



*Police conduct towards demonstrators during the World Bank/International Monetary Fund meeting was not always appropriate. © Jana Chrzova*

**IHF FOCUS: Freedom of the media; torture, ill-treatment and misconduct by law enforcement officials; conditions in prisons and detention facilities; protection of ethnic minorities; protection of asylum seekers and immigrants; restitution; women's rights; rights of the child.**

Towards the end of 2001, the protest uproar by the Czech public television staff - triggered by a politically motivated appointment of new directors - also highlighted the need for new legislation on the public media. Police conduct during the International Monetary Fund (IMF) and World Bank meetings in Prague revealed persisting inadequacies in Czech policing. Czech prisons were overcrowded due, for example, to outdated sentencing policies and the virtually non-existent rehabilitation of prisoners into society.

Other human rights concerns were related to the new Residence of Aliens Act, which had an adverse effect on long-term aliens living in the Czech Republic and children of foreigners born in that country; the protection of the Roma minority and the problems they faced upon returning home following unsuccessful asylum claims; and the inadequate

law on the restitution of property confiscated during the Communist era.

### **Freedom of the Media**

The end of the year 2000 was marked by protests and sit-ins organized by the reporters and other staff of Czech state-run television against the newly appointed general director and his team. Their main objection was that the nomination had been rushed, illegitimate and - most importantly - decided under political influence and pressure. This case led to a discussion about the role of the public media and their independence from political parties and other influential bodies or persons.

The developments at the television station carried over into 2001, when the Parliament began discussing a new law on public Czech television and amendments to the law regulating the Czech Broadcas-

ting Council. The Czech Helsinki Committee has issued a detailed expert opinion on both pieces of legislation.

### **Torture, Ill-Treatment and Misconduct by Law Enforcement Officials**

In autumn 2000, the police forces faced a significant test when charged with the task of securing public order during the meetings of the International Monetary Fund and the World Bank in Prague. According to the Czech Helsinki Committee, they generally stood the test and handled the situation in a professional manner by using suitable tactics and adequate means.

However, the arrest and other police procedures following the apprehension of some protesters during the IMF/World Bank meetings in Prague violated concrete human rights. The police and prison personnel ill-treated detainees, insulted them verbally and physically, humiliated them, and (in Prague-Pančrác) sprayed groups of people with chilled water from a water cannon. All of this allegedly happened in police stations and prisons.

Individuals filed hundreds of complaints and initiated several charges against police officers who had allegedly resorted to misconduct. Upon being taken to a detention facility, the arrestees were strip-searched and their fingerprints were taken. Some were beaten or otherwise ill-treated and insulted, and were not informed of their rights. The cells were often cold and overcrowded and arrested persons only had restricted access to the toilet. Many persons received food only after 24 hours. There were incidents of delayed access to medical care for which the arrestees were sometimes asked to pay. Some detainees were severely wounded, and many of their cameras and films were damaged. Arrestees' hands were often tied for several hours and they were asked to sign Czech-language documents that they did not understand. Some claimed that they were held outdoors overnight freezing. In many cases the police failed to inform the

embassies about the arrest of foreign citizens in due course.

◆ The Czech Helsinki Committee visited eight foreign demonstrators held in the prison of Pankrac, accused either of violence against public officials or damaging property. All of them claimed that they had been denied access to legal counsel, the telephone, and interpreters until the judge decided they were to be taken into custody. Many said they were forcibly strip-searched, photographed and had their fingerprints taken. The demonstrators all mentioned that the police had treated them roughly; and four claimed that they had been beaten or otherwise ill-treated and humiliated. Two persons said that it appeared that demonstrators from the East were more brutally treated than Westerners. Five persons claimed they had been hosed with freezing cold water upon their arrival in the prison.

According to results available at the time of writing, the Police Presidium and the Ministry of Interior concluded that an overwhelming majority of complaints were unjustified: only four complaints were found to be justified and not a single police officer has been charged with committing a criminal act. The Czech Helsinki Committee stated that there were well-grounded reasons for questioning this assessment.

About 55-60 percent of Czech citizens said they trusted the police force, a figure that represented the strongest public support for the police following the "velvet revolution" in 1989.

Regrettably, there was no progress in the legislative work on the new Police Act and it was not expected to be adopted in 2001. The purpose of the Act is to harmonize Czech police legislation with EU standards.

The quality of management and human resources policy in the Ministry of Interior, which were criticized in previous years (particularly in relation to the police structure), did not improve markedly in

2000: there were only insignificant changes concerning the system. In particular, the foreign and border police force as well as the traffic police had considerable problems with corruption and the improper conduct of their members.

Gradual initial improvements were made towards a more open policing system, in the police management and the education of police officers, the promotion of the police work as a service for citizens as well as the training of police newcomers. These improvements could be partly attributed to intensive educational activities pursued by the Czech Helsinki Committee in the police academy and in police training colleges.

### **Conditions in Prisons and Detention Facilities**

The year 2000 was characterized by a number of major events and changes in the prison system, including new prison regulations, the January and April prison commotions and instructions by the new General Director of the prison service not to take new inmates who were sentenced to less than two years in prison.

In addition, the events connected to the meeting of the IMF and the World Bank highlighted some problems related to the prison system and the treatment of inmates and detainees.

The basic problems in prisons included overcrowding, unemployment, poor hygienic and physical conditions, inadequate medical care, as well as a lack of leisure and educational activities. There was also a shortage of educators and the financial management by the State left much to be desired.

Prison rules were tightened in some respects, and the right to use one's own money was restricted for prisoners with debts related to the criminal act they had committed and the sentence they were serving. Also, prisoners were only allowed to receive two parcels a year. As a result of these limitations tension in the prisons grew to the extent of revolt: nearly one

third of all prisoners broke out in January. Similar situations occurred on a smaller scale later in spring 2000. The revolts were halted without violence.

Respect for human rights in prisons was closely linked to the policies of prison personnel. In 2000, capable persons with both excellent theoretical and practical experience and known for their humane attitudes were appointed to important posts, including the General Director of the General Directorate of the Prison Service.

For several years the main problem related to prisons has been overcrowding and the high proportional prisoner rate in the Czech Republic. These problems could be attributed to the fact that imprisonment was overused as a punishment; most sentences were excessive; available alternative punishments and proceedings were basically not used; there was no efficient prevention of criminality; and released inmates could not reintegrate into society because of poor rehabilitation – a fact that led to a high recidivist rate. These problems lie to a great extent outside the prison system, i.e. in the operation of the courts and in the poor quality work done at the local level such as the district offices and municipal authorities.

As of 23 March, the General Director of the prison service instructed prisons to stop taking individuals sentenced to imprisonment for two months unless at least two years of the sentence was suspended. This was done due to an acute shortage of accommodation capacities in prisons. This decision, following years of warnings by experts, was a clear signal to public bodies that they could not close their eyes to the possible collapse of the prison system. In 2000, the number of prisoners started to decrease slowly and as a result of the step taken by the General Director of the prison service, it appeared that some public bodies began putting parts of long needed criminal policy reforms into practice.

The Czech Helsinki Committee proposed to the Czech authorities, for example,

building an infrastructure for a system of alternative punishments and surveillance for released individuals. The aim of this proposal was to reduce the period of detention to better match the seriousness of the criminal act and to decrease the maximum term of detention. The Czech Helsinki Committee also urged the courts to grant bail on a more regular basis. The Helsinki Committee further proposed that the authorities should consider the interests of the injured party more closely by adopting appropriate legislation, allowing for accelerated proceedings in cases of petty crimes, ensuring that the property of the prison service is managed properly and that the buildings and premises of the prisons are fully utilized. The Committee also supported increased employment for prisoners and the promotion of economic and entrepreneurial activities by prisons, and noted that the General Directorate of the prison should be consulted about all legal measures concerning prisons and that the prisons should be provided with an adequate number of educators, psychologists and social workers.

### **Protection of Ethnic Minorities**

#### Roma Minority

It was estimated that approximately 6,000 Czech Roma were a part of asylum procedures in various European countries as of the end of 2000. However, their chances of obtaining asylum were minimal and they were expected to return to the Czech Republic. Their arrival was expected to pose an unsolvable problem for some small municipalities in trying to ensure the re-integration of returning Roma into the local community.

As housing management was entirely the responsibility of a local community, there was some segregation of the Roma in certain parts of towns, with the result that modern ghettos were emerging. Some municipal board members openly expressed their racist opinions about Roma, saying, for example, that they will "kick them out of town."

The eviction of Roma from their apartments because of their failure to pay rent was becoming a serious problem. Although the procedure was in accordance with Czech law, such measures were short sighted because these people ranked among the poorest in society and were not able to ensure housing for themselves on their own. The Czech Helsinki Committee noted that timely social support was necessary to prevent Roma from ending up on the streets.

Czech legislation prohibited discrimination in employment - in accordance with international standards - and punished it accordingly. The state employment agency was authorized to impose sanctions on employers who resorted to discrimination. In the experience of the Czech Helsinki Committee, the agencies were unable to effectively combat situations where employers refused to hire Roma and employment problems persisted.

◆ A company refused to hire a Roma woman clearly because of her ethnic origin. She complained to the employment agency but was informed that the employer was free to choose whom he/she wanted to hire.

Nevertheless, a sign of hope for improving the racist atmosphere in the Czech Republic was the signing of Protocol No. 12 to the ECHR, the application of which could force the public administrative bodies to combat racism more consistently.

### **Protection of Asylum Seekers and Immigrants**

The Act on the Residence of Aliens (No. 326/1999 Coll.), which came into force on 1 January, adversely affected the situation of aliens. According to the initiators of the bill and the legislators, the Act was intended to be adapted to similar provisions valid in the EU; to minimize illegal migration; and to protect the labour market bearing in mind the high unemployment rate in the Czech Republic.

However, it seemed that the drafters of the Act drew inspiration mainly from the restrictive part of European legislation and disregarded the more humanistic elements of European law and individual national legislation, which counter-balanced the restrictive elements. Moreover, some of the provisions of the Act conflicted with the Principles of the Plan of Integrating Aliens on the Territory of the Czech Republic.

The Act put many aliens who had settled in the Czech Republic during the previous years in legal limbo. Pursuant to Section 183(5), the period of residence for individuals who had lived in Czech territory for a long time under the earlier regulations was not counted in the 10-year (or, in some cases 8-year) period required for obtaining a permanent residence permit. Therefore, the Act actually gave these individuals the status of newcomers and denied their own role in integration and the benefits they had brought to Czech society.

The important issue of legalizing the residence of aliens' children born in the Czech Republic remained unsolved. A newborn child was entitled to a visa for 90 days, but he/she would have to apply for a permanent residence permit through a Czech embassy abroad. The effects of having different requirements for members of one family gave rise to considerable negative social consequences. Even children who had reached the age of 15 during their residence in the Czech Republic faced problems legalizing their visa-based residence exceeding 90 days because they were required to have their own separate passports. However, many embassies refused to issue passports to them.

Section 35 of the Act provided residence visas in specifically defined cases. In some cases, this visa ensured payment of a part of medical care expenses. Neither the Aliens Act nor the Employment Act provided for a possibility of work for those possessing a residence visa. According to the law, these people were not entitled to any social benefits and either had to rely on

charity, whose network was still almost non-existent in the Czech Republic, or were compelled to make a living illegally.

The costs for all forms of visas and residence permits were considerable. In addition, an individual wanting to invite a foreigner to stay in the Czech Republic had to pay a high sum to guarantee the coverage of the visitor's possible expenses. Such requirements were discriminatory as they favoured wealthy visitors. The requirement to pay medical insurance for the entire period of a visit, for which a visa was required if exceeding 90 days, were especially discriminatory, since the cost for foreigners was comparably higher than for Czech citizens. For foreigners applying for a permanent residence permit or for a prolongation thereof, it was not possible to document financial status with an income certificate.

Positive developments could be seen though in the Government's policy on integration of foreigners into Czech society and in the activities of the Commission of the Interior Ministry. The Commission was set up to implement the principles adopted by the Government and the activities of the Council for Human Rights, and its section specialized in aliens' rights. There were also some positive long-term plans, but the Czech policy on foreigners simultaneously failed to apply the principle of equal human rights of citizens and aliens. The Czech Helsinki Committee stated that it expected more positive developments in the field of aliens' rights as soon as the Aliens' Residence Act comes into force on 1 February 2001. However, it appeared that discussion of this amendment in the Parliament would be delayed.

### **Restitution**

Since 1990, a number of laws have been adopted on the restitution of property that was confiscated by the Czechoslovak State until 1989. The basic idea of the newly adopted legislation was to provide for compensation for at least some of the violations of property rights

committed by the Communist regime between 25 February 1948 and November 1989 against both natural and some legal entities (e.g. associations, churches, the Jewish community). However, the compensation was intended to concern only some violations of property rights.

The very idea of providing compensation for only certain forms of property rights violations was controversial in itself and was the main reason why the European Court of Human Rights declared the cases inadmissible. In particular, persons who had been deprived of property such as houses, apartments, movable property or farms, agricultural land and agricultural stock or equipment felt at a disadvantage by the wording of the law. If they wanted to file a claim, many of them had to bring the case to court and satisfy the burden of proof: for example, they had to prove that the current owner (or a series of owners if the property had been re-sold since the confiscation) had obtained the property at variance with the then valid laws, or that he/she had been illegally given preferential conditions – all facts that were difficult or impossible to prove simply because much of the documentation had been destroyed. Persons who had been living abroad for years were in a particularly difficult position since it was often impossible for them to provide the court with all the relevant documentation.

In some cases, persons who were sentenced for illegal emigration during the Communist regime and had their property confiscated as part of the sentence, have been rehabilitated but their property has not been returned because they are unable to provide the court with the relevant documents.

In addition, the restitution laws only concern Czech citizens, a fact that excludes anyone who left the country and acquired the citizenship of their new host country from receiving restitution.

The length of legal proceedings was an additional problem. Restitution cases have

often been pending in court for eight to ten years without a decision. Moreover, even after decisions were passed, some people still had to wait a few more years until their property was actually physically returned to them. The restitution of land or agricultural property that was owned by so-called agricultural co-operative during the Communist era was particularly problematic. This property was now in danger of being literally stolen through a transfer to other legal bodies.

Church property remained a complex and specific issue, and the Roman Catholic Church was particularly affected.

### **Women's Rights**

Discrimination against women remained a problem in the Czech Republic, particularly in the labour market. When being interviewed for a job, women were often asked about their age, marital status, number of children and their ages and even about who would care for the children if they fell ill. These practices all breached Article 11 of the Convention on Elimination of All Forms of Discrimination against Women, according to which a woman is entitled to equal opportunities in employment, including being subject to the same selection criteria for employment as men.

In the second half of 2000, the Czech Helsinki Committee, together with other partner organisations, started to implement a project entitled "Equal Opportunities in the Labour Market," which was funded by the European Commission. Within the project, the Committee will undertake to investigate the valid legal regulations and monitor every-day practice. The main activity shall be to provide women with legal consultation in individual cases in which the principle of equal opportunities is violated.

In May, an extensive amendment to the Labour Code was adopted, which, *inter alia*, explicitly prohibits discrimination against employees on the basis of gender, marital and family status or obligations towards the family, and also prohibits sexual

harassment in the workplace. This amendment came into effect on 1 January 2001.

### **Rights of the Child**

In 2000, the Czech Helsinki Committee recorded several specific cases in which the rights of children were violated. There was a marked reluctance on behalf of some judges to apply the minimal application of the provision of Section 178 of the Civil Procedure Code, which provided that a court of law - if it deemed necessary - could hear a child's opinion on the suitability and usefulness of the proposed or intended measures concerning him/her. This practice violated Article 12 of the Convention on the Rights of the Child, which provides for a child's right to express his/her opinion freely on all matters concerning him/her. It is also a breach of the Family Act, Section 31(3) of which provided that a child has the right to be heard and to freely express his/her opinions on all parents' decisions on material matters concerning the child in any proceedings, as well as a child's right to receive any neces-

sary information. Section 8 of the Act on Socio-Legal Protection of the Child provided that a child who was able to formulate his/her own opinions was entitled to respect for his/her opinions. A child had the right to express these opinions freely when matters concerning him/her were discussed, including in the absence of parents or other individuals responsible for the education of the child.

The Czech Helsinki Committee stated that due attention must be paid to a child's statements in correspondence with the age and intellectual maturity of the child. The Committee noted that it seemed that the application of this provision was inhibited by the insufficient professional skills of judges, who chose to have the children interviewed by psychologists or social workers. However, these experts were not as independent as judges, and individuals involved in a dispute often exerted pressure on them. The Helsinki Committee suggested that the Ministry of Justice eliminate shortcomings, such as those mentioned above, by organizing specialized professional seminars for judges.

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### **Endnotes**

<sup>1</sup> Based on the *Annual Report 2000* of the Czech Helsinki Committee.