequently, unable to appeal it.

With regard to social care homes, on the other hand, the situation was more complex. Over 17,000 Czech adults and children with mental disabilities lived in social care homes, and the majority of these residents were under guardianship. Thus, they were formally “voluntary” patients through the consent of a guardian. However, as the majority of them were not given an alternative, their residency could also be described as *de facto* detention. Due to the fact that they were not officially detained, they had no means of accessing justice. In many cases, the guardian

was actually the director of the institution (often for administrative convenience), giving rise to possible conflicts of interest. There were no complaints procedures in social care homes and no mechanism of redress for any kind of complaint. The residents were generally not informed of their rights, and caregivers were also generally unaware of residents’ rights.

The system of guardianship continued to have serious failings and was applied too frequently. The procedure by which someone was placed under guardianship remained inadequate, and violations similar to those in the civil commitment process persisted: for example, persons were unable to attend trial in many cases, or they were uninformed about the decision to incapacitate them. Despite passage of a new law at the end of 2005 on the procedural aspects of guardianship, there is no explanation in the law as to the specifics of guardianship, such as how guardianship should be used, to whom guardianship should be applied, etc. The new law does provide that the person concerned has the right to be heard and that an attorney must be appointed as a representative. However, the substantive part of the law remains the same and it remains to be seen if the new procedural changes will be respected in practice.

Ethnic Minorities

Roma Minority⁴

On 23 December, the Czech ombudsman published a report about his investigations into allegations of the use of coercive sterilization of Romani women, based on complaints brought by 87 women. The report concluded that “The Ombudsman is convinced that in the Czech Republic, the problem of sexual sterilization – carried out either with unacceptable motivation or illegally – exists, and that Czech society stands before the task of coming to grips with this reality.”

According to the case summaries in the ombudsman's report social workers and doctors had recommended caesarean section births to Romani women in order to manufacture "indicators" through which sterilization would appear legitimate and necessary. Measures undertaken by the Czech Ministry of Health were seen as grossly inadequate.⁵

The report confirmed earlier findings of the European Roma Rights Center (ERRC), which stated that Romani women continued to be subjected to coercive sterilizations in the Czech Republic without fully informed consent. The incidents the ERRC has revealed have ranged from cases in which consent had reportedly not been provided at all or it had been received under insufficient or manipulative information, to racially motivated pressure by doctors.⁶

Following discussions in late 2004, the Czech Ministry of Health established a panel to review files of alleged victims and respond to questions submitted by the ombudsman.

◆ On 4 March 2005, the first in a series of civil complaints in the matter was filed in an Ostrava court, on behalf of Helena Ferencikova, coercively sterilized by doctors in a hospital there in 2001.

In other sectors of life, there was concern about a continued rise of racial segregation of Roma in the field of housing, an issue which the government has acknowledged, as well as segregated schooling.

During 2005, developments in housing escalated in the town of Bohumin.

◆ In June, about 250 persons – the majority of them Roma – were threatened with forced eviction from their houses, or were pressured into moving into racially segregated or otherwise substandard housing arrangements. Those who refused to leave their homes were humiliated by municipality officials publicly calling them "non-payers," as part of efforts to garner

public support for expelling them and thereby inflaming anti-Romani sentiment. In July, the municipality cut off hot water supplies and on 5 October, it stopped providing heating to the building. Eventually, only five families were provided with council flats, most others moved into already overcrowded flats of their extended families. Bohumin officials maintained that the situation of these families had been resolved.⁷

The ERRC filed a complaint to the European Court of Human Rights (ECtHR) to challenge the racial exclusion of Roma in the Czech school system under article 14 of the ECHR combined with article 2 of Protocol no. 1 (racial discrimination in the enjoyment of the right to education). The case concerned eighteen children who had been assigned to special schools for mentally disabled, an act that was tainted by racial animus. Tests used to assess the children had not been validated for Czech Roma and placement procedures left room for conscious and unconscious racial prejudice on the part of educational authorities.

However, the ECtHR found in February 2006 that the applicants had not sustained their claims. At the same time it acknowledged that the practice of placing Romani children in special schools was of concern and noted that, "if a policy or general measure has disproportionately prejudicial effects on a group of people, the possibility of its being discriminatory cannot be ruled out even if it is not specifically aimed or directed at that group." Nonetheless, as "the system of special schools was not introduced solely to cater for Roma children," the applicants had not proven a violation of the aforementioned articles.⁸

The ERRC maintained that school authorities indeed had acted on racial prejudice by placing Romani children in schools for the mentally disabled. Over half of

Romani children were placed in remedial special education and over half of the pupils in such institutions were Romani. Moreover, any randomly chosen Romani child was more than 27 times more likely to be placed in schools for the mentally disabled than a similarly situated non-Romani child, and if Romani children managed to avoid placement in remedial special schooling, they were usually schooled in substandard and predominantly Romani urban ghetto schools. Once these children have been placed in substandard education, they have little if any chance of accessing higher education and, ultimately, real job opportunities.⁹

Immigrants and Refugees

Integration of Foreigners

Aliens living in the Czech Republic faced a wide range of difficulties, which were linked both to problematic legislation and questionable practices especially by the foreigners' police, effectively hindering foreigners' integration into Czech society.

Legislation regulating citizenship and foreigners' legal residence was confusing and it was difficult to receive competent legal counsel. There were virtually no legal remedies available for example in cases concerning residence rights. In addition, a major problem was a lack of information on issues such as residence and family matters, social benefits, health care, housing, employment, etc. Moreover, poor communication between foreigners and administrative agencies created a major barrier: even the foreigners' police that predominantly dealt with foreigners were not able to use the most common foreign languages as a means of communication but used Czech only.

The process of deciding on residence matters before the foreigners' police lacked transparency, and the right to family and private life was not always fully respected. In some cases, individual officers

were suspected of accepting bribes. Some problems were solved by a shadow "client system," which helped many foreigners to obtain work or residence permits, health insurance etc. These "services" were provided by commercial agencies, which profited from unclear legal regulations and non-transparent administrative practices, thus making their clients dependent on them.

Family life was in some cases negatively affected by registry offices' practices, which sometimes restricted reunification of children of mixed parents (Czech and foreign) in the Czech Republic. New rules on this issue based on European directives took effect at the end of November.

Foreigners were discriminated against when trying to rent apartments, in many cases they also had to pay far more rent than citizens.

Czech regulations for the employment of foreigners provided strict conditions for the change of jobs during the term of one work permit. In addition, employees who were dismissed from their job had to leave the country to reapply for a work permit. However, new legislation gave rise to hope for increased protection.

Since only foreigners with permanent residence rights were included in the public system of health insurance, also children without a permanent residence permit had to apply and pay for a private health insurance, which was incompatible with the UN Convention on the Rights of the Child.

The possibilities of foreigners even with permanent residence permit to participate in public life were very limited; only EU citizens were able to vote in European or municipal elections, but could not stand for elections. Opportunities for participation in public life were limited, even for foreigners with permanent residence.

Endnotes

- ¹ During the project the CHC visited almost half of the 84 district and eight regional directorates of the police.
- ² The statistics are from 2004, but the situation has remained the same over the past several years.
- ³ This section was provided by the Mental Disability Advocacy Center (MDAC, IHF cooperating organization).
- ⁴ Information on Roma rights was provided by the European Roma Rights Center (ERRC, IHF cooperating organization).
- ⁵ The ombusman's report is available (in Czech - an English version was not available as of this writing) at www.ochrance.cz/documents/doc1135861291.pdf.
- ⁶ These include cases in which consent was secured during delivery or shortly before delivery; during advanced stages of labor (i.e., in circumstances in which the mother is in great pain and/or under intense stress); cases in which consent appears to have been provided on insufficient clarification and/or manipulative information of consequences and side effects of sterilization or alternative contraception; cases in which officials put pressure on Romani women to undergo sterilization, including through the use of financial incentives or threats to withhold social benefits; and cases in which explicit racial motives appear to have played a role during doctor-patient consultations.
- ⁷ See also ERRC, IHF et al., "Forced Eviction from Housing in Bohumin," 30 June 2005, at www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4081.
- ⁸ ERRC, "European Court Fails to Find Czech Roma Children Victims of Racial Discrimination in Education," 10 February 2006, at www.errc.org/cikk.php?cikk=2378.
- ⁹ See also ERRC, *Stigmata: Segregated Schooling of Roma in Central and Eastern Europe*, at www.errc.org/db/00/04/m00000004.pdf.