

Czech Republic¹

IHF FOCUS: judicial system and independence of the judiciary; torture, ill-treatment and police misconduct; prisons and detention facilities; asylum seekers; women's rights.

During 2003, unreasonable delays in judicial proceedings continued. The Czech Helsinki Committee (CHC) observed a stand-still in judicial reform and emphasized the need to reach a consensus between the judiciary and the state administration of courts provided by the Ministry of Justice, especially in the field of self-government of the judiciary and the management of the courts. The Supreme Administrative Court was finally established and started operation completing the establishment of the system of administrative justice.

Though the physical conditions and the professionalism of prison staff in Czech prisons improved gradually, most prisons still failed to meet EU penitentiary standards. Positively, the use of alternative punishments and the so-called "process of diversions" in criminal proceedings increased. The personnel of the Prison Service, Probation and Mediation Service and other organs acting in criminal proceedings needed further training in their specific fields.

No changes took place in police structure or in police control mechanisms. There was no Act on Police that would have defined the mission of the police force according to EU standards. However, a new version of the Law on Police Service was adopted and will come into force at the beginning of 2005. Some cases of police abuse were reported.

Asylum seekers were still held in detention and the asylum process was problematic in terms of human rights.

Discrimination against Roma continued, particularly in employment and housing.²

Other problems in the Czech Republic, though not dealt with in this report, were the treatment of senior citizens, human trafficking³, domestic violence⁴, and child prostitution at the Czech-German border.

Judicial System and Independence of the Judiciary

Czech legislation was still under reform. In May 2002, the Czech president filed a complaint with the Constitutional Court about the Law on Courts and Judges No. 6/2002 Coll. The new balance of powers provided by this law continued to cause concern as it allowed the minister of justice to interfere in the operation of the courts. It allowed the minister of justice to appoint and recall the chief judge of a court, to manage the selection and competence evaluation of judges and to appoint a director of the Judicial Academy. The Constitutional Court dismissed the part that required expert evaluation of judges.

Defendants' and victims' procedural rights improved markedly due to extensive amendments to criminal law. A January 2002 amendment also simplified and improved the so-called "process of diversions" by providing for mediation, settlement and a conditional suspension of proceedings. It also introduced alternative punishments such as community service. Moreover, court proceedings were cut down to a few weeks in less serious criminal cases. As a result, the number of prison sentences handed

¹ Based on information from the Czech Helsinki Committee.

² See the web site of the Czech Helsinki Committee at <http://www.helcom.cz/index.php>.

³ See International Organization for Migration (IOM) at <http://www.iom.cz/indexe.html> and La Strada at http://www.strada.cz/czechia/index_en.html.

⁴ See the White Circle of Safety, <http://www.bkb.cz/149467/short>.

down by the courts in 2003 decreased because they were replaced by alternative punishments. However, alternative punishments were applied differently from region to region. For example, in Prague, Karlovy Vary and Ceske Budejovice more cases were solved by way of mediation or alternative punishment than in the rest of the republic where imprisonment was used more often. The lack of probation officers led to difficulties in carrying out “diversion” or alternative punishment.

A new project supported by the EU appeared to be able to guarantee the Czech judicial system sufficient funding. The real impact of the project will be assessed in 2004. Judges’ salaries were proportionate but the salaries of other judicial staff were seriously insufficient. A cause of concern was the fact that the judiciary was financed from the Ministry of Justice budget, which rendered it dependent on the executive branch. In addition, court buildings also needed renovation, but it was estimated that it would take many years to find enough resources to modernize them.

In several regions in the northern parts of the country there was a shortage of qualified judges. Many judges left the judiciary in the wake of 1989 due to low salaries, for political reasons or because they lacked the required qualifications.

The average duration of legal proceedings differed according to the type of procedure. For example, bankruptcy proceedings could drag on for more than five years while divorce proceedings usually took only a few weeks. In addition, the length of proceedings varied according to the level of criminality in the region in question and the number of cases in the courts there. Proceedings were lengthier in the regions of Ostrava and Usti nad Labem, where there were few judges and the level of criminality was high.

Several cases were pending before the Constitutional Court and the European Court of Human Rights in Strasbourg from people who had filed complaints for undue delays in their judicial proceedings.

Torture, Ill-Treatment and Police Misconduct

The Czech Republic has been party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1988 and to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment since 1996. No reservations were made upon the ratification of these instruments.

Any form of torture and ill-treatment was strictly prohibited under article 259a of the Criminal Code and any form of harm to health was prohibited under article 222.

Despite formal legal protection against abuse, during 2003 the CHC received information about five serious alleged cases of police misconduct and ill-treatment. They amounted to suspicion of abuse of authority by a public official (punishable under article 158 of the Criminal Code), suspicion of torture and other cruel or inhuman treatment, and suspicion of infliction of harm to health.

- In one case a suspect was brutally beaten during a house search.
- In another case, a person whose passport was being controlled by a police officer during an identity check was punched in the face by the police officer causing a broken jaw.
- In three cases, suspects were ill-treated during interrogation. In one of these cases a suspect was shot through his leg during interrogation in what appeared to be incautious handling of a firearm. Official results stated that the suspect himself caused the incident and that police measures were taken according the law. The Interior Ministry initiated investigations into the cases, but no results were available as of the year’s end.

No independent body existed to investigate alleged cases of police misconduct. The Police Act stipulated that any misconduct must be examined by the Supervision Department of the Ministry of the Interior, whose employees were police officers and thus not impartial. In addition, there were no efficient remedial measures against acts of misconduct.

While information extracted from suspects through torture was inadmissible by law as evidence in courts, the CHC had information about one case in which such information was used as evidence.

- A suspect was slapped, beaten with hands and handcuffed to an iron heater for several hours by police officers during an interrogation and was then forced to sign a record.

While no cases of ill-treatment or torture were reported to the CHC from prisons, the organization did receive information about disproportionate use of coercive measures by corrections officers.

According to the Ministry of the Interior, 444 police officers were accused of 453 crimes in 2003. Of them, 176 were cases of abuse of the authority of a public official; 47 were cases of insurance fraud (article 250a of the Criminal Code); 19 were cases of deception (article 250 of the Criminal Code); 16 were cases of harm to health (article 222 of the Criminal Code); 3 were cases of illicit manufacturing and possession of narcotics, drugs and poisons (article 187 of the Criminal Code); 16 were cases of theft (article 247 of the Criminal Code); four were cases of unauthorized use of personal data (article 178 of the Criminal Code); there was one case of murder, etc. As a result, 287 policemen were charged and approximately 90 sentenced and punished.

Prisons and Detention Facilities

Prisoners had a regular medical check-up upon their arrival in prison and appropriate medical care was generally available. In some isolated cases medical treatment lacked quality. Prisoners complained about the arrogant behavior of physicians, long delays in getting an appointment, degrading examinations in the presence of prison guards of the opposite sex, and in one case, denial of access to a civil medical facility for a complicated operation which could not be carried out in a prison hospital.

The standard of psychological and psychiatric care varied considerably from prison to prison. A substantial percentage of prisons lacked staff specialized in psychiatry and it was difficult to hire a psychiatrist even as external staff. In the most serious cases, when no psychiatrist was available, the patient was transported to a civil psychiatric facility. There was at least one psychologist on the staff of each prison, but there still were not enough to provide adequate care.

The food in prisons appeared to be generally of acceptable quality, although monotonous. In one case, the CHC initiated a sanitation inspection of a prison by the relevant state authority which detected irregularities in the nutritional value of meals (the percentage of fat exceeded the recommended limit). The problem was rectified by the prison upon the report by the sanitation authority. Special diets due to religious needs were served in almost all prisons. This was mostly for Muslims who refused to eat pork on religious grounds.

In general, hygiene conditions and the availability of natural light and fresh air corresponded with basic acceptable standards, but varied from facility to facility. By law, prisoners were allowed to take a shower at least once a week but usually they were able to shower more often. In some prisons the prisoners had access to showers all day long. Warm water was usually available all day long and often directly in each cell. A change of prison clothes was usually allowed only once every two weeks, underwear once a week. The quality of the clothes was not always adequate.

According to law, convicted prisoners had the right to meet with their relatives once a month, remand prisoners every two weeks. The persons a prisoner wished to meet with had to be registered in advance at prison administration. Approval from the prison director was required for visits with people not registered as well as for visits among the prisoners themselves. The CHC was informed about cases in which a prison director did not approve visits by a prisoner's homosexual partner. As a form of special reward for good conduct, some prisoners were allowed to leave the prison in order to visit relatives.

In most prisons, the use of a phone depended upon the approval of prison administration. Generally, people other than relatives could be contacted by phone only if there was a serious reason to do so. Apart from exceptional cases, phone calls were monitored. The use of mobile phones was prohibited on the grounds that they could be used for organizing criminal activities in prisons.

No restrictions were placed on the frequency of correspondence but letters were checked at random by the prison staff, again, to prevent criminal activities. However, it was prohibited to intercept correspondence with state and international institutions, including human rights organization.

In their free time, prisoners could occupy themselves with various activities such as reading, playing table-tennis, watching TV, playing chess and similar games and exceptionally, by playing pool and darts. In some cases, special activities were organized, including model building, wood crafting, pottery, music, etc.

Remand prisoners had to stay in their cells except for during the time designated for organized activities. As for convicted prisoners, their ability to move about depended on the type of prison they were held in. There were four types of prisons ranging from open prisons to top security prisons. In open prisons, inmates were allowed to move about in designated areas without restrictions while in top security prisons they could move only under supervision from corrections officers. However, regulations on movement varied largely depending on internal prison regulations.

Isolation was used exceptionally as punishment, usually for breaching prison regulations. The maximum period for isolation was 28 days. A prisoner could also be placed in a closed department, or in solitary confinement, both for a maximum duration of 20 days. In spite of the fact that such disciplinary punishments constituted a serious infringement of prisoners' rights, there were no avenues available to prisoners to seek review of these sanctions by an independent authority.

Sometimes prisoners were placed in a "crisis cell" or in a special department in isolation if they appeared to be very upset (e.g. upon news about the death of a relative) in order to recover mentally. These were specific measures of psychological and similar care, not measures of disciplinary punishment.

Juvenile prisoners were held separately from adults, either in special prison departments or in special prisons for juveniles. Adequate education was organized for them.

There were "check-out units" in some prisons, the purpose of which was to prepare prisoners who were to be released soon, for life outside prison. The instruction given to them covered practical issues such as cooking, laundry, learning how to communicate with state authorities, using public transportation etc. "Check-out units" also emphasized cooperation with social workers and probation officers. These units, however, need to develop their program and capacity and such units should be established in all prisons.

Asylum Seekers

Asylum issues were regulated by Act No. 208/1993 Coll. in which the 1951 Geneva Convention relating to the Status of Refugees together with the 1967 Protocol relating to the Status of

Refugees were published. Article 10 of the Constitution of the Czech Republic provided that international treaties that were published in the Collection of Laws and International Treaties were binding to the Czech Republic and formed an integral part of the Czech legal order. In case of discrepancy between an international treaty and relevant domestic legislation, the international treaty shall prevail.

The right to asylum was also provided for in article 43 of the Charter of Fundamental Rights and Freedoms which formed part of the constitutional order of the Czech Republic. It established the obligation of the state to grant asylum to aliens who were persecuted for exercising political rights and freedoms.

Act No. 325/1999 Coll. as amended, also called the Asylum Act, was based on the Geneva Convention. It also incorporated the asylum principles applicable in EU countries.

Pursuant to Section 16(1)(e) of the Asylum Act, an asylum application was to be rejected as “manifestly unfounded” if the applicant came from a country that was considered a “safe third country” by the Czech Republic. An exception could be made if it was proved that in an asylum seeker’s particular case a so-called “safe third country” could not be considered “safe.” In the statement of reasons that described an application as “manifestly unfounded,” the responsible authority was required to state the grounds on which a country was a “safe third country” as provided under the Asylum Act. Account was taken as to whether the country was a signatory to the Convention relating to the Status of Refugees; whether entry into asylum procedure would be restricted for persons who would be returned; and whether the *non-refoulement* principle was in effect.

Under Czech asylum law, the concept of a “manifestly unfounded” application was treated as a refutable legal assumption as regards “safe third countries” or “safe countries of origin.” As a result, if the responsible administrative authority believed that the applicant came from a “safe country,” it did not deal with the case.

A normal asylum procedure lasted about 18 months. An accelerated asylum procedure was applied in “manifestly unfounded” cases, especially when an application was submitted from an alien detention center, from pretrial detention, or delivered when the asylum seeker was placed in a reception center of an international airport transit area. According to the CHC, the accelerated procedure was unduly applied to some asylum seekers who were placed in a reception center of an international airport transit area. These included people from Iran.

It was possible to appeal a negative asylum decision before a court within the prescribed time period. Timely filing of an appeal had the effect of suspending the decision unless another state, to which the applicant was to be sent, would be competent to carry out the asylum proceedings. A court could only confirm or overrule the decision of the state administrative authority, but it could not alter the decision. If the court overruled the decision, the case was returned to asylum authorities who were bound by the court decision. If the court refused to consider the appeal, the entire asylum procedure was terminated.

According to the CHC, however, after some people received the first negative decision they were expelled the same day and were denied the right to file an appeal to the second instance.

With effect as of 1 January 2003, a law provided that a so called “cassation complaint” could be filed against a court judgment. The complainant had to be represented by an attorney. Cassation complaints had no suspensive effect, however, a court could grant suspension upon the complainant's application.

Generally, the judiciary dealt with asylum cases independently, although it often failed to operate in an efficient manner, especially with respect to time. Another problem the Czech judiciary

faced was the lack of uniform case law in asylum cases, which undermined legal certainty. In addition, the court could not decide on the merit of a case.

Asylum seekers had the right to receive free basic health care, accommodation, food, hygiene items and other basics services, provided that they stayed in a reception or accommodation center and their situation did not justify reimbursement of the state for the services. Asylum seekers wishing to live outside of reception and accommodation centers had to cover the cost of living themselves.

By law, asylum seekers could be held in detention centers for a maximum period of 180 days. While detained, they experienced problems such as being unable to contact NGOs to request assistance. Conditions in the detention centers were criticized by the European Committee for the Prevention of Torture.

Generally, human rights violations by non-state actors were not taken into account when deciding on the merits of a particular case and there were no specific criteria for women to be granted asylum, such as if they had suffered genital mutilation.

The asylum procedure for underage asylum seekers included some exceptions to the normal procedure. Authorities were not able to dismiss an application for asylum as “manifestly unfounded” if the asylum seeker was underage and not competent to perform legal acts. Also, according to the Asylum Act, it was impossible to terminate a child’s stay in the Czech Republic if the child did not have statutory (adult) representation and if the child’s country of origin (or a “third country”) was not able to adequately care for him/her.

The CHC noted that in several cases of asylum seekers, the government should have issued an “obstacle to leave” on the grounds that the situation in their home country did not allow for a safe return.

An additional problem was that in some cases asylum procedures were held in parallel with expulsion procedures. Moreover, Czech authorities in some cases approached foreign embassies in order to clarify the identity of some asylum seekers, a procedure that seriously endangered the asylum seekers and their families.

A recent amendment to the Asylum Act that came into power on 1 January 2004 introduced a major restriction to the right of asylum seekers with respect to the asylum proceedings. In particular, it eliminated the duty of the administrative authority to make the asylum seeker familiar with the complete file of supporting material gathered by the authority for the purposes of their decision. Furthermore, it revoked the right of the asylum seeker to make a statement. Such restrictions were widely discussed in the parliament and were criticized by representatives from NGOs and by the Ombudsman's Office.

Women’s Rights

The Convention on the Elimination of All Forms of Discrimination against Women was ratified by the Czechoslovak government in 1982 and it continued to be valid in the Czech Republic. The treaty has legal precedence over national legislation. A new Anti-discrimination Act that is in line with the UN convention was pending in early 2004.

The Council of Czech Government for Equal Opportunities of Women and Men was established in 2002. It had advisory status in the creation of equal opportunities for women and men but it did not deal with concrete cases of discrimination.

The principle of paying men and women the same wage for the same or similar work was secured in an act of January 2001.

The unemployment rate of women was 8.1%, twice as high as the rate for men.

Women remained seriously underrepresented in political life. None of the presidents of the political parties were women. As of the end of 2003, only two government ministers were women. Gender policy was mentioned in a very general form in the platforms of all political parties.

Abortion was legal and no special procedure was prescribed for its performance.

Domestic violence was a problem that received more attention only very recently, mainly due to information campaigns by NGOs and due to reports on some specific cases in media. However, there were no legal provisions to deal specifically with this problem. An amendment to the Penal Code was being prepared to regulate criminal charges for domestic violence.

Rape was a criminal act regardless of whether it took place in a marriage. Although the police took the investigation of these cases seriously it is necessary to improve the attitude of society and of state institution toward the victims.

The Labor Code prohibited sexual harassment in the workplace. This problem, however, was not taken very seriously.