

Czech Republic¹



The construction of a metal fence between Roma and the majority population in the Maticni Street in the North Bohemian town of Usti nad Ladem received worldwide attention.
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IHF FOCUS: Freedom of expression and free media; the judicial system; fair trial; conditions in prisons and detention facilities; protection of ethnic minorities; citizenship; protection of asylum seekers and immigrants.

The main human rights concerns in the Czech Republic concerned prolonged judicial proceedings, particularly in civil cases, and the failure to adequately resolve the "Roma question", which continued to raise attention internationally. Criminal libel remained in Czech legislation, a fact which contributed to self-censorship. The situation of asylum seekers remained precarious. New citizenship legis-

lation improved the rights of former residents of Czecho-Slovakia but left some loopholes which could, potentially, be used against individuals. In the field of children's rights, new legislation was adopted, and more legislation was pending, improving the situation of children but failing to solve some serious problems.

Freedom of Expression and the Media

On 7 December, the Chamber of Deputies passed a heavily amended version of the press bill. The new bill did not contain provisions imposing large fines or the suspension of the publication of a newspaper

¹ Based on the *Annual Report 1999* of the Czech Helsinki Committee.

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or magazine that had fomented violence or spread racial hatred, because such acts were already banned by the criminal code. The new legislation limited the right to respond to incorrect information published by the media: the earlier law had guaranteed such a right in relation to the publication of both correct and incorrect information. Now, a publication also has the right to comment on responses.²

Journalists could be charged with making “false accusations” under the criminal law, which provided for prison sentences.

■ On 13 December, the State Attorney’s Office filed a lawsuit against journalist Zdenek Zukal for making “false accusations” against police officers in the town of Olomouc. If convicted, Zukal could face a prison sentence of up to three years. Zukal had alleged links between the Olomouc police force and organized crime.³

The Judicial System

The functionality and efficiency of the criminal justice system was influenced by a number of factors, not all of which directly involved the operation of the courts. For example, the preparation of cases, investigations, collecting evidence, and the work of the prosecutor often impeded the operation of courts.

The collection of evidence by the police, under the supervision of the prosecutor, caused particular concern. Their work was inconsistent, and often insufficiently established the core of the case. The incompetent and insufficient work of the police often resulted in a chain of failures and unsubstantiated delays in judicial proceedings, leading to the miscarriage of justice: innocent individuals were convicted and perpetrators were released. In addition, the courts sometimes held individuals guilty

even though doubts about their guilt remained.

In dubious cases, individuals were sometimes held guilty due to poor professional qualifications of the police. In several cases, police overlooked or destroyed crucial evidence. In other cases, they obtained evidence by illegal means, resorting to violence, criminal activity and bribery.

Insufficient funding and a lack of supervision of the use of funds both affected police work. Low wages resulted in a drain of competent experts, shortage of police officers, permanent overtime work, and difficulties in recruiting suitable officers. Moreover, the prosecutors’ supervision of police work and guidance in legal matters was frequently inadequate.

The courts, under pressure to sentence offenders, tolerated the poor preparation of cases. They also rarely used alternative methods of proceedings – for example, mediation between the victim and perpetrator or the conditional suspension of criminal proceedings. Alternative sentences to imprisonment for minor offences, such as petty theft or failure to pay alimony, were equally rare – a fact that in no way assisted the rehabilitation of offenders.

The courts also lacked modern recording equipment for the court’s records, resulting in both unnecessary delays in the hearings and the distortion of statements. Such technical problems were sometimes a substantial impediment to the work of appeal courts because the records of the cases were typed according to the orders of the preceding judge, and thus only reflected his/her attitudes.

Other serious problems in the Czech judicial system were the failure to observe the

² RFE/RL Newswire, 8 December 1999.

³ RFE/RL Newswire, 14 December 1999.

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dubio pro reo principles (i.e., when in doubt, the court should decide in favor of the defendant), observance of objective truth and the right of the defendant to speak his mother language.

Many individuals, particularly foreigners, spent extremely long periods in detention, often because courts failed to observe legal provisions. Many courts, for example the court in Kladno, refused conditional release almost systematically, thereby overburdening the already suffering penitentiary system.

The modification of the criminal procedure code was underway. It will assign, inter alia, the central part of the criminal proceedings to the courts and is expected to make the work of the authorities more efficient by preventing the unnecessary repetition of certain procedures.

Fair Trial

Non-observance of the right to a fair trial was the main human rights problem in the field of civil law. European standards were violated by all levels of the civil courts.

Lawsuits dragged on for several years. Sometimes the delays stemmed from the complexity of the case, but in the overwhelming majority of cases, the delays could not be justified. Courts simply adjourned the proceedings to an unspecified date, sometimes even for one year. In response to a complaint by the Czech Helsinki Committee, the presiding judge in a regional court admitted to inadequate delays, but only cited the excessive workload of judges as a justification.

As a result of prolonged proceedings, more and more individuals decided not to file a claim, as they could not afford the costs of legal proceedings expanding over years.

In December 1999, the Chamber of Deputies of the parliament discussed a

governmental bill to amend the civil procedure code. The new code was passed and will come into force in January 2001.

Court decisions in matters of restitution pursuant to the Extra-Judicial Rehabilitation Act No. 87/1991 were also problematic. If individuals with restitution claims succeeded in attaining judgment, the courts often ordered the defendant to surrender his/her real estate to the claimant, but left the plot of land concerned in the possession of the defendant, resulting in an untenable situation. Several applications for extraordinary remedies were filed, including a complaint to the Constitutional Court with reference to courts' misinterpretation of the act. Two of the complaints were filed by the Czech Helsinki Committee.

Conditions in Prisons and Detention Facilities

The situation in the penitentiary system in the Czech Republic has been alarming for a number of years. According to the Czech Helsinki Committee, the prison system was expensive and obsolete, and ran ineffectively. It claimed that without fundamental changes, it would not be able to continue to maintain the semblance of meaningfulness it has been able to demonstrate. The penitentiary system was staggering under the weight of a large number of problems, caused by overcrowding and a desperate financial situation.

The prisons were overcrowded: as of 12 November, the detention facilities housed inmates at 113 percent of their capacity; prisons at 123 percent of their capacity. Some penitentiaries accommodated inmates at 50 percent beyond their capacity. The overcrowding of prisons could be attributed to the tendency of courts to place too many suspects in custody; ignorance of alternative sentences; an inefficient penitentiary system; and insufficient post-penitentiary care.

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Many criminal suspects were placed in custody awaiting trial, a time that could turn into years. Most judges had little trust in using new, alternative punishment instead of imprisonment, or mediation between the defendant and the plaintiff, which aimed at solving the dispute on a civil basis. In addition, the system of probation was underdeveloped. This was partly due to a lack of governmental interest on the issue. The regulation and implementation of alternative sentences, such as the performance of publicly beneficial work, was also addressed unsatisfactorily. As a rule, the municipalities were not interested in offering job opportunities to offenders because it would have brought them additional responsibilities that were not clearly defined. The financing of such alternative punishment was not clearly regulated either. Moreover, the Penitentiary Administration did not take effective measures to find places of work.

The care of prisoners was gravely insufficient, with the system focusing in many prisons merely on the inmates' survival. This could partly be attributed to a shortage of funds. As a result, imprisonment had a plainly deterrent effect: it did not contribute to the rehabilitation of offenders. The prisoners had few opportunities to work, or be both physically and mentally active.

The prison administration was underpaid and understaffed, hardly able to keep the organization under control. This led to authoritative attitudes towards prisoners, instead of fruitful cooperation. Only the increased use of alternative sentences could bring the number of prisoners down by at least one third.

As a result of the poor prison conditions, violence, blackmail, abuse and mental terror among the prisoners escalated. The Czech Helsinki Committee urged that the prison system be transformed in the direction of individual work with the prisoners,

that single-bed cells be introduced, and prisoners be provided with productive work.

Post-penitentiary care fell seriously short of international and domestic standards. Former prisoners were left virtually all alone and were not even offered temporary accommodation and employment – or if such a possibility existed, they were often not informed of it. This omission left them poorly equipped in terms of their reintegration into society.

Protection of Ethnic Minorities

The Roma

1999 did not bring any marked changes in the field of minority rights. Although the state was aware of the necessity of integrating the Roma into Czech society, the measures taken by the state were slow, diffident and inconsistent.

The Roma minority continued to face problems stemming from their low social status and discrimination in all sectors of life. Their unemployment rate, which remained at 70–90 percent (compared to the majority population's rate of about 8 percent), could be partly attributed to the poor qualifications of the Roma: 80–85 percent of them had only completed elementary education, mostly in the so-called ESN schools designed for retarded children. Only 8.4 percent had attended occupational schools; 1.2 percent secondary schools; and 0.3 percent had academic education. Five percent remained without any school education. Another obstacle was the reluctance of Czech employers to hire Roma. The state took no measures to promote the employment of Roma, or to establish regulations that would penalize employers who refused to hire Roma solely on ethnic grounds.

In addition, for years, in some locations, Czech unemployment officers have added

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“R” into the computer files of applicants who appeared to be Roma.⁴

Roma still fell victim to skinhead attacks, but the police and the courts appeared to be reacting with increased sensitivity.

■ On 30 June, a Prague court sentenced three skinheads to prison terms ranging from six-and-a-half to eight-and-a-half years on charges of racially motivated murder and attempted murder. The light sentences were motivated by the fact that the perpetrators had been under age at the time of the crime. In 1993, they had, with other skinheads, attacked a group of Roma in Pisek, southern Bohemia, and chased them to a river. One Roma drowned.⁵

■ On 26 October, the Regional Court of Ostrava accepted an offer from the Hotel Imperial to pay 25,000 Czech crowns (approximately U.S.\$800) in compensation to three Roma because hotel staff had refused to serve them. This was the first successful legal case which challenged racial discrimination in access to public accommodation in the Czech Republic.⁶

■ On 22 November, two skinheads were arrested and charged with racially motivated violence for allegedly attacking Roma in Ceske Budejovice. In total, around 30 skinheads attacked some 60-70 Roma and a brawl ensued. Six people were injured.⁷

On 26 October, a group of Czech deputies submitted a bill that would impose stiffer penalties (of up to eight years) for the propagation of movements that promote racial or class hatred.⁸

Roma continued to emigrate, mostly to the United Kingdom, but also to Belgium and Finland. The Czech airlines marked Roma passengers travelling to London with “G” for “Gypsy” on their flight records, officially to speed up the immigration process in London.⁹ After a public outcry, this practice was abolished. It was alleged that the main reason behind emigration was the poor economic situation, often with no intention to apply for political asylum. This fact raised criticism among the majority population and contributed to intolerance towards Roma. The Roma did not lose their entitlement to social security benefits during their absence, and while abroad, the welfare in the host countries was another source of income. After being returned from abroad (often after one year) they collected the accumulated benefits.

The construction of a metal fence in the Maticni street in the North Bohemian town of Usti nad Ladem received worldwide attention. The dispute emerged between the owners of apartment buildings on one side of the street and the Roma living as non-paying tenants in municipality-owned apartments on the other side of the street. The fence was erected after the real estate owners claimed that the Roma had placed garbage in front of the houses, failed to observe the night-time silence and caused damage to the private real estates near their homes. The owners demanded a reaction from the municipality, but the legal situation was complex because the civil code did not provide for any remedy. The municipal authorities eventually chose to erect a fence in the middle of the street to “protect” the owners of the houses. The fence attracted wide international criti-

⁴ RFE/RL Newslines, 27 October 1999.

⁵ RFE/RL Newslines, 1 July 1999.

⁶ European Roma Rights Center, “ERRC Applauds Court-Approved Compensation for Racial Discrimination against Roma by Czech Hotel Owner,” 29 October 1999.

⁷ RFE/RL Newslines, 23 November 1999.

⁸ RFE/RL Newslines, 27 October 1999.

⁹ RFE/RL Newslines, 19 October 1999.

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cism, for example by the EU and the UN, as a violation of international anti-discrimination standards and an act of racial segregation. According to the Czech Helsinki Committee, the construction of the wall also demonstrated that the Czech state was entirely ill-prepared to solve ethnically motivated problems and lacked the ability to distinguish between racism and inter-personal problems. On the initiative of the prime minister, the wall was eventually pulled down on 24 November.¹⁰

As of this writing, a governmental bill on ethnic minorities was under discussion. It would address, among other things, the status of minorities, the right to self-government, and the means of electing local minority authorities. The bill was scheduled for submission to parliament in 2000.

Another persistent problem was the high percentage (80 percent) of Roma children attending special schools (ESN schools) designed to support retarded children or children with educational and other problems who were unable to attend regular primary education. In practice, however, about 70 percent of pupils in the special schools were of Roma origin. Such a high number suggested the deliberate and racially motivated segregation of school children. It also suggested that the rights of Roma children were not secured in accordance with the International Convention on the Rights of the Child. Some Roma families filed constitutional applications against this practice. The Constitutional Court rejected the applications for procedural reasons, as the parents had not used all appropriate legal measures.

■ In one children's home, some Roma children were intimidated and humiliated in public by two educators who were

eventually fired. The director of the home reported the cases to police as racially motivated slander.

The European Roma Rights Center (ERRC, IHF cooperating organization) filed a suit with the Constitutional Court against the Ministry of Education, Youth and Physical Education and against the principals of ESN schools. It stated that 12 Roma pupils, whom the Center represented together with their parents, had been placed in ESN schools even though they should have attended normal elementary schools. The ERRC charged that their selection to ESN schools was racially motivated and aimed at racial segregation. However, the Constitutional Court dismissed the case on procedural grounds and merit.

On the other hand, it was commonplace that Roma parents did not make a special effort to support their children and see that they completed their education in normal elementary schools. The state appointed Roma assistants in some schools to support Roma children and help them overcome linguistic and cultural barriers. Assistants were also appointed to schools, and "zero"-classes were established in schools to help the Roma in the beginning. Although these measures proved successful, they remained pilot projects only.

Citizenship

In September, the Czech Republic finally fulfilled its citizenship obligations as a successor state of federal Czecho-Slovakia: it approved an amendment to Czech citizenship law, facilitating access to Czech citizenship for citizens of the former Czecho-Slovakia and other residents in its territory. The 1996 amendment had already made it easier to obtain Czech citizenship, but that provision had left the final decision at the

¹⁰ See also European Roma Rights Center, "ERRC Demands Effective Action in Halting Czech Apartheid," 7 October 1999, and "City Authorities Build Ghetto Wall in Usti nad Labem, Czech Republic," 14 October 1999.

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discretion of the Ministry of Interior. In addition, the former procedure was considerably more complicated with a number of administrative hurdles.

The 1999 amendment finally acknowledged the unlimited right of option for citizenship for former Czecho-Slovaks who had been residing in the Czech territory at least from the date of the disintegration of Czecho-Slovakia. Such persons can, without a set deadline, obtain Czech citizenship by making a declaration to that end.

The amendment provided for dual citizenship on a relatively large scale because most prospective new citizens under this amendment would be also Slovak citizens: the law did not require them to give up their Slovak citizenship. Despite the ostensible minimal requirements for Czech citizenship, the Czech Helsinki Committee feared that the situation could turn out to be more complicated in practice. It said the most critical point was the fact that a person would not be granted citizenship the moment he/she submits the declaration, but that the document would be issued by a district office at a later date. This regulation still vested district offices with the power to reject the declaration on the grounds that the evidence for permanent residency since the date of the disintegration was insufficient. It was feared that some district offices would only state their rejections orally, and thus deprive the declarants of the possibility to appeal the decision. This fear was well-grounded as the aforementioned practice was commonplace. This problem was of particular concern given the fact that most declarants were expected to be older, semi-literate or completely illiterate, and unaware of administrative procedures and their own rights.

The first to experience difficulties with the implementation of the law were individuals who claimed to have lived permanently in the Czech Republic at least since the

split of the federation but were not officially registered as residents. Most of them were Roma.

Children under the age of fifteen could be included in the declarations of their parents. If one of their parents was a Czech citizen at the date of the declaration, the child could submit its own declaration. The same applied to children whose Czech parents had been stripped of their parental rights: the child's guardian or tutor would submit the declaration for the child. The new provisions regarding children were especially welcome as they could, if properly applied, prevent the division of families.

The amended law failed to prescribe a fee for the declaration. The Czech Committee initiated a discussion between the Ministries of Interior and Finance to have the fee waived, but with no progress at the time of this writing.

Protection of Asylum Seekers and Immigrants

Asylum seekers were accommodated in a camp in Vyšní Lhota in Moravia. The Counselling Center for Refugees (PPU) was in charge of underage unaccompanied youths: one of its employees acted as a guardian in administrative proceedings. The PPU criticized the fact that individuals from specific countries who did not possess travel documents were not allowed to stay in the refugee camp.

The regime of the refugee camps, which were located outside municipalities, often had a detrimental effect on the mental health of asylum applicants. Traumatized by the experiences in their countries of origin, their future remained uncertain during prolonged administrative proceedings that could even take one year. The PPU provided asylum seekers with mental, social and legal assistance, and organized recreational activities. Special attention was

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paid to children and women, with a particular focus on women who had fled countries where they had enjoyed virtually no human rights or had been exposed to cruel and inhuman treatment.

In 1999, refugees from Kosovo were granted temporary protection: some of them applied for asylum, others obtained residence permits on the grounds of family reunification pursuant to the foreigners residence act.

Asylum applicants who were not granted asylum, appealed an asylum decision with the High Court of Justice, or were without travel documents treated as normal foreigners. These individuals could not contact their embassy as long as their cases were pending in the High Court, which lasted approximately two years. They were housed in a camp in Belá-Jezová, but their financial situation was extremely precarious.

During 1999, amendments to the relevant legislation were discussed, resulting in a new asylum act and a new foreigners' residence act.

Rights of the Child

The Ministry of Labor and Social Affairs prepared draft legislation on the social and legal protection of the child. The new law was expected to replace sections of the 1963 family law and improve the state's protection of the child. As of December, the House of Representatives had passed the bill and it was pending in the Senate. Some NGOs objected to the provisions of the bill concerning mediation in the cases of adoption. The bill provided for mediation only by the state, without influence from these organizations. According to the Czech Helsinki Committee, the bill would centralize the adoption procedure and make it more efficient and transparent. The committee pointed out that a prompt procedure was particularly important in a

situation where children had to spend increasingly long periods in children's homes, a result of a 1998 amendment of family law that prolonged the procedure. The provisions governing the divorce of parents of minors was also made more complicated: the courts first had to decide on the care of the child and then decide on the divorce.

Despite the 1999 legislative improvements, not all problems were solved. It appeared that the draft law focused more on procedure than substance. For example, the current law failed to centralize child protection issues, which remained divided in different ministries. This problem was not solved by the establishment of a section for the rights of the child under the Council for Human Rights because neither the council nor the ministries had executive powers and did not operate under the law, but rather under a governmental resolution.

In addition, the regulation of parents' visiting rights in children homes (following a court decision that the parents were unable to care for the child) remained at the discretion of the homes. This could lead to conflicts touching upon the interest of the child and could be considered as running counter to principles of the established rule of law.

Under the new bill, the child care officers responsible would have a duty to visit a child placed in a home at least once every six months in order to establish whether the reasons for the child's stay in the home still exist. The Ministry of Labor and Social Affairs presented a draft law on home and protective care in late 1999. It was incorporated into the new law on social and legal protection of the child.

Parliament also passed a law that improved the situation of children of former Czecho-Slovak citizens. These children, despite their permanent residence in the

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Czech Republic after the break-up of Czecho-Slovakia, had not been granted Czech nationality under new Czech citizenship law and were therefore considered either Slovaks or stateless persons. Problems occurred in different spheres of their lives, mainly upon parental neglect. After the new law was passed, guardians, custodians or other persons responsible for the children (including social protection officers acting as custodians) could present a declaration of Czech nationality on the child's behalf without parental approval.¹¹

The amended family legislation also had a positive effect on the attitudes of state administration. Courts were able to withdraw parents' custodial responsibility if they considered a child to be the victim of a crime committed by his or her parent; if the child was pushed to commit a crime; or if a parent committed a crime together with his or her child. This new legislation provides for the better protection of children who suffer from parental misconduct. Unfortunately, the protection of children who were victims of a crime committed by their parents remained inadequate under the penal procedure. It was not uncommon that a parent charged with abusing his/her child was represented by an attorney, whereas the child was represented only by a legally unskilled social worker. The Czech Committee demanded that children in such cases be appointed legal representation.

Arms Trade¹²

Despite a proclaimed commitment to follow the European Union Code of Conduct on Arms Exports, the Czech Republic continued to allow deals to areas of conflict, governments suspected of re-transferring weapons, and armed forces known to violate human rights. Past beneficiaries of lax

Czech export controls include countries engaged in abusive civil wars, such as Angola and Sri Lanka. More recently, in September 1999, the Czech government confirmed its intention to sell surplus tanks to Yemen despite serious concerns that the tanks would be diverted to Sudan, which is subject to an E.U. arms embargo because of a protracted civil war marked by gross violations of human rights. Earlier in the year, Poland cancelled a similar tank transfer to Yemen after the first shipment of twenty tanks was reportedly delivered to Sudan instead.

In addition, at least one private Czech company has been accused of involvement in illicit arms trade. In March 1999, customs officials in Azerbaijan halted the attempted delivery, reportedly to North Korea, of several disassembled fighter planes from Kazakhstan. The deal had been arranged by a Czech company whose representatives were briefly detained, with the cargo, in Baku. The Czech government initiated an investigation and has reportedly filed charges. The company denied any wrongdoing, stating that the disassembled aircrafts were headed to India via Slovakia. In a separate but related case in November 1999, the United States government imposed sanctions on the same Czech company and three representatives accused of facilitating the transfer, in mid-1999, of around forty combat aircrafts from Kazakhstan to North Korea. A trial is underway in Kazakhstan against a military official and businessperson connected to the latter deal. ■■■

¹¹ See also *Citizenship*.

¹² By *Human Rights Watch/Division on Arms Trade* for this report.