

IHF FOCUS: freedom of expression and media; fair trial and detainees' rights; prison conditions; torture, ill-treatment and police misconduct; religious intolerance; national minorities; asylum seekers and immigrants; women's rights.

During 2001, freedom of expression was violated in a number of instances in the Czech Republic. In the beginning of the year the so-called TV crisis evoked a keen public discussion on the independence of public media.

The number of prisoners was still relatively high, and the judicial authorities remained reluctant to impose alternative forms of punishment. Due to a lack of resources and improper accommodation of prisoners, the quality of prison conditions and prison security also remained low. Police work remained largely unregulated and non-transparent, and corruption and biased attitudes within the police ranks were reported.

The draft Act on Churches and Religious Associations was heavily criticized for violating freedom of religion and the principle of equality before the law.

Although the adoption of a new Act on Minorities was considered a positive step, the law was criticized for having too narrow a scope. In particular, the law's failure to address matters of discrimination was worrisome in light of the widespread discrimination that the Roma continued to face. In mid-2001, the United Kingdom (UK) introduced non-standard screenings of passengers travelling to London at Prague airport, which attracted much international attention and protests from human rights organisations. Although the screenings were claimed not to be racially motivated, a majority of the passengers turned away were Roma.

Amendments to the Act on Residency of Foreigners made it extremely difficult for foreigners to receive permanent residence permits for humanitarian reasons. Meanwhile, a review of the Act on Asylum was aimed at speeding up the asylum process and preventing its abuse. However, the draft amendments seriously jeopardized the right of asylum seekers to *non-refoulement*.

Discrimination of women in the labour market and domestic violence were persisting problems.

Freedom of Expression and Media

In the beginning of the year the so-called TV crisis took place. The crisis was triggered by the appointment of Jiri Hodac as General Manager of the state-owned TV in December 2000. Reporters and other staff members of the TV objected the appointment and said it had been done under political influence and pressure. Mr Hodac's appointment was followed by a nationwide discussion about the independence of public media and the perhaps greatest demonstrations in the country since 1989. As a result, the TV Council, in charge of the supervision of the state-owned TV was forced out of office. An amendment to the Act on the state-owned TV made it possible to appoint a new Council under limited influence from political parties. A new General Manager of the state-run TV was also appointed.

Thanks to the reorganisation, the TV Council was no longer dictated by political forces. However, the new General Manager made a number of questionable decisions. Firstly, he apparently neglected the findings of an audit of the accounts of the Brno studio, in which the head of the studio was charged with holding close ties to regional political and economic groups. Later on it was decided that a new public competition for the highest regional positions within the state-owned TV was to be organised. Secondly, the new General Manager neglected the opinion of the TV Council when he appointed a new Head of the News Department of the state-owned company. This matter had yet to be resolved as of the end of 2001.

At the same time, certain members of the so-called Radio and TV Broadcasting Council, which is the state authority supervising compliance of TV and radio broadcastings with legal regulations, continued to show a clear political bias. The Council was also criticized in relation to a legal dispute with investors of the private Nova TV. According to the rulings in this case, the Council had contributed to worsened investment conditions in the TV field and thus indirectly made the Czech Republic responsible for financial damages suffered by the investors of the Nova TV.

A new Media Act was passed, but - like its predecessor - the new Act failed to grant a person about whom incorrect information was published the right to insist that the media outlet in question publish a statement and supplementary information provided by him or her.

During the year, the publisher of a Czech edition of Hitler's *Mein Kampf* was also sentenced for propagating Nazi ideology, although his decision to publish the controversial book was apparently prompted by the prospect of making a good profit rather than an intent to advocate and spread its message. The Czech Helsinki Committee (CHC) stressed that the need to punish any propagation of Nazi ideology does not warrant measures to prevent people from familiarizing themselves with the major publication on the ideology, and the historical source it constitutes.

In response to the 11 September terrorist attacks, several persons were charged with chanting Osama bin Laden's name and encouraging others to do the same. A journalist who criticized the charges was himself charged with supporting terrorism. However, the charges arguably violated the freedom of expression of the persons affected, thus indicating the danger that measures to combat terrorism may easily sacrifice basic human rights.

Legal charges were also brought against a Catholic priest who, prior to the

parliamentary elections, posted leaflets reminding the citizens of the criminal past of the Communist Party of Bohemia and Moravia and encouraging them not to give their vote to the party. The event caused public outrage and a wave of strong support for the prosecuted priest, and eventually the charges were dropped.

In late 2001, the weekly *Respekt* published an article in which the Government in general and a number of ministers in particular were labelled as corrupt. In response, the Government filed a complaint against the weekly. According to the Prime Minister, the ministers also deliberated to demand compensation from *Respekt* in private cases in order to facilitate the closure of the weekly. However, when it was found out that the ministers would have to pay high fees related to such judicial action, the plan was abandoned. In early 2002 the police decided to shelve the Government's complaint as well as that filed by the *Respekt's* Editor-in-Chief against the Government.²

Prison Conditions

The number of prisoners in the country remained relatively high in 2001, with over 200 prisoners per 100,000 inhabitants. According to the CHC, imprisonment was used too often as punishment, especially in cases of minor crimes that cannot be considered a great danger to society. The CHC also deplored the fact that family and health conditions were not taken into account when persons found guilty of crimes were sentenced to imprisonment.

During the year, the CHC received 569 complaints from 420 persons regarding the penal system. Most frequently, problems concerned penal proceedings, rejection of cases, prison conditions and health care of inmates. Other problems included prison security and transfers between prisons.

The vague legal situation for persons awaiting deportation also remained a serious problem. As there was no particular leg-

isolation regulating detention in cases of this kind, persons to be deported often had to spend lengthy periods of time in custody, sometimes for periods of more than a year.

The high number of inmates had a negative impact on prison conditions. As there were not enough resources and trained personnel to meet the needs of the prisoners, matters related to, for example, food, hygiene and leisure activities were subjected to much criticism from the prisoners and their relatives.

Problems with prison security were often related to the improper placement of prisoners. It was not uncommon for persons who testified against each other during trial to be placed in the same prison department, and, as a result of their mutual animosity, engage in violence endangering the security of all inmates. Another security risk was the lingering system of collective accommodation combined with a high density of prisoners. The CHC stressed that the norm of 3.5 m² per inmate was insufficient, although it was not as badly exceeded as in previous years.

Torture, Ill-Treatment and Police Misconduct

Although new police legislation has been under preparation for five to six years, no new act was adopted in 2001. Nor were any essential amendments made to the legislation in force. Consequently, the need for new regulations reflecting the most recent information in the field of police work and in line with the standards set by the European Union, the Council of Europe and the Czech Constitution remained pressing. Rather astonishingly, the only legislation relating to the police proposed by the Ministry of Interior during the year dealt with social benefits of police officers. These amendments are expected to come into effect on 1 January 2003.

Due to inadequate training, police work was in several instances of a worryingly poor quality. In particular, corrupt practices and unacceptable conduct occurred in the

ranks of the border police, the police dealing with asylum issues and the traffic police.

In general, the police showed a somewhat greater openness toward the public in 2001. Still, the control of the police system was of an almost exclusively internal character, which provided civil society with no real possibilities to gain insight into policing. Moreover, despite an increased willingness to organise trainings on the part of the police, the need for complementary trainings remained obvious. This applied especially to specialist courses for officers in different departments and human rights education.

In a positive development, an amendment to the Criminal Procedure Code, due to enter into force on 1 January 2002, transfers the responsibility for the preparatory phase of criminal proceedings from police investigators to public prosecutors and judges. As a result, the police investigator offices are incorporated into the general police structure.

Religious Intolerance

In the year 2001 the preparations of a new Act on Churches and Religious Associations went into its final stage. The draft law was fiercely criticized across the spectrum of churches in the country, i.e. both by traditional, "privileged" churches, and by smaller newly founded religious groups and movements.

The proposed Act requires religious communities to meet a number of conditions in order to be granted legal status. More disturbingly, these conditions violate Articles 15 and 16 of the Declaration of Fundamental Rights and Freedoms, which constitutes part of the country's constitutional order. In particular, there is a danger that so-called new religions will be denied registration on the basis of the proposed regulations. It also seems dubious that the draft law establishes different rights for different religious communities. The only right that is guaranteed to all registered religious communities is the right to educate and

train members. In all other respects, the draft law interferes with the right of religious communities to establish their own institutions, including in the field of social work and charity.

The proposed Act, as submitted to the Parliament, seriously violates the principle of equality of legal entities before the law and the right of citizens to freedom of worship. For that reason, the CHC stressed that the law should not be adopted without extensive amendments.

National Minorities

A new Act on Minorities entered into force in July 2001 and was expected to establish a coherent legal framework on the rights of national minorities, and thus do away with the shortcomings of the previous legislation. However, although the Act was largely based upon the Framework Convention for the Protection of National Minorities (some provisions were even identical), it differed from this treaty in a fundamental way. As the new law was restricted to rights related to the development of national minorities, many rights of crucial importance for minorities were left out; for example, the protection of minority members from discrimination was not covered despite the fact that, *inter alia*, the UN Commission for Elimination of all Forms of Racial Discrimination has repeatedly criticized the Czech Republic for the lack of legal provisions of this kind. Evidently, the lack of effective anti-discrimination legislation has also directly contributed to the problem of widespread discrimination of the country's Roma minority.

In the year 2001, the Roma continued to face discrimination in different aspects of everyday life, including employment, housing and access to restaurants and similar facilities. Moreover, the pattern of violent abuse of Roma at the hands of both police officers and private actors persisted and the authorities often failed to investigate and prosecute such crimes effectively.³ Accord-

ing to a survey published in August, about 53% of the country's Roma had been denied jobs because of their ethnicity, 46% had been denied service in restaurants and 46% lived in fear.⁴

Primarily due to the pattern of discrimination and abuse, a considerable number of Roma decided to leave the country and seek asylum abroad. In relation to this trend, the UK introduced non-standard screenings of passengers bound for London at the Prague Ruzyně airport in mid-July. The screenings were called off in August but were later resumed and irregularly applied throughout the year. Although the system was claimed not to be racially motivated, a majority of all those turned away during the period of screenings were Roma. Detailed files on all passengers denied the right to travel to the UK were also kept for possible future use. According to the CHC, the British pre-clearance arrangements can be seen to have violated the Czech Constitution. For that reason, the Committee demanded a public investigation into the role of the Czech Ministry of Foreign Affairs in the affair.

Asylum Seekers and Immigrants

Two laws regulated the status of foreigners in the Czech Republic; the 1999 Asylum Act and the 1999 Act on Residency of Foreigners. An amendment to the Asylum Act (No. 325/1999) came into force in February 2002.

The revision of the Asylum Act was undertaken mainly in an attempt to bring it more in line with the asylum legislation in the EU member States. However, the revision was also prompted by the dramatic increase of asylum applicants and the fact that abuses of the asylum system were perceived as a growing problem. In total, 18,082 foreigners entered the asylum process in 2001, which was more than twice as many as in 2000. However, asylum was granted to only 83 persons, i.e. less than 0.5% of the applicants.

The amendment to the Asylum Act attempted to do away with the most frequently criticised shortcoming of the 1999 Asylum Act, namely the lack of independent judicial review. However, the new judicial review of administrative decisions on asylum applications is strictly limited to its legality, and does not apply to the merits of the case. This shortcoming can be attributed to the ruling of the Constitutional Court according to which a Civil Procedure Code provision, that had allowed the High Court to decide upon the merits of a case, was declared unconstitutional. Thus, the judicial review in the newly amended Asylum Act will not remove the criticised shortcoming. In contrast, it will probably lead to a substantial aggravation of the legal status of asylum applicants because the merit of the case will only be decided upon in the first instance by the Department of Asylum and Migration Policy of the Ministry of Interior, whose discretion was also unreasonably expanded.

The concept of "safe third countries" was already part of the old Asylum Act, but it was defined less strictly. In the old version of the Act it was explicitly stated that a transit country was not considered a "safe third country". However, the new version no longer contains this statement, thus making it possible to reject an asylum application with the argument that the person filing it could have sought asylum in a "safe third country" that he/she had passed through on his/her way to the Czech Republic.

Moreover, Article 25(1.h.) sets forth that proceedings shall be terminated if during the asylum procedure the asylum seeker enters illegally the territory of another state or even attempts to do so. Asylum seekers who do so will be subjected to an administrative expulsion and ordered to leave the country within a specific deadline, no matter what awaits them in their countries of origin regardless of whether they have travel documents and money. Should they not abide, they will be charged with obstruction of an official decision. The CHC

stated that, while understanding that an alien who decides to apply for asylum in the Czech Republic has to stay in its territory, the Act fails to take into account the desperate situation of many genuine asylum seekers who cannot return to their countries due to persecution.

Furthermore, the amendment introduces stricter criteria for family reunification, and provides for limitations on the right of an applicant to use his/her mother tongue during the proceedings. Under the old regulations, an asylum seeker was entitled to use his/her mother tongue or, with his consent, another language he/she understood during the proceedings. The amendment, however, does not require the applicant's consent on using another than a native language, which can lead to the applicant not being able to express the reasons for his/her application properly.

The combination of these individual limitations, tightened rules and arbitrary decision made by the Ministry of Interior constitutes a risk that the Czech Republic will breach its obligations ensuing from the Geneva Convention as well as from other international human rights instruments.

Women's Rights

In 2001, the Government made some efforts to realize an equal opportunities policy. Still, a major part of the measures had a purely formal character. The fact that the Government has had no female members in the last three and a half years reflects the substance of its commitment to equal opportunities for the two sexes.

Also in 2001, a crucial problem was the fact that the department dealing with matters of equal opportunities, that is the Department for Equality of Men and Women at the Ministry of Labour and Social Affairs, was seriously understaffed. The governmental Commission for Equal Opportunities for Men and Women that was established during the year had not carried out any concrete activities by the

end of the year. Official information on equal opportunities was totally insufficient.

Discrimination against women was manifest in the labour market. The Labour Code explicitly prohibited discrimination of employees on the basis of sex, marital or family status or family obligations, but the authorities did not adequately supervise compliance with these provisions. Moreover, lengthy proceedings prevented women from using courts as an avenue to effective remedies. Great inequalities in salaries for the same type, quality or effort of job persisted, and the average salary of women was only 74% of the average salary of men. About 54% of all unem-

ployed were women, and women also more often than men worked on the basis of disadvantageous contracts, sometimes not even receiving the minimum wage prescribed by law.

The issue of domestic violence has only recently been recognized as a problem in Czech society, and nearly all measures to address the problem so far have been taken by non-governmental organizations. Also in 2001, public authorities remained unwilling to act in this field and initiate proper legislation. Statistics showed that up to 30% of women in the country had experienced domestic violence at some point in their lives.

Endnotes

- ¹ Unless otherwise noted, this section is based on the *Annual Report 2001* of the Czech Helsinki Committee.
- ² *RFE/RL Newsline*, 6 February 2002.
- ³ The United Nations Committee Against Torture, *Conclusions and Recommendations concerning the compliance of the Czech Republic with the Convention Against Torture*, 14 May 2001.
- ⁴ *RFE/RL Newsline*, 8 August 2001.