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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic report of States parties due in 2005

CZECH REPUBLIC* **

[24 May 2006]

* This document contains the second periodic report of the Czech Republic, due in 2005. For the initial report and the summary records of the meetings at which the Committee considered those reports, see documents CCPR/C/CZE/2000/1 and CCPR/C/SR.1931-1933.

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I. INTRODUCTION

1. The Czech Republic presents the second periodic report in accordance with article 40, paragraph 1 (b), of the International Covenant on Civil and Political Rights (hereinafter the "Covenant") and in accordance with the concluding observations of the Human Rights Committee as the Covenant's monitoring body (hereinafter the "Committee"). The recommendations arose from the Committee's discussions of the Czech Republic's initial report on the fulfilment of undertakings from the Covenant at its 1931st to 1933rd meetings on 11 and 12 July 2001.[1]

2. The second periodic report is prepared in accordance with the Committee's general instructions for preparing periodic reports[2] and covers the period from 1 January 2000 to 31 December 2004. In the report the Czech Republic thus focuses on changes relating to the protection of rights guaranteed by the Covenant and on the Committee's concluding observations for improving the standard of observing those rights protected by the Covenant.

3. Due to the period that the report covers and the broad range of rights protected by the Covenant, the report in some places contains only the basic updated information on the specific matter and refers to other reports that the Czech Republic presents to other committees as control bodies for other international treaties on human rights in the United Nations treaty base.[3]

The relationship between international and national law and the Committee's concern[4] regarding the Covenant's status in Czech law

4. The change in the Constitution of the Czech Republic in 2002 led to a review and clarification of the relationship between national and international law. Whereas up to May 2002 only "ratified and announced international treaties on human rights and basic freedoms" had precedence over the law (national law) and were directly binding, from June 2002 "announced[5] international treaties, to whose ratification Parliament has given its consent and by which the Czech Republic is bound, form part of the legal code". The Constitution moreover expressly contains the principle of precedence in the application of such international treaties when it says that "if the international treaty specifies something different from the law the international treaty shall apply". If the law is at variance with the international treaty which forms part of the legal code of the Czech Republic then all those who apply the law must give precedence to the international treaty. If the variance is such that it does not allow for the effective exercise of the rights set forth in international treaties, subjects may have recourse to the Constitutional Court to seek cancellation of the law, other legal regulations or their specific parts.

5. In addition to this change to the Constitution (art. 10), the Constitutional Court acquired new powers - it can now decide on a proposal to review the compliance of an international treaty with the constitutional order before it is ratified (art. 87, para. 2). The authorization to submit a proposal for the review of international treaties compliance with constitutional law before their ratification lies with the President of the Republic, a certain number of members of Parliament or senators or chambers of Parliament.[6] If the Constitutional Court identifies variance between the constitutional law and an international treaty this variance can be removed only by changing the constitutional law of the Czech Republic, thereby creating the possibility for ratification, or by refraining from ratifying the relevant international treaty.

6. Some rights protected under the Covenant were affected by the Czech Republic's accession to the European Union (hereinafter the "EU") on 1 May 2004. These concern chiefly rights whose holders under the Covenant can only be nationals of the treaty State. Member States of EU, or community law, also acknowledge these rights for the nationals of other member States. They concern, for example, the right to vote and be elected to the European Parliament, the right to vote and be elected to representative bodies at the local level or the right of access to a public function.[7]

7. From 2000 to 2004, the Czech Republic ratified or signed the following international treaties linked to the observance of rights guaranteed by the Covenant:

- European Convention on the Adoption of Children (No. 58);
- European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (No. 105);
- Amendment to article 43, paragraph 2, of the Convention on the Rights of the Child;
- Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption;
- Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children;
- Declaration of the Czech Republic pursuant to article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination;
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- Convention for the Protection of Human Beings and the Dignity of the Human Being with regard to the Application of Biology and Medicine (No. 164) and the Additional Protocol thereto (No. 168);
- Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (No. 28);
- European Convention on the Legal Status of Children born out of Wedlock (No. 85);
- European Convention for the Protection of Individuals with regard to Automated Processing of Personal Data (No. 108);
- European Convention on the Exercise of Children's Rights (No. 160);
- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (No. 51);

- Additional Protocol to the Convention on the Transfer of Sentenced Persons (No. 167);

- Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (No. 187);

- Second Optional Protocol to the International Covenant on Civil and Political Rights;

- European Convention on Nationality (No. 166);

- Convention on the Legal Status of Persons without Nationality.

II. INFORMATION RELATING TO ARTICLES 1 TO 27 OF THE COVENANT

Article 1

Right to self-determination (para. 1)

8. During the monitored period of 2000-2004, there were no changes relating to the right to self-determination. Information on the status of minorities in the Czech Republic is given in the commentary to article 27.

Right to dispose of natural wealth and resources (para. 2)

9. During the monitored period of 2000-2004, there were no changes in the Czech Republic.

Territorial guarantee of rights (para. 3)

10. During the monitored period, there were two changes in the State border between the Czech Republic and neighbouring States. In both cases, the Czech Republic concluded a treaty on changes to State borders with Austria and Germany.

11. The reason for the change in the State border between the Czech Republic and Austria in 2001 was the administering of joint State borders at border waterways, the construction of roads and servicing of buildings. These changes were effected in order to minimize future damage from floods and to improve the agricultural use of land around the border.

12. The reason for the change in the State border with Germany is the newly built motorway bridge with border pass at Rozvadov-Waidhaus. It was necessary to modify the State border so that it should intersect the middle of the border bridge (transverse axis). This “division” of the border bridge allows for its easy maintenance, including the payment of the necessary costs.

13. In both cases, the international treaties were confirmed by the adoption of constitutional laws[8] on changes to State borders, as required by the Constitution of the Czech Republic.

Article 2

The State's territorial jurisdiction in matters guaranteeing rights protected by the Covenant (para. 1)

14. The rights and freedoms protected by the Covenant belong to all individuals in the Czech Republic. The difference between individuals in the Czech Republic depends on citizenship and residential status. In the Czech Republic, citizenship is still differentiated according to whether the individual is a national of the Czech Republic or of another EU member State. In deciding the individual's residential status[9] the decisive factor is whether he has permanent or temporary residence in the Czech Republic, if the individual is an asylum-seeker, or if he has been granted refugee status.

15. In the Czech Republic it generally applies that so-called citizenship rights belong to individuals who are nationals of the Czech Republic, and some of these rights are granted both to foreigners - citizens of other EU member States - and to foreigners from other States.[10] On the other hand, some rights belonging to everyone are bound to the individual having permanent residence in the Czech Republic, regardless of whether he is a citizen of the Czech Republic, another EU member State or whether he is a foreigner.[11]

Application and effective protection of rights protected by the Covenant (paras. 2 and 3)

16. In the Czech Republic, the core protection of rights guaranteed by the Covenant is afforded by the courts. As stated in the initial report and the basic document, the judicial system is based on the system of common justice and the Constitutional Court, whose role is not to decide on rights, interests and obligations protected by the right, but on the compliance of legal regulations and decisions with the constitutional order and the international legal undertakings of the Czech Republic. Since the end of 2000, the ombudsman has worked as an informal control of State administration, although by no means all public power. His core task is to monitor the performance of State administration in accordance with the principles of good administration. During the monitored period of 2000-2004, no institution was created in the Czech Republic which would systematically be involved with human rights questions.

New judicial legislation, including the status of judges

17. Since 2002, a new Act on Courts and Judges (No. 6/2002 Coll.) has come into effect in the Czech Republic.

18. Due to a possible violation of the principle of the division of power into legislative, executive, and judicial power, as well as the derivative right of the individual to have matters heard by an independent court, the President of the Republic submitted a constitutional complaint. He advised the Constitutional Court that it should cancel some provisions of the Act on Courts and Judges (No. 6/2002 Coll.), concerning the evaluation of the expert competence of judges, their mandatory inclusion in expert training in the Justice Academy and the exercise of the State administration of courts. The Constitutional Court agreed to the President's complaint and cancelled the provisions in the Act on Courts and Judges.[12]

19. Regarding the evaluation of the expert competence of duly appointed judges, the Constitutional Court expressed the opinion that "… the challenged mechanism for reviewing the expert competence of judges as laid down by the Act should be rejected and considered unconstitutional on the grounds that it breaches the principle of the division of power and the related principle of judicial independence. This … has an unconditional nature, excluding the possibility of such a method for the intervention of executive power, as is presented by its disproportionate share in the review of the expert competence of judges".[13] Regarding the mandatory inclusion of judges in the Justice Academy, the Constitutional Court stated that "… the establishment of the Justice Academy under the Act is justified with regard to the function that it should fulfil in training probationers and other judicial staff. However, in relation to the continual training of judges it can only … be understood as one of the many resources freely chosen by the judges".

New administrative justice[14]

20. From 1991 to 2002, the legal code of the former Czechoslovakia and subsequently the Czech Republic contained only the possibility of the partial judicial control of decisions of public administrative bodies concerning rights and obligations. The courts could only review the legality of the procedure involved in the creation of the decision by the body of public administration, but could not formally pass judgement on the merit of the case. Moreover, the review of the legality of a decision by a body of public administration was only possible in those cases where a legal claim was enforced according to the material national legal provisions. In June 2001 the Constitutional Court by its decision[15] valid as of the end of 2002 cancelled the legal provisions for the review of the legality of decisions by a body of public administration on rights and obligations contained in part five of the Civil Procedure Code (No. 99/1963 Coll.). The year 2002 was thus the final year when on the one hand decisions by administrative bodies could not fully be reviewed by an independent body, and on the other hand the Constitution of the Czech Republic was fulfilled regarding the existence and functioning of the Supreme Administrative Court.

21. Administrative justice in the Czech Republic functions as a combined model, which means that administrative courts - senates of judges or individual judges from regional courts - form part of the common judicial system, but the Supreme Administrative Court exists as a separate institution independent of the Supreme Court. Apart from the judicial review of decisions by administrative bodies on rights and obligations, administrative courts decide on electoral matters and local referendums and on matters concerning political parties and movements. Administrative courts can also offer protection against further infringements by public authorities, including the activity of administrative bodies. The Supreme Administrative Court ensures the unity and legality of decisions in administrative justice; it decides on cassation appeals, monitors and evaluates legitimate decisions of regional courts and adopts standpoints.

22. As far as furnishing evidence is concerned, the court decides which of the proposed evidence it admits, and may also admit other evidence. As regards cases, the court decides by means of a judgement. In order to change the decision the court can use legal remedies - cassation appeal and the reopening of the proceedings.

23. The cassation appeal is a legal remedy against a legitimate decision by a regional court in administrative justice, by which a party to the proceedings or a person involved in the proceedings can demand the cancellation of the court's decision. The cassation appeal is admissible against every decision, unless the law expressly rules this out. A cassation appeal can only be submitted on enumeratively stated grounds, above all on the grounds of alleged illegality consisting in the court's incorrect consideration of a legal question in the previous proceedings. A cassation appeal does not have suspensory effect. The Supreme Administrative Court may, however, allow this at the complainant's request. A cassation appeal is decided by the Supreme Administrative Court, usually without a hearing. It must order a hearing if evidence is furnished, and may order hearings if it regards them appropriate. If the Supreme Administrative Court comes to the conclusion that the cassation appeal is justified, it will cancel the decision of the regional court and return the matter for further proceedings. If the cassation appeal is not justified, the Supreme Administrative Court will reject it.

24. A court may allow the reopening of proceedings terminated by a legitimate judgement at the proposal of a party to the proceedings if evidence or facts have come to light which were not or could not be admitted in the original proceedings, or a different decision was reached on a preliminary matter, and the result of the reopened proceedings may be more favourable to the party. Proceedings can only be reopened against a decision issued in a proceeding on protection against interference by an administrative body and in cases of political parties and political movements. A submitted proposal does not have suspensory effect, although the court may admit it at the party's request. The court is generally bound by the applied grounds of the proposal. The court decides on allowing the reopening of proceedings by means of a resolution. If the reopening of proceedings is legitimately permitted, the court continues in the proceedings on the original proposal. In addition to the due findings of fact which existed at the time of its original decision, it will admit new evidence and decide on the original proposal. The new decision replaces the original decision.

25. Initially, the competence of courts in administrative justice was not known to the public in certain cases, and this resulted in complaints being submitted against decisions of administrative bodies to the Supreme Court, which passed them on materially and locally to the relevant administrative courts.[16] These cases are now sporadic.

Changes in the possibilities of enforcing decisions of international courts and to recommendation No. 6[17]

26. During the monitored period of 2000-2004, criticism of the Czech legal code from the Committee and other international control bodies focusing on the protection of human rights was aimed at the absence of legal means for new hearings of cases in which these international control bodies found breaches of international legal undertakings in human rights matters on the part of the Czech Republic. As a constitutional complaint is considered the final national means for the protection of rights, the Czech Republic decided to resolve the new hearing of cases after the decision of an international court on a breach of international legal undertakings by means of the Act on the Constitutional Court (No. 182/1993 Coll.). At the proposal of individuals, the Constitutional Court thus passes new judgements on matters of rights in the light of the decision of an international court. However, the change in the Act on the Constitutional Court does not

allow this generally but only in criminal cases, and thus rules out the possibility of reopening proceedings in cases which have not been heard by the criminal courts, i.e. in cases where the individual has defended his rights in administrative judicial proceedings or civil proceedings.[18]

Failure to respect rights protected by the Covenant according to decisions of other international control bodies

27. During the monitored period, the Czech Republic was criticized in three judgements issued by the European Court of Human Rights (hereinafter the "Court") for breaching the right of an individual to be judged within an adequate time span or released from custody during the proceedings if he is in custody during the course of criminal proceedings. The court justified its decisions by stating that the length of custody for the complainants exceeded an adequate time span, and therefore that bodies active in criminal proceedings did not proceed in these matters with special care, and the criminal proceedings thus registered certain delays.

28. Most of the Court's judgements regarding the Czech Republic concern a variety of aspects of the right to due process, and particularly the right to judicial proceedings on civil rights and obligations or on the justification for the length of criminal proceedings within an adequate time span. In 28 judgements, the Court decided that the Czech Republic had breached the individual's right to judicial proceedings on rights and obligations in an adequate time span, and in 3 judgements decided on the same matter regarding the length of criminal proceedings. In seven cases, the Court concluded that the Czech Republic had not allowed complainants to have their case heard by a court. In three cases, the Court stated that the Czech Republic had breached the right of access to a common court, which rejected an action for rights and obligations to be heard in civil proceedings on the grounds of a real or assumed legal impediment. In two cases the Court found breaches of various aspects of the right to due process, firstly in the principle of a judicial hearing of an action in administrative judicial proceedings and secondly in the right of the individual who is a party to judicial proceedings to express his opinion on evidence used by the court in the proceedings. The judgements on the length of judicial proceedings also criticized the Czech Republic for the absence of effective national legal remedy.

29. In five cases, the Court's criticism concerned the Constitutional Court's approach in evaluating the fulfilment of conditions for submitting constitutional complaints. Three of them concerned the relation between appellate review (extraordinary legal remedy), whose hearing the Supreme Court could reject on grounds of discretion, and constitutional complaints, which can only be submitted to the Constitutional Court after exhausting all legally defined means for the protection of a right.[19] In the remaining two cases the Court concluded that the Constitutional Court had considered a carelessly drawn up constitutional complaint too formally.

Development of national legal remedies and constitutional complaints

30. The Act on the Constitutional Court (No. 182/1993 Coll.) made it possible for an individual to submit a constitutional complaint after exhausting all legal remedies. However, this condition did not sufficiently distinguish between ordinary and extraordinary legal remedies, which resulted in problems of application and in relation to procedural methods, which arose in the period following the adoption of the Act on the Constitutional Court, i.e. after 1993. For example, in exhausting the appellate review as a legal remedy for which the admissibility

depends in each case on the discretion and decision of the court, it is thus not entirely dependent on the will of the individual as a party to the proceedings. It is thus not possible to make the right to lodge a constitutional complaint conditional without exception, nor in order to enforce it can the time limit for lodging a constitutional complaint be applied.

31. This situation was also criticized by the Court because the Constitutional Court rejected the constitutional complaint on the grounds that the complainant had not exhausted all legal remedies, or because the complainant had submitted an extraordinary legal remedy which was turned down, and the 60-day limit for the submission of a constitutional complaint had already passed since the previous decision.[20] A case is also known where the constitutional complaint in the same matter was first rejected because not all legal remedies had been exhausted, and after this error had been remedied the Constitutional Court rejected the subsequent constitutional complaint because it was submitted too late.

32. This situation resulted in a change to the Act on the Constitutional Court, which has been in force since April 2004 (No. 83/2004 Coll.). This amended the specific relationship between the appellate review and the constitutional complaint so that, with the exception of reopening the proceedings, it was made clear that an individual must submit a constitutional complaint not only within the normal 60-day time limit, but also before a decision has been issued on permitting the extraordinary legal remedy, i.e. the appellate review.

33. The change to the Act on the Constitutional Court (No. 182/1993 Coll.) was preceded by a communication from the plenum of the Constitutional Court (No. 32/2003 Coll.) on a change in its procedure in the event of a constitutional complaint running parallel to an appellate review to which there is no legal entitlement. From 3 February 2003 to 1 April 2004, the Constitutional Court thus proceeded so that in the event of an extraordinary legal remedy being submitted the constitutional complaint was considered admissible after the decision on the extraordinary legal remedy, with the exception of a decision on the reopening of proceedings. The 60-day time limit for the submission of a constitutional complaint commenced on the delivery date of the decision on the extraordinary legal remedy, with the exception of the reopening of proceedings, regardless of the method of the decision on the extraordinary legal remedy. The Constitutional Court justified this step as a response to the criticism from the Court. The aforementioned change to the Act on the Constitutional Court is thus beneficial for individuals.

Extraordinary legal remedies in civil proceedings, their influence on the principle of exhausting all legal remedies and the right to effective legal remedy

34. Since the beginning of 2001, the change in the Civil Procedure Code (No. 99/1963 Coll., amended by Act No. 30/2000 Coll.) introduced into civil judiciary proceedings the possibility for the Supreme Court not to substantiate decisions not to permit appellate review in civil judicial proceedings (sect. 243c, para. 2). It was thus possible for the Supreme Court not to substantiate its decision when it rejects an appellate review as an extraordinary legal remedy. Although one of the reasons for introducing this rule was to avoid delays in judicial proceedings, the Constitutional Court focused on the question of whether this possibility in the Supreme Court's procedure " … adequately eliminates examples of high-handedness in the application of the right …" and whether the limitation of the appellant's right to know the reasons for the rejection

of his appeal actually serves the intended purpose, which is to speed up judicial proceedings. This essentially thus rested on assessing the proportionality between the speed of judicial proceedings and any limitation of the party's rights, and the substantiation of this procedure.

35. Of those arguments supporting the opinion that this does not result in an infringement of the rights of the party to the proceedings, the material argument can be mentioned that the Supreme Court " … always reaches a preliminary conclusion on whether the case … of the appeal court on the legal side is of essential importance and thus important for the decision-making activity of courts in general, and not only for a specific instance …". From arguments of the system, the Supreme Court stated for example the fact that the proceedings did not involve ordinary but extraordinary legal remedy, and that a judicial system of first and second instance was considered adequate - appeal proceedings then took place before a court which is already a third instance.

36. According to the Constitutional Court, justification for limiting the appellant's right to the speed of judicial proceedings in deciding on the appeal was inadequate because the rejection of an appeal was only justified by reference to the provision of the Civil Procedure Code (sect. 243c, para. 2) which makes it possible for the Supreme Court not to substantiate the rejection of an appeal. The appellant thus does not have the possibility of learning why the Supreme Court did not consider the matter a question of fundamental legal importance. If the matter is submitted to the Constitutional Court or the European Court the Supreme Court thus finds itself in a position where it has to additionally substantiate its decision to reject. The Constitutional Court also pointed out that this is only the case in civil judicial proceedings because the court always offers substantiation both in decisions on appeals in criminal cases according to the Code of Criminal Procedure (No. 141/1961 Coll.), and in proceedings on a cassation appeal at the Supreme Court according to the Administrative Procedure Code (No. 150/2002 Coll.). The party to the proceedings is thus treated differently according to the type of judicial proceedings. The Constitutional Court thus did not find grounds for this inconsistent procedure and with effect from 8 April 2004 cancelled the possibility that the Supreme Court may not have to substantiate the rejection of an appeal in civil proceedings.[21]

Proposal to define the time limit for executing a procedural act as a protection against delays in judicial proceedings

37. From the beginning of 2002, when it came into force, the new Act on Courts and Judges (No. 6/2002 Coll.) only permitted a complaint to be submitted as a protection against a court's inactivity or delays in the proceedings. This is generally resolved by the chairman of the court against whose employees the complaint is directed, and the chairman of the superior court if the complaint is directed at the chairman of an inferior court. If the complainant does not agree with the method of settling his complaint he may have recourse to the Ministry of Justice as the central body of State administrative justice.

38. This complaints system, however, was not suitable for ensuring an effective judicial remedy against a court's inactivity or delays in proceedings. Therefore, from the beginning of July 2004, the Act on Courts and Judges was amended (No. 192/2003 Coll.) so that an individual who considers that the court is handling his case ineffectively, or if there are delays in the proceedings, can submit a proposal to the court for the time limit to be specified for executing a

procedural act. This proposal may be submitted by every party to the judicial proceedings regardless of whether these are civil, criminal or administrative proceedings. The party to the proceedings may submit the proposal for specifying the time limit for executing a procedural act if in his opinion his complaint has not been settled in a common complaints regime. The superior court decides on the party's proposal within 20 days. If this court decides that there has been a delay in the proceedings it shall set the lesser court a time limit within which it must continue the proceedings.

39. In order to settle a complaint about a court's inactivity the chairman of the superior court has 1 month and 20 days to take a decision on the proposal to set a time limit for the execution of a procedural act. Under the Act on Courts and Judges, the party to the proceedings who considers that there have been delays in obtaining judicial protection for his rights can now count on the judicial hearings of the case continuing within two months of the complaint being submitted concerning the inactivity of the court. This time limit can only be longer if the chairman of the superior court does not succeed in obtaining the documents for deciding on the complaint about delays necessary to settle the complaint within one month. However, the complainant must also be informed of this. This has significantly strengthened the preventive element of protection against inactivity.

System changes in criminal justice[22]

40. In 2001, the Constitutional Court also addressed the equality of injured parties in criminal proceedings.[23] With effect from 23 February 2001 its decision[24] cancelled the provision in the Code of Criminal Procedure (No. 141/1961 Coll.) which established inequality between damaged parties in criminal proceedings based on whether the proceedings were held in front of a district or regional court (sect. 44, para. 2). In hearings before a district court the injured party had the right to attend proceedings; in hearings before a regional court, however, the court had to consent to the participation of the injured party. The Constitutional Court stated that "it does not consider the difference in the status of an injured party in proceedings before the stated courts - in this regard - to be justified or reasonable as, just as in proceedings before a regional court so proceedings before a district court can result in questions of State secrecy being heard, a serious, complicated and wide-ranging criminal matter may be involved in which deciding on compensation for damage may exceed the framework of the purpose of the criminal prosecution … . For this reason in particular the Constitutional Court concluded that the consequences of the challenged provision led to unjustified inequality for the party to the proceedings in the enforcement of his rights in proceedings before a district and a regional court". Besides a breach of the prohibition on discrimination, the Constitutional Court also stated a breach of the right to judicial protection and of rights.[25]

41. The status of injured parties and witnesses was also one of the reasons for the change in the Code of Criminal Procedure in 2004 (Act No. 283/2004 Coll.). Since the beginning of July 2004, injured parties and witnesses have been able to request information on the release date or escape of the accused from custody or of the convicted from prison. The intention is to protect them, chiefly in cases of violent crime where the culprit and the victim or witness know each other.

42. Since the beginning of November 2004, the law of the Czech Republic has also included the European arrest warrant (change in the Code of Criminal Procedure No. 539/2004 Coll.),

which for the first time permits a citizen of the Czech Republic to be handed over for criminal proceedings to another EU member State. However, it expressly states that the Czech Republic may only hand over its own citizen to another EU member State upon fulfilment of the condition of reciprocity.

43. Together with the introduction of the European arrest warrant the Czech Republic resolved questions of legal relations with foreign countries in criminal matters. For example, the new legislation allows for the extradition and handing over of an individual - including a Czech national - for criminal prosecution abroad, with the provision of legal assistance based on reciprocity. If this does not exist, the process follows the Code of Criminal Procedure. Regarding the international prosecution of crimes it is important that this should be a process by which an individual can also be handed over or extradited at the request of international criminal courts and tribunals, i.e. in particular the International Criminal Court and ad hoc criminal tribunals set up by resolutions of United Nations bodies.

44. Since November 2004, the Code of Criminal Procedure has also contained the right of the Minister of Justice to waive a prison sentence or its remainder in the case of a convicted person who has been or should be extradited to a foreign State or handed over to another EU member State on the basis of a European arrest warrant. This right of the Minister corresponds to the right of a court to waive a prison sentence or its remainder if the convicted person has been or should be deported. If the extradition, handing over or deportation of a convicted person to a foreign State does not go ahead, or if the person extradited, handed over or deported returns, the court shall decide on his obligation to serve the remainder of his sentence.

Article 3

Equality of men and women in enjoying rights guaranteed under the Covenant

45. As regards women's participation in leading bodies of parliamentary political parties, there are no significant differences between right- and left-wing political subjects. The main problem is the fact that women do not attain key positions in the party hierarchy, and therefore have a lower proportion in the selection of candidates.

46. At the end of the monitored period 2002-2004 there were 32 women in the Chamber of Deputies of Parliament, or 16 per cent, and 10 female senators, or 12 per cent. The structure of elected representative bodies in the Czech Republic during the monitored period according to the criteria for the representation of women and men is illustrated by the following data.

Table 1

Structure of the Chamber of Deputies of Parliament by gender

	Sex	Candidates		Elected	
		Number	%	Number	%
2002 elections	Men	4 472	73.70	166	83.00
	Women	1 596	26.30	34	17.00
	Total	6 068	100	200	100

Table 2

Structure of the Senate of Parliament by gender

	Sex	Candidates		Elected	
		Number	%	Number	%
2000 elections	Men	134	83.7	23	85.2
	Women	26	16.25	4	14.8
	Total	160	100	27	100
2002 elections	Men	142	84.52	24	88.89
	Women	26	15.48	3	11.11
	Total	168	100	27	100
2003 supplementary elections	Men	13	92.86	2	100
	Women	1	7.14	0	0
	Total	14	100	2	100
2004 supplementary elections	Men	11	91.67	2	100
	Women	1	8.33	0	0
	Total	12	100	2	100
2004 elections	Men	173	83.98	23	88.46
	Women	33	16.02	3	11.54
	Total	206	100	26	100

Table 3

Structure of regional councils by gender

	Sex	Candidates		Elected	
		Number	%	Number	%
2000 elections	Men	6 060	78.13	578	85.63
	Women	1 696	21.87	97	14.37
	Total	7 756	100	675	100
2004 elections	Men	6 148	74.00	573	84.89
	Women	2 161	26.00	102	15.11
	Total	8 309	100	675	100

47. In municipal and town councils the proportion of women is higher than in regional councils. At present, women make up 22.7 per cent of municipal councils (in the 2002 elections their proportion was 22.6 per cent).

Table 4

Structure of municipal councils by gender

	Sex	Candidates		Elected	
		Number	%	Number	%
2002 elections	Men	139 504	72.30	48 335	77.34
	Women	53 426	27.70	14 159	22.66
	Total	192 930	100	62 494	100

48. In the 2004 elections to the European Parliament 19 men were elected and 5 women (or 20.8 per cent).

49. Of the 18 members of the Government, two women are currently ministers (16.6 per cent), who run the Ministry of Education, Youth and Sport and the Ministry of Information Technology. As far as local politics is concerned, there are no female governors in the regions,[26] although women do hold the position of deputy governor.

Article 4

Principle of limiting rights

50. The possibility of limiting certain human rights in situations of general threat is twofold - in crisis military situations and in crisis non-military - civil - situations. In the monitored period of 2000-2004, there were no changes in the possibility of limiting certain human rights - in crisis military situations, as opposed to the possibility of limiting certain human rights in civil situations.[27]

So-called crisis situation

51. Procedures enacted to resolve crisis situations of general threat are called crisis management. The crisis management system responds to varying degrees of crisis intensity by announcing three levels of so-called state of crisis, which are divided according to the degree of harmful consequences caused, the scope and character of the threat according to which public administrative body is responsible for the crisis management in the relevant situation. These crisis states are: state of risk, state of emergency and state of threat to the State.[28] All crisis management proceedings that do not relate to the defence of the Czech Republic are contained in the Crisis Act (No. 240/2000 Coll.); only reasons for announcing, maintaining and terminating a state of emergency and a state of threat to the State are contained in the Constitutional Act on the Security of the Czech Republic (No. 110/1998 Coll.).

52. A state of risk is announced by the regional governor (in Prague by the city mayor) for a maximum period of 30 days.[29] The governor/mayor may only extend the period of maintaining the state of risk beyond 30 days with the Government's consent. The governor/mayor announces the state of risk either for the entire region or a part thereof as an urgent measure in the event of a natural disaster, environmental or industrial catastrophe, accident or other risk which threatens human life, health, property or the environment. In such cases, the governor/mayor announces a state of risk if it is not possible to avert the threat through the ordinary activities of a public authority and bodies of the emergency services.

53. A state of emergency is usually announced by the Government, either at the suggestion of the governor/mayor, or at its own initiative. The governor/mayor asks the Government to announce a state of emergency if it is not possible to avert the threat as part of a state of risk. If the seriousness of the situation so requires, the state of emergency can also be declared by the Prime Minister. In this case, the Prime Minister must also decide on the extent of the limitation of basic rights and freedoms and on stipulating the type and scope of obligations. The Government must then either cancel or confirm his decision within 24 hours. The Government

announces the declaration of a state of emergency to the Chamber of Deputies (the lower chamber of Parliament). When declaring a state of emergency the Government states which rights and freedoms will be limited, which obligations will be imposed and the period during which the state of emergency will be maintained. The maximum term for a state of emergency is 30 days, although the Government may formally terminate it before this period ends. A state of emergency may be repeatedly extended, although only with the agreement of the Chamber of Deputies, which may also cancel it.

54. A state of risk and state of emergency are thus civilian crisis situations which are announced in the event or risk of an internal threat to the State or administrative district, and which threaten lives, health, property, the environment, and, in the case of a state of emergency, also internal order and security.

55. To complete the list of crisis situations, we need to briefly mention the state of risk to the State. This has a specific, mixed character. It can be declared both in the event of an internal risk or as a civil crisis situation, as well as a military crisis situation in the event of the risk of a military threat. If it is announced as a civil crisis it is the highest crisis situation. The right to decide on its declaration or cancellation belongs only to Parliament, to which the Government submits a proposal for the declaration or cancellation of a state of risk to the State. Both chambers of Parliament decide on the declaration of a state of risk to the State, and an absolute majority of all members of each chamber is required to adopt the decision. If the Chamber of Deputies is dissolved only the Senate shall decide on the declaration or cancellation of a state of risk to the State. A condition for the declaration of a state of risk to the State is that the potential or actual risk must be capable of threatening the State's sovereignty, its territorial integrity or democratic foundations. In all other cases the state of risk to the State cannot be declared.

Extent of the limitation of rights and freedoms and stipulation of obligations

56. When declaring one of the crisis situations measures can be ordered limiting rights and freedoms and imposing obligations. The Crisis Act contains a list of the rights and freedoms that may be limited, and a list of the obligations that may be imposed. The limitation of rights and freedoms and the imposition of obligations is possible only in order to protect life, health, property or the environment, where these are threatened by the crisis situation; adequate compensation must be provided for these limitations. Limitations relate to the territory in which the crisis situation has been declared. Other limitations of rights and freedoms and the imposition of obligations cannot be distinguished any further.

57. The crisis situation can be terminated in two ways: either through the expiry of the period for which it was declared, or by decision of the responsible body before the expiry of this period.

58. The following rights and freedoms can be limited:

- Right to personal immunity and immunity of habitation during evacuation;
- Property and user rights;

- Freedom of movement and abode;

- Right to peaceful assembly;

- Right to operate business activity which would threaten the crisis measures enacted or interfere with or render impossible their implementation;

- Right to strike, if the strike would interfere with or render impossible rescue and clearance work.

59. As regards the limits for the obligations that may be imposed, the Crisis Act states that work obligation, work assistance or the provision of material aid can only be imposed if they cannot be arranged on a contractual basis, the concerned party places clearly inappropriate financial and time conditions on the crisis bodies, or refuses performance and in the meantime there is a risk of danger from delay. According to the type of crisis situation declared, the governor/mayor or the Government may:

- Order the evacuation of persons and property from the specified territory;

- Forbid the access, residence and movement of persons in specified places or areas;

- Decide on the imposition of work obligation, work assistance or the obligation to provide material aid in order to resolve a crisis situation;[30]

- Decide on the urgent completion of buildings, construction work, terrain modifications or the removal of buildings in order to alleviate or avert the threat;

- Order the mandatory reporting of a temporary change of residence longer than three days;

- Order the transfer of people in custody or serving a prison sentence to another prison, or forbid the free movement of these people outside the prison;

- Order the use of soldiers to execute crisis measures;

- Order the care of children and juveniles if this care cannot be performed by parents or legal guardians in a crisis situation;

- Ensure priority for stocks of children's and health equipment and armed security and fire rescue units;

- Adopt measures to protect State borders, and the residence of foreigners or persons without Czech nationality;

- Arrange an alternative means of deciding on social security benefits and their payment.

Crisis situations during the floods of 2002

60. A true test of crisis management and integrated rescue system in the Czech Republic came with the floods of 2002. In July 2002, the governors of the South Moravian region and the Vysočina region declared a state of risk for part of their regions. The spreading of the floods led on 12 August to the Prime Minister declaring a state of emergency for 5 of the 13 regions.[31] The Prime Minister declared the state of emergency with effect until 22 August 2002, i.e. for 10 days. The Government approved this measure on the following day.[32] Together with the declaration of the state of emergency, the Prime Minister also announced the following measures:

- The evacuation of individuals at risk in the affected and threatened territories;
- A prohibition on access to and residence in an affected or evacuated territory, with the exception of those persons who carry out rescue and liquidation work according to the instructions of the crisis teams;
- The possibility to impose work assistance and the obligation to provide material aid to resolve the crisis situation;
- The performance of building modifications and field work and the removal of buildings if essential for the alleviation or prevention of public threats;
- Mandatory reporting of temporary changes of residence;
- Use of persons obliged under civil service to carry out crisis measures.

With the exception of ordering work obligation, the floods of 2002 thus led to the maximum possible limitation of rights in a civil crisis situation according to national law, which also corresponds to the international legal commitments of the Czech Republic.

Other cases of limitation of rights

61. One of the first officials to declare a state of risk was the chairman of the district committee[33] of Děčín on 29 January 2002 on the grounds of the direct threat of a sandstone landslide on a residential area of the town of Hřensko.

62. There was also much debate about the limitation of individual's rights at the time of the NATO summit in November 2002, when neither a state of risk or other crisis situation was declared in individual parts of the capital city of Prague, neither preventive or subsequently. Despite this, certain local bodies adopted preventive measures in limiting individual's rights which required legal grounds. In the vicinity of buildings and areas occupied by the NATO summit participants, the police established a so-called security zone and asked local bodies to ensure the maximum limitation of the movement and residence of individuals in these security zones.

Article 5

Principle of preserving the achieved standard of rights, principle of a minimum standard of rights protected by the Covenant, prohibition of the abuse of rights protected by the Covenant at the expense of the rights of others

63. There were no changes in this area in the monitored period of 2000-2004. On the contrary, the change in the Constitution of the Czech Republic on the primacy of international treaties strengthened the protection of these rights from the moment that the Czech Republic adopts such binding instruments. When adopting commitments, Czech law must comply with the international treaty, i.e. it must at least not prevent the exercise of rights, unless these are already guaranteed by a higher standard of protection.

64. The principle of forbidding the abuse of specified limits and of investigating their bases and meaning is one of the basic principles of Czech law. It concerns the basic application rule both for the creation of the law and for application practice, including the exercise of individual rights. During the monitored period of 2000-2004 the Constitutional Court addressed these principles in reaching decisions on several dozens of cases. The vast majority of these concerned questions of accommodation, the fairness of fines stipulated in administrative proceedings and generally the right to judicial protection.

Article 6

Right to life (para. 1)

65. During the monitored period of 2000-2004 there were no changes in the Czech Republic in the protection of human life before birth. For almost 20 years, every pregnant woman has been able, without giving a reason, to request the artificial termination of a pregnancy up to the twelfth week. The woman's decision is not bound to any other consent, and the only reason to refuse to artificially terminate pregnancy is a threat to the woman's life in individual cases. Artificial termination of pregnancy is possible only for health reasons up to the end of the twentieth week of the pregnancy.

66. The doctor only requires the consent of the legal guardian to artificial termination of a pregnancy if the woman is younger than 16. If the woman is aged 16-18 the consent of the legal guardian is not required. In such cases, the legal guardian or the person responsible for upbringing are informed of the medical operation - the artificial termination of the pregnancy after it has been performed. Artificial termination of a pregnancy is therefore the only planned medical operation where the legal guardian's consent is not strictly required if the patient is under the age of 18, even though the medical operation is for health reasons. The major increase in contraceptive methods since the beginning of the 1990s means there has been a fall in the number of artificial terminations of pregnancies, both for health reasons and without health reasons.

67. A fundamental aspect is the payment of contributions to the public health insurance system. These can be used to pay for artificial terminations of pregnancies only if the termination is for health reasons. However, payments from public health insurance for medical

care are only available to those women who have permanent residence in the Czech Republic, regardless of their nationality, or, in the case of foreign women, who are economically active and who contribute from their earnings to public health insurance.[34] All women who ask for the artificial termination of their pregnancy without health reasons are obliged to pay for this medical service. A woman's nationality is only relevant with regard to the statistical monitoring of the number of artificial terminations of pregnancies. Information on nationality does not, however, make it possible to determine the numbers of foreign women who travel to the Czech Republic as tourists in order to undergo an artificial termination of their pregnancy.

Table 5

Number of artificial terminations of pregnancies, by nationality, 2000-2004

Number of artificial terminations of pregnancy/year			2000	2001	2002	2003	2004
Health reasons	Foreign national	to end 12th week	111	130	158	156	106
		to end 24th week	23	12	19	15	12
	Czech national	to end 12th week	5 871	5 324	4 894	4 611	4 065
		to end 24th week	467	553	535	603	530
	Total		6 472	6 019	5 606	5 385	4 597
	Of which to end 12th week		5 982	5 454	5 052	4 767	4 171
	Of which to end 24th week		490	565	554	618	542
Other reasons	Foreign nationals		1 959	2 028	2 115	2 005	1 671
	Czech nationals		26 192	24 481	23 421	21 908	21 306
	Total		28 151	26 509	25 536	23 913	22 977
Total	Foreign nationals		2 093	2 170	2 292	2 176	1 789
	Czech nationals		32 530	30 358	28 850	27 122	25 785
Total of all artificial terminations of pregnancy			34 623	32 528	31 142	29 298	27 574

68. In 2003, the lower chamber of Parliament began to debate a bill on cancelling the Act on the Artificial Termination of Pregnancy (No. 66/1986 Coll.). The purpose of the bill was to prevent the artificial termination of a pregnancy on the grounds that the conceived child had a right to life. The termination of an already conceived life would be possible only by a medical operation that was intended to save the woman's life. The bill included the introduction of culpability for performing an artificial termination of pregnancy and guarantee of impunity for a woman who asked for the artificial termination of pregnancy. The bill was, however, rejected at the very beginning of the approval procedure. The main reason was medical, as a prohibition on the artificial termination of pregnancy would not only result in an increase in crime from illegal artificial terminations of pregnancy, but also an enormous rise in female ill-health (hip inflammations, sterility, infertility, etc.) and a consequent major decline in the birth rate.

69. In the Czech Republic the protection of life is also provided for by the penal law in terms of crimes against life and health which may be committed intentionally (murder, murder of a newborn baby by the mother) and as a result of neglect or intentionally (harming health resulting in death). Death may also be the consequence of numerous other crimes.

Prohibition of the death penalty (para. 2)

70. There were no changes in the Czech Republic during the monitored period.

Article 7

Protection against torture and cruel, inhuman or degrading treatment or punishment (recommendations Nos. 14, 15 and 16)

Protection in criminal law against torture and cruel, inhuman or degrading treatment, and recommendation No. 14[35] concerning domestic violence

71. Protection against torture and cruel, inhuman or degrading treatment by a public authority (section 259a of the Penal Code) has not changed from the state described in the initial report. Likewise, there have been no changes in the legislation on the obligations and entitlements of police officers in dealing with other individuals concerning protection against torture. Neither was there any change in the concept of protection against torture and cruel, inhuman or humiliating treatment by private entities in the form of the crime of abusing a person in their charge (section 215 of the Penal Code).

Table 6

Survey of prosecutions for the crime of torture and other inhuman and cruel treatment (section 259a of the Penal Code), 2000-2004

Phase of criminal investigation/year	2000	2001	2002	2003	2004
Suspicion of committing a crime	-	-	1	-	-
Launch of criminal prosecution	-	-	1	-	-
Charges brought	-	-	1	-	-
Convictions	-	-	-	-	-
Acquittals	-	-	-	-	-

(Data from the Ministry of Justice; according to data from the Ministry of the Interior, however, in 2002 no one was prosecuted or charged.)

Table 7

Survey of prosecutions for the crime of abuse (section 215 of the Penal Code), 2000-2004

Phase of criminal investigation/year	2000	2001	2002	2003	2004
Suspicion of committing a crime	166	172	320	192	233
Launch of criminal prosecution	147	181	182	171	162
Charges brought	118	137	164	155	152
Convictions	75	83	102	95	104
Acquittals	26	14	18	40	35

72. Since 1 June 2004, instances of the so-called domestic violence have new merits of the case for the crime of abusing a person living in a shared apartment or house (section 215a of the Penal Code).[36] Offenders can be punished with a prison sentence of up to three years. If the crime has been committed in a particularly brutal manner, on several people, or if the offender persists in this behaviour for an extended period, he can be sentenced to up to eight years in prison.

73. The introduction of the case merits was accompanied by the need to broaden the list of aggravating circumstances to include people in a dependent status, such as juveniles under the age of 15, pregnant women, the seriously ill, people of advanced age or the infirm.[37]

74. This protection against torture and cruel, inhuman or degrading treatment on the part of private entities will in future have also to include special assistance in the health and social spheres.

Inspection and complaint systems - recommendation No. 16[38] concerning the setting up of an independent inspection body to look into wrongs committed by public authorities

75. The system for inspecting criminal and non-criminal behaviour by police officers and security officers is described in the Czech Republic's statement on recommendation No. 16, which the Committee obtained in 2002. Crimes committed by police officers have been investigated by public prosecutors since 1 January 2002, when a change in the Penal Code came into effect.[39] The Public Prosecutor's Office is not part of the Ministry of the Interior, but of the Ministry of Justice.

76. An agreement was concluded on assistance between the Chief Public Prosecutor's Office, the Police Headquarters and the Ministry of the Interior Inspection with the aim of preventing a dispute on the competence and powers involved in criminal proceedings and performing activities essential to fulfilling tasks in criminal proceedings concerning matters in which the public prosecutor acts against police officers. The subject matter of the agreement is a more detailed specification of the responsibilities for the actions involved in criminal proceedings and the performance of activities necessary for the fulfilment of tasks by bodies active in criminal proceedings, as well as the means by which these actions or activities are realized if they fall within the competence of a party to the agreement, particularly in cases where these actions or activities should be performed for a party to the agreement at its request.

77. The fulfilment of tasks relating to investigations and the supervisory activities of the Public Prosecutor's Office in criminal proceedings against police officers was complicated from the beginning by the lack of experienced public prosecutors. An essential precondition to the public prosecutor's activities was therefore the extensive assistance of the Ministry of the Interior Inspection. In many districts, the inadequate staff levels resulted in serious delays in investigations. The Chief Public Prosecutor stated that at present there are no fundamental problems in fulfilling the agreement on assistance in applying practice. According to information from the Chief Public Prosecutor there are no serious doubts on the expertise of public prosecutors who investigate crimes by police officers, nor on the quality of assistance between the investigating public prosecutors and the Ministry of the Interior Inspection and the impartiality of their procedure.

78. Investigations into non-criminal offences committed by police officers continue to fall within the competence of the complaints and inspection department of the Police Headquarters. Persons may also address their complaints concerning police behaviour to the ombudsman as an independent inspection body, with the exception of those cases where the police proceed as a body active in criminal proceedings. Under the Act on the Ombudsman (No. 349/1999 Coll.), this police role in criminal proceedings is outside the ombudsman's competence and comes under the supervision of the relevant public prosecutor (see above). In all its other activities, however, the police's activity falls entirely within the competence of the ombudsman. The complaints that the ombudsman receives, and which are directed at the police, are very wide-ranging and reflect the broad scope of police powers.[40]

79. As the initial report states in relation to the inspection of security officers, and the settling of complaints about their behaviour, security officers are employees of the municipality (municipal authority), and not a State body. For this reason, if involved in criminal proceedings their status is identical to that of other individuals. A non-criminal offence is thus dealt with directly by the mayor/chairman of the municipal authority, or the member of the council entrusted with the management of the municipal police, in the same way as a labour-law violation. The specification of procedure in settling complaints concerning security officers is thus within the competence of every municipality. The municipality is liable for any damage resulting from a violation by a security officer, i.e. injured parties should request compensation for damage from the municipality, and not from the relevant security officer.

80. All members of the Prison Service employed in the prevention and complaints section in remand prisons and prisons, and members of the Prison Service employed in the prevention section of the inspection department in the Prison Service's general directorate, including the manager of this section, are entrusted by Prison Service bodies with performing police actions in fulfilling tasks in criminal proceedings, and in their investigations proceed like police bodies under the Code of Criminal Proceedings.

81. Like the relevant police body, these members of the Prison Service investigate suspicions of criminal activity among Prison Service members in individual prisons, apart from the director, deputy director and the manager of the prevention and complaints section. Criminal acts of which the aforementioned people are suspected, i.e. the director, deputy director and the manager of the prevention and complaints section in individual prisons, are investigated by the prevention section of the general directorate's inspection department. Cases of suspected criminal behaviour by a member of court security or a member of an escort are investigated by employees of the prevention and complaints section of the prison where the Prison Service member was employed.

82. When criminal proceedings are launched with the aim of clarifying and verifying facts suggesting that a crime has been committed, the police body shall immediately draw up a record in which it states the factual circumstances for which it is launching the procedure, and how it came to learn of them. Within 48 hours of launching the criminal proceedings, it shall send a copy of the record to the public prosecutor and also inform the inspection department of the Prison Service's general directorate.[41]

83. The directors of remand prisons and prisons are responsible for the reception, recording and the correct and timely settlement of complaints of a non-criminal character against members of the Prison Service. The director general performs this procedure with regard to employees of the Prison Service general directorate. As the director general and prison directors can entrust the investigation into complaints to other employees, they entrust this responsibility, as in the case of criminal misconduct, to employees from the prevention and complaints section in prisons and remand prisons, and employees from the complaints section of the inspection department at the general directorate in the Prison Service. All the aforementioned directors follow this method to settle complaints against their own staff; in the event that another employee has been entrusted with the investigation, decisions on complaints are made by their subordinates.

84. Between 2000-2004, there were no changes in the rules on settling complaints (neither by Government decree nor by an instruction of the director general). Within the Ministry of Justice, inspections in the Prison Service are carried out by the general inspection department (prison section) and the internal audit section.

85. The Czech Republic is preparing to set up a system of external and independent inspections of places that contain or may contain persons who are deprived of their freedom or whose freedom has been limited, regardless of whether the individual's legal regime has been established by a formal decision of a public authority, or whether the limitation of freedom comes as a result of being dependent on the provision of care. The inspection should be performed by the ombudsman. The amendment to the Act on the Ombudsman broadens his material and staff powers to make systematic preventive visits, during which he will ascertain how individuals are treated. The authorization to perform visits should relate not only to facilities run by a public authority (usually prisons, hospitals, facilities for aliens, police cells), but also facilities run by private entities (e.g. social care institutions and hospitals). Here, the Czech Republic proceeds from the principle of the admissibility of tolerated illegal actions by the State, for the State's commitment to prevent torture and inhuman or degrading treatment or punishment is not limited to the State/public sphere. The aim of the proposed amendment is to strengthen the protection of persons placed in a variety of facilities from torture and cruel, inhuman or degrading treatment.[42]

Dignified treatment of people resident in social care institutions and health institutions

86. People residing in various types of social care institutions, and people who are hospitalized, can be seen sui generis as people with limited freedom. It is therefore essential to pay special attention to respecting their human dignity. The Czech Republic does not have a unified or any other system governing these people's rights and obligations which would also include an inspection system. The situation regarding social care institutions should be resolved by extending the ombudsman's agenda, as well as by preparing a social services act that would include an inspection mechanism for respecting chiefly the rights of people in these social institutions.

The involvement of individuals in medical and scientific research

87. In the Czech Republic, scientific research on people is performed according to the rules of providing medical care. If the research is financed from public budgets the decision on their provision is made by the Ministry of Health or its internal grant agency on the basis of an application for research project financing.

88. People for research are most commonly selected from the ranks of patients whose illnesses and medical treatment correspond to the matters being studied. If healthy individuals are required for the research group to act as a control group, these are usually selected from healthy volunteers. The reasons for excluding people from the research or control group may be that their ailment/illness does not correspond to the study's needs, or because their state of health is not such that they could be included in the control group of healthy people. Other reasons may be age, the locality in which they live, employment, sex, etc.

89. People in both the research and control groups must give in writing their detailed and informed consent to their participation in the research. For research financed from public budgets the informed consent proposal is always investigated by the Ministry of Health's internal grant agency where a research project on people is part of a project. The quality of the informed consent is first judged according to whether the proposal accords with the problem being studied and whether it fully and correctly informs individuals of the priorities and possible risks of the investigation. If the informed consent lacks substantiation the project will be rejected.

90. The instruction includes chiefly information on the research goals and reasoning on why the person examined should be included in the group of monitored people. The instruction must also include a description of all procedures and acts that will be performed on the individual, and the benefits to be gained from inclusion in the group, as well as any potential risks. In the research itself, the specific instruction on the measure performed is usually made by a doctor, who is in direct contact with the individual from the research or control group.

91. In cases that negatively affect a person's health compensation should be sought through the courts, either in civil proceedings for compensation for damage, or in criminal proceedings.

Recommendation No. 15[43] on police behaviour towards minorities, above all ethnic minorities and foreigners

92. In relation to police work with minorities, the Ministry of the Interior and the police have since 2003 implemented the National Strategy for Police Work with National and Ethnic Minorities.[44] The strategy introduces in police structure three basic preventive instruments for police work with minorities:

(a) Police activity plan in relation to national and ethnic minorities;

(b) Contact officer for issues of minorities;[45]

(c) Police assistant for work in socially excluded Roma communities.

All these mechanisms exist to help the police communicate more effectively with minority communities and better solve chiefly latent criminality, which directly affects minorities. They should also help improve the trust between the police and minorities, and prevent racial and ethnic stereotypes, xenophobia and intolerance inside the police.

93. The contact officer is an employee specialized in the field of police work with minorities. His main task is to mediate contact and communication between minorities and the police. He should assist in resolving possible conflicts and serious offences connected with the life of minorities and offer members of minorities help in solving specific problems. He also acts as a consultant in resolving all matters that, from a police perspective, concern minorities.

94. In areas with large minority populations the work of contact officers for minorities can be supplemented by the so-called police assistants who specialize in working in socially excluded localities populated chiefly by people with ethnic minorities. Police assistance is a range of services that enable the inhabitants of socially excluded localities to contact and communicate with the police. The aim of the police assistants' work is to help the police eliminate crime connected with the lives of inhabitants from socially excluded localities, covering both crime of which these societies are victims and crimes that they themselves commit.

95. In addition to these practical measures, the police also focus on educating police officers on working with minorities, with training both for new recruits and police officers in active service. Special courses are organized for police officers who work in regions with large minority populations. A priority for the next two years will be training police management.[46]

Article 8

Protection against servitude and slavery (paras. 1 and 2)

Recommendation No. 13[47] - human trafficking

96. For the Czech Republic, human trafficking is a relatively new phenomenon. During the 1990s, the Czech Republic changed from being a source country for human trafficking, gradually becoming a target country. Trafficking in people (above all women) and organized prostitution are chiefly the concern of Russian-speaking and Bulgarian groups, which are active throughout the Czech Republic, most often along the border with Germany and Austria, as well as in Prague. In recent times, the police have recorded an increase in the number of women from Eastern Europe[48] as well as Viet Nam and China, who are forced into prostitution in the Czech Republic, or are transported through the Czech Republic to other countries in Europe.

97. In the Czech Republic in November 2002, the Project for the prevention, suppression and punishment of trafficking in people, particularly women and children (hereinafter the "Project"), was officially launched. The Project was designed by the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention for the Czech Republic and Poland as a part of the Global Programme against Trafficking in Human Beings. The aim of the programme was, inter alia, to gather data on human trafficking in the Czech Republic, assess the effectiveness of adopting measures and evaluate the level of institutional cooperation in countries of origin and transit and target countries. The data collected helped in the development of a system for protecting victims and witnesses of human trafficking in the Czech Republic. Its introduction is expected to improve the prevention, investigation and prosecution of this crime.

98. In September 2003, the Czech Republic adopted the National Strategy for Combating Trafficking in Human Beings for Sexual Exploitation. The document is the first comprehensive material on human trafficking to be adopted at a governmental level, and contains a report on the situation concerning such trafficking in the Czech Republic and a list of measures that the Government should implement in this respect. It also includes the Programme Support and Protection Model for Victims of Human Trafficking, which was tested as part of the Project from March 2003 to May 2004.[49]

99. The Programme for the Support and Protection of Victims of Human Trafficking[50] is contained in the National Strategy to Combat Human Trafficking. The system for supporting and protecting victims of human trafficking is currently in its third year in the Czech Republic, and so far more than 30 victims have been included in it. The Programme's aim is to provide all-round support to victims of human trafficking and to help bodies active in criminal proceedings to detect criminal activity and prosecute the offenders.

100. Victims who live illegally in the Czech Republic are issued by the Aliens Police with temporary visas for the duration of the criminal proceedings against the offenders. After the end of the criminal proceedings, the victim may obtain permanent residence on humanitarian grounds. Victims issued with these temporary visas may work and have access to health care paid for from public funds.

101. All victims included thus far in the Programme have cooperated with bodies active in criminal proceedings, and some of them have also appeared as witnesses in court. One of the victims obtained permanent residence in the Czech Republic on humanitarian grounds. A problematic issue is the practical application of the monthly time limit in which the victim must decide whether to cooperate with the relevant bodies. This question should receive greater attention in the future.[51]

102. As part of the preparation of the National Strategy for Combating Trafficking in Human Beings for Sexual Exploitation the police carried out research with the aim of ascertaining the dynamics in the development of prostitution and related phenomena. They focused particularly on street prostitution and prostitution offered in night and erotic clubs. All other forms of prostitution are far more difficult to chart.

103. The street prostitution scene in the Czech Republic is changeable and not homogeneous. It occurs practically all over the country. The street prostitution scene is practically uncontrollable. With very few exceptions, prostitutes are in the power of pimps. Many of these women are definitely trafficked not only from abroad to the Czech Republic and vice versa but also within the territory of the Czech Republic. Prostitutes come from an ever broader range of countries. In addition to women who are Czech nationals, erotic clubs also contain a high percentage of foreign women. Some nightclubs are ethnically homogeneous and specialize in girls/women from specific regions and countries. In addition to street prostitution and prostitution in clubs, so-called hotel and apartment prostitution is becoming increasingly widespread, as is escort service prostitution, where girls/women are taken to apartments, guest houses and hotels according to the client's prior order.

104. The actual number of offenders involved in the trafficking of people and children (sections 246 and 216a of the Penal Code) is difficult to monitor as human trafficking is prosecuted under several other provisions of the Penal Code, e.g. the crime of pandering, kidnapping, harming somebody's health, blackmail, limiting somebody's freedom, deprivation of freedom, abducting somebody abroad and others. The statistics kept by the courts and public prosecutors on human trafficking (sect. 246) and trafficking in children (sect. 216a) help us determine how many offenders trafficked women aged over 18, and female children under 18. The statistics do not, however, monitor whether they are trafficked for the purpose of prostitution to foreign countries or from abroad.

105. Issues of human trafficking figured prominently in the amendment to the Penal Code (No. 134/2002 Coll.) from July 2002. The amendment introduced a change in the definition of the case merits of the crime of human trafficking. The crime's case merit has been expanded so as to protect not only women but also other individuals. The new definition also introduces the term "sexual trafficking". This applies only to trafficking for sexual purposes and thus does not cover trafficking for other purposes, such as forced labour, slavery, practices similar to slavery or removing bodily organs. Compared to the previous legislation, which only considered trafficking from the Czech Republic abroad to constitute trafficking, the new definition punishes both trafficking abroad and from abroad. It does not, however, cover human trafficking in the Czech Republic. The current definition of the crime of human trafficking is thus not in accordance with the internationally accepted definition of human trafficking. This shortcoming should be remedied by the new Penal Code, which also contains a term for another form of exploitation.

106. At present, an Act on the Regulation of Prostitution is being prepared, the main aims of which include separating legal and illegal prostitution and making it easier to identify people who are abused and trafficked. It is very difficult to separate voluntary prostitution from forced prostitution as people prostituting themselves are for various reasons extremely reluctant to tell the police anything. The importance of such legislation in combating human trafficking and forced prostitution is clear - effective State regulation, backed up by the crucial strengthening of police powers and those of other authorities should eliminate the space for criminal activity in this field.

Prohibition on forced labour (para. 3)

Compulsory work in crisis situations

107. Since 2000, an entirely new integrated rescue system has existed in order to resolve the so-called crisis situations. If a certain level of crisis is declared all individuals can be required to provide work assistance and mandatory labour.[52]

108. After declaring a state of emergency in 2002 because of the floods, the Government decided to employ the army for rescue purposes. In all, 8,000 soldiers were employed, together with military technology. Six military rescue units are included in the integrated rescue system in order to help in remedying the consequences of natural disasters, transport accidents and other unforeseen events. Every year, these military units intervene in roughly 50 incidents, and their members perform this work as their profession.

Cancellation of civilian service as a result of the introduction of a professional army

109. The introduction of a professional army has led to the cancellation of civilian service as an alternative for those who on grounds of conscience or faith refuse to perform military service.

110. General military duty was retained outside peacetime, i.e. at times of threat to the State and at times of war. Those who refuse to fulfil their military duty are liable for work duty according to the Act on the Defence of the Czech Republic (No. 222/1999 Coll.). The Act defines work duty as "the duty of natural persons for essential periods to perform specific work tasks, which are necessary to ensure the State's defence at a time of risk to the State or in time of war, and which these natural persons are obliged to perform in the place and according to the

needs of ensuring the defence of the State and beyond the working hours stipulated in labour-law relations". Under the new Defence Act (No. 585/2004 Coll.), work duty is, however, addressed to all those who refuse military service.

111. The only court case partly concerning the prohibition on forced labour was a case of 40 soldiers performing basic military service. Since 2003, these have sought payment from the Ministry of Defence of the minimum remuneration for work for every month of service in the armed forces reduced by the salary paid thus far. They base their claim on the need to secure the minimal living standard for them and their families throughout the period of military service, and stated that their activity in the armed services does not chiefly concern training to defend the country, but is rather work securing the internal running of the armed services, for which the remuneration for the scope of their work is clearly disproportionate to the minimum remuneration guaranteed by law.[53]

112. The court of first instance and the appeal court rejected their request for remuneration in the amount of the minimum wage on the grounds that in addition to their salary, the State also provided them with food, accommodation, clothing and transport costs, thereby ensuring for them an adequate standard of living. The soldiers lodged an appeal with the Supreme Court (extraordinary legal remedy).

Work performed by prisoners

113. Work performed by prisoners is voluntary, and prisoners cannot be forced to work as part of their sentence, i.e. without right to remuneration for work, or required to work as an obligation even with remuneration. During the monitored period of 2000-2004, there was still insufficient work for those prisoners who are able to work.

114. Work for prisoners is organized by the individual prisons. Work placement forms part of the prisoner treatment programme. Prisoners are placed in work by a committee made up of expert employees from the prison. Prisons allocate prisoners to work not only in view of their expert skills and knowledge, but also so that the work corresponds to their state of health. The following types of work were arranged for prisoners:

- Internal prison operations (kitchen, laundry, etc.);
- Prison manufacturing work areas and outlets of economic activity;
- On the basis of a contract with parties who are interested in prisoner's work and offer them employment.

115. Remunerated work is important for prisoners as they can earn money needed to compensate damage that occurred from the crime for which they were convicted, and to pay for their stay in prison.[54]

Article 9

Right to freedom and personal security (para. 1)

116. In Czech law, the limitation of an individual's freedom is recognized chiefly in criminal law. It is usually punished by detention or imprisonment, protective treatment and protective

education, deprivation or limitation of freedom by police bodies or disciplinary punishment in the army.[55] This does not include situations where persons are placed in various institutions de jure more or less voluntarily, whether due to their personal situation (age, health, physical or mental handicap) or to measures implemented by the institution limiting their freedom de facto.

Table 8

Survey of places containing people with limited freedom de facto or de jure, type of inspection and definition of their legal status inspection

Institution/place containing persons deprived of freedom or with limited freedom	Reason for deprivation/ limitation of freedom		Inspection body		Act regulating legal status of persons with limited/ deprived of freedom, or also external inspection
	Formal	Actual	Internal	External	
Police cell (Ministry of the Interior)	● Detention	-	Police bodies and Ministry of the Interior*	Ombudsman	Conditions: ● Police Act Inspection: ● Act on Ombudsman
	● Detainment ● Arrest ● Delivery to place of imprisonment		-	-	Conditions: ● Penal law ● Police Act Inspection: Not legislated
Police stations (Ministry of the Interior)	● Attendance (identity verification, explanation)	-	Police bodies and Ministry of the Interior*	Ombudsman	Conditions: ● Police Act Inspection: ● Act on Ombudsman
	● Limitation of freedom of movement of aggressive people		Same inspection bodies	Same inspection body	Conditions and inspection: Same laws
Remand prisons (Ministry of Justice)	● Decision of criminal court on custody in criminal proceedings	-	● Public prosecutor ● Prison Service	● Ombudsman ● Body for the social and legal protection of children**	Conditions: ● Act on Custody Inspection: ● Act on Public Prosecutor ● Act on Ombudsman ● Act on Social and Legal Protection of Children ● Act on Custody
	● Decision of criminal court on custody based on sentence of judicial deportation		Same inspection bodies	Same inspection bodies	Conditions and inspection: Same laws

Table 8 (*continued*)

Institution/place containing persons deprived of freedom or with limited freedom	Reason for deprivation/ limitation of freedom		Inspection body		Act regulating legal status of persons with limited/ deprived of freedom, or also external inspection
	Formal	Actual	Internal	External	
Prisons (Ministry of Justice)	● Decision of criminal court to impose a prison sentence	-	● Public prosecutor ● Prison Service	● Ombudsman ● Body for social and legal protection of children**	Conditions: Act on Imprisonment Inspection: See remand prisons
Facilities for the Detention of Foreigners (Ministry of the Interior)	● Decision of Foreign Police (administrative body) on detention before administrative deportation	-	Police bodies and Ministry of the Interior*	Ombudsman	Conditions: Aliens and Immigration Act Inspection: Act on Ombudsman
	● Extension if an application lodged for asylum before administrative deportation		Same inspection body	Same inspection body	Conditions and inspection: Same laws
Asylum facilities (Ministry of the Interior)	● Quarantine in reception asylum facilities	Actual impossibility of accommod-ation outside asylum facility	Police bodies and Ministry of the Interior*	Ombudsman	Conditions: Asylum Act Inspection: Act on Ombudsman
	● Rejection of private accommodation after transfer to residential asylum facility		Same inspection bodies	Same inspection body	Conditions and inspection: Same laws
Social care institutions (Ministry of Labour and Social Affairs)	● Judicial decision on protective or institutional education in a social care institute	Dependence on provided care	Administrative bodies of the individual facilities***	-	Conditions and inspection: No legislation
Health facilities (Ministry of Health)	● Placement in health facility against the person's will	Dependence on provided care	Administrative bodies of the individual facilities****	Ombudsman only for people for whom the court has ordered protective treatment	Conditions and inspection: No legislation
	● Court decision on grounds for placement in a health facility				Conditions and inspection: No legislation
	● Court order for institutional protective treatment				Conditions: No legislation Inspection: Act on Ombudsman

Table 8 (*continued*)

Institution/place containing persons deprived of freedom or with limited freedom	Reason for deprivation/ limitation of freedom		Inspection body		Act regulating legal status of persons with limited/ deprived of freedom, or also external inspection
	Formal	Actual	Internal	External	
Education facilities (Ministry of Education, Youth and Sport)	● Court decision on protective education including order of precautionary measure	Decision of legal guardian	● Bodies of administrators of individual facilities**** ● Czech School Inspection	● Ombudsman ● Public prosecutor ● Body for the social and legal protection of children only in relation to specific children	Conditions: ● Act on institutional or protective education ● Act on Social and Legal Protection of Children ● Education Act Inspection: ● Act on institutional or protective education ● Act on Public Prosecutor
	● Court decision on protective education including order of precautionary measure			Same inspection bodies	Conditions and inspection: Same laws
Military prison (Ministry of Defence)	● Imposition of disciplinary prison sentence	-	Inspection of the Ministry of Defence (Chief Inspector for the Protection of Human Rights)	● Ombudsman	Conditions: Partly the Act on Military Service Inspection: Act on Ombudsman

* Internal inspection mechanisms in the Ministry of the Interior function in parallel inside the police and the Ministry of the Interior. However, they focus on general inspections and do not address in greater detail the legal status of persons deprived of or limited in freedom.

** The body for the social and legal protection of children performs only a limited inspection: for juveniles in custody and imprisoned, and for children who are cared for by their mother in custody or who are imprisoned.

*** Under his inspection powers over the Ministry of the Interior, the ombudsman performs inspections of institutions for detaining foreigners and asylum institutions. The management of refugee institutions, which are run by asylum institutions and the police, which runs institutions for detaining foreigners, are subordinate to the Ministry of the Interior.

**** These internal inspections, performed usually by the institution's administrator (region, municipality, Ministry - see introduction) are however used to inspect health and hygiene rules and the financial management, although not to inspect the observance of the legal status of persons who reside in the institutions.

117. The Czech Republic does not have a body that would perform a systematic external inspection of places that contain persons deprived of or limited in freedom, and which would also be independent.

Problems of external independent inspections of places that contain persons deprived of or limited in their freedom

118. Under the Act on the Public Prosecutor's Office (No. 283/1993 Coll.) the Public Prosecutor's Office supervises the observance of legal regulations (not only acts) in the following places: for custody, imprisonment, protective treatment, protective or institutional education, and other places where personal freedom is legally limited. The Public Prosecutor's Office supervises certain places where it inspects the observance of legal regulations.

119. With the exception of social care institutions and health facilities, the ombudsman's activities also take in places where persons may be deprived of their freedom. As an inspection body, the ombudsman is entitled to talk to persons deprived of and limited in their freedom without the presence of other people.

120. One of the few places that is subject to inspection both by the Public Prosecutor's Office and the ombudsman is educational facilities providing institutional or protective education. The conditions for this type of deprivation or limitation of freedom are stipulated by the Act on Institutional or Protective Education in Educational Facilities (No. 109/2002 Coll.). If, however, institutional or protective education takes place in social care institutions, the Act, and particularly its provisions on the rights and obligations of these people/charges and on the conditions for residing in educational facilities, do not apply. As a result, neither does the supervision of the Public Prosecutor's Office apply, with the exception of the mandatory supervision of the body for the social and legal protection of children over institutional or protective education, if this is performed in social care institutions, although again only in relation to specific children and not the whole institution.

Grounds for general deprivation or limitation of freedom by police officers under the Police Act

121. In these cases the limitation of freedom is relatively brief, which means it should not exceed 24 hours for non-punitive limitation and 72 hours for punitive limitation.[56] This is why there are lower demands on conditions of deprivation or limitation of freedom in police stations, including police cells, than in institutions where people are subjected to longer deprivation or limitation of freedom.

122. As an individual may thus be deprived of or limited in freedom in police stations, including cells, both for punitive and non-punitive purposes, the information on the grounds for non-punitive intervention in a person's freedom is stated here, and information on reasons for punitive intervention are given in the text to paragraph 2. An individual may be deprived of or limited in his freedom in a police station, including being placed in a police cell outside criminal proceedings and custody or imprisonment in the following cases:

- Attendance in order to issue an explanation - Section 12 of the Police Act (No. 283/1991 Coll.);

- Attendance in order to verify identity - Section 13, paragraph 5, of the Police Act;
- Restricting the movement of an aggressive person - Section 16 of the Police Act;
- Detention - Sections 14 and 15 of the Police Act.[57]

123. Since 2002, the amendment to the Police Act[58] has expanded the reasons (sect. 14) why a police officer can detain someone by placing him in a police cell. In addition to detention due to the fact that the individual directly threatens his own or other people's lives and health, threatens property, tries to escape during attendance and damages or defiles the police station premises, or insults other people in the police station, the individual may, regardless of age, be detained if apprehended when committing an act that may be considered a misdemeanour, or in the case of a child under 15, for behaviour that has the signs of a crime. In both new cases, the condition must be fulfilled that there is good reason to believe that the individuals will continue in this unlawful behaviour or will impede the detection of the incident. If a juvenile aged 15 to 18 is detained, the police are obliged to inform the legal guardian, which is usually a parent or other person who is responsible for the child's upbringing. If the detained child is under the age of 15, police officers shall inform not only the legal guardian but also the body for the child's social and legal protection.[59] In all cases the police is obliged to write an official report on the detention. The law of the Czech Republic does not state the method of informing the detained person of the reasons for his detention.

124. Police officers restrict the movement of an aggressive person by handcuffing them to an appropriate object for a maximum of two hours. Someone whose freedom has been limited in this way usually is not placed in a police cell.[60] Neither can a person attending in order to issue an explanation be placed in a police cell, unless he tries to escape during the attendance.[61] A protocol on the issuing of an explanation must be written immediately and after it has been finished the police must release the individual concerned. Compared with placing someone in a police cell, both cases could therefore involve far shorter limitations of freedom (not lasting more than a few hours). Since the Police Act regulates conditions of residence only for people placed in police cells the legislation does not apply to these two types of limitation of freedom.

Reasons for placing somebody in a facility for the detention of foreigners before their administrative deportation

125. The building of facilities for the detention of foreigners led to sharp criticism from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its inspection visit to the Czech Republic in 1997. This international inspection body commented above all on the conditions for detaining foreigners before their deportation in police cells, where there was no daily regime whatsoever and no legislation concerning the rights of the detained people.[62] The detention of foreigners before their administrative expulsion thus took place under the same legal regime as for people placed in a police cell. Since the beginning of 2000, the Aliens and Immigration Act (No. 326/1999 Coll.) has thus included both the formal existence of facilities for the detention of foreigners and the rights and obligations of persons placed in them, as well as the rights and obligations of staff.

126. Police issue a decision in administrative proceedings on the placement of a foreigner in facilities for the detention of foreigners before their administrative deportation. However, the foreigner may be placed in the facility from the time he is delivered a written decision on the administrative deportation, or if he refuses to accept the decision. A foreigner may be detained for purposes of administrative deportation only if there is a risk that he will threaten the security of the State, present a serious risk to public order or frustrate or impede the enactment of the decision on administrative deportation. The detention may not exceed 180 days from the time the individual's personal freedom is limited. The detained foreigner must be informed of the possibility to submit a petition for a judicial review of the legality of his detention. In the proceedings, the court decides on the duration of the detention or orders the person's release if the grounds for detention are dismissed. The foreigner is entitled to submit the petition at any time during the course of the detention, and to do so repeatedly. The detention must be terminated, even without a court decision, if the reasons for the foreigner's detention cease to exist.

127. From the beginning of 2000 to 30 June 2001, the police were obliged to instruct foreigners in their native language or a language which they could understand. If this was not possible, the police would omit the task and write a report on the matter. With effect from 1 July 2001, the amendment to the Aliens and Immigration Act (No. 140/2001 Coll.) regulated the police's obligation so that instead of not offering instruction and recording this fact in a report, the police now have to instruct foreigners formally by giving them a text on instruction in the following languages: Czech, English, French, German, Chinese, Russian, Arabic or Spanish. Since 2003, the Foreign Police also informs foreigners of the possibility of a judicial review of the legality of their detention, of the possibility of submitting a petition for the launch of proceedings for their release from detention and of submitting an asylum request in the detention facility for foreigners. The Foreign Police carry out these tasks by means of the "Information for Foreigners", which comes in a variety of languages.[63] This measure means foreigners are better informed about their procedural rights. During the monitored period of 2000-2004, the decision (its form) on placement in a strict regime was not available in writing, and foreigners were not informed of the reasons that led to the decision.[64]

Reasons for placing people in asylum facilities

128. Since 1 January 2000, asylum-seekers have not been obliged to reside in asylum facilities throughout their asylum proceedings, and do not need the Ministry of the Interior's agreement to leave the facilities. After completing identification, medical examination and quarantine the asylum-seeker may leave the asylum facilities and apply for residence outside. The facility is only obliged to report this.

129. Since the beginning of 2004, the Czech Republic has been preparing an amendment to the Asylum Act (No. 325/1999 Coll.),[65] which responds to the EU directives and Protocol on providing asylum to citizens of EU member States.[66] This excludes from asylum proceedings all citizens of EU member States, and suspends asylum proceedings on grounds of the inadmissibility of the request. An asylum-seeker is thus obliged to remain in asylum proceedings until being transported to the EU member State that is due to consider his application.[67]

130. Like other States, the Czech Republic has to arrange care for children-asylum-seekers not escorted by a legal guardian, as well as other children-foreigners not escorted by a legal guardian. In 2002, a concept was prepared for the placement, education and upbringing of children with a language barrier, including asylum-seekers-minors not escorted by a legal guardian.[68]

131. Its main purpose is to create a comprehensive and appropriate system for caring for these children which would prepare them for possible permanent integration in Czech society. In June 2004, operations began of a special facility for the institutional and protective education of children-foreigners. The facility is part of the system of facilities for institutional and protective education.

Table 9

Survey of the number of asylum-seekers under the age of 18 unaccompanied by an adult relative

Monitored item/year		2000	2001	2002	2003	2004
Number of asylum-seekers under 18 without an escort	Total	446	364	283	157	94
	Under 15	31	43	14	26	7
	15-18	415	321	269	131	87
Submission of asylum requests in facilities for the detention of foreigners	Total	265	127	124	60	54
	Under 15	14	9	4	1	0
	15-18	251	118	120	59	54
Submission of asylum requests in asylum facilities	Total	178	237	158	90	35
	Under 15	14	34	10	20	5
	15-18	164	203	148	70	30

Reasons for placing and holding a person in a health facility against their will

132. Between 2000 and 2004 there were no changes in the grounds, approach or conditions for placing and holding a person in a health facility against their will. From 2001, the reasons for placing a person in institutional health care expanded[69] to include people infected by a human immune deficiency virus, people with abdominal typhoid and para-typhoid, or people with chronic viral inflammation of the liver type B and C.

133. Following the decision of a criminal court, health facilities can also contain people for whom the court has ordered institutional protective treatment. This the criminal court orders alongside or in place of a sentence if it finds that the convicted person's personality will be better served by such treatment rather than a sentence. This is commonly the case for persons who are not able to bear the consequences of their criminal behaviour, or who committed a crime in a state of reduced responsibility. However, the criminal court cannot impose protective treatment if the convicted person's reduced state of responsibility was due to having taken an addictive substance, either intentionally or unintentionally.

134. Under the decision of a civil court, individuals are placed in health facilities if they have been limited in or deprived of their legal capacity[70] due to their excessive use of narcotic substances. The court only orders treatment in cases where treatment can be expected to positively affect the person's state of health in such a way that he does not have to be limited in or deprived of legal capacity.

Grounds for placing a child in protective or institutional upbringing

135. A child may be placed in an educational facility either under the decision of its legal guardian or by decision of a court. The first case involves the child's actual limitation by decision of the guardian (usually parents); while the second case involves the formal limitation by a court, either criminal or civil. The court either orders institutional upbringing or imposes protective education. The court will order institutional education in cases where this is in the child's interest, usually in cases of an unsuitable family environment.

136. The court imposes protective education within criminal proceedings as a protective measure under the Act on Juvenile Responsibility for Unlawful Acts and on the Judiciary in Juvenile Matters (No. 218/2003 Coll.) in the event that the imposition of institutional education is not sufficient. Protective education has rather the character of a sanction.

Table 10

Survey of the number of children with institutional and imposed protective education

Monitored item/year*	2000/01	2001/02	2002/03	2003/04	2004/05
Number of children with ordered institutional education	6 097	5 930	6 012	5 970	6 354
Number of children with imposed or protective education	97	93	86	84	94
Number of children placed in educational facilities by decision of the legal guardian	75	84	62	45	63
Number of children in educational facilities - total	7 333	7 222	7 270	7 205	7 590

* Data is not available for the calendar year but for the school year, which in the Czech Republic lasts from 1 September of the calendar year to 30 June of the following calendar year.

Imposition of disciplinary prison sentence

137. A disciplinary prison sentence is a specific punishment of a limitation of freedom as in the monitored period 2000 to 2004 it could be imposed by a superior officer on a soldier performing military service.[71] It was an administrative, not a judicial decision which could limit freedom for up to 14 days. A disciplinary prison sentence could only be imposed on soldiers in

basic military service for up to 14 days, and on reserve soldiers on military training for up to 4 days; a disciplinary prison sentence could under no circumstance be imposed on female soldiers. Neither can a disciplinary prison sentence be imposed on soldiers - members of a professional army. Even before the beginning of 2003 a soldier could appeal against the imposition of a disciplinary prison sentence when the full system of administrative justice began to function in the Czech Republic, although this only involved the review of the legality of the procedure by which the disciplinary prison sentence was imposed. During the monitored period 2000-2004 no administrative complaint was lodged against the decision to impose a disciplinary prison sentence. Disciplinary prison sentences were served in military prisons set up in ordinary military units.

Table 11

Survey of the number and total capacity of military prisons, 2000-2004

Monitored item/period	1.1.2000-30.4.2003	1.5.2003-30.9.2003	1.10.2003-31.3.2004	1.4.2004-30.9.2004	1.10.2004-31.12.2004
Number of military prisons	25	11	9	6	1
Total capacity of military prisons	230	100	78	49	10

Table 12

Survey of the number of disciplinary prison sentences imposed, 2000 to 2004

Monitored item/period	2000	2001	2002	2003	2004
Number of prison sentences imposed	Data not available	2 300	1 915	549	136
Average length of prison sentences imposed (in days)		4.2	3.5	2.7	2.06
Proportion of prison sentences to total number of sentences (in %)		13	10	8	2

Protection of personal freedom in criminal law

138. Like many other rights and freedoms, personal freedom also enjoys protection in criminal law. The Penal Code covers both the limitation of personal freedom (sect. 231) and deprivation of personal freedom (sect. 232). However, the actual deprivation or limitation of freedom also occurs in the commission of many other crimes, which is why the person found guilty is commonly also convicted for other criminal acts (so-called parallel crime).

Table 13

Survey of prosecutions for the crime of limiting personal freedom (section 231 of the Penal Code) for the period 2000-2004

Stage of criminal investigation/year	2000	2001	2002	2003	2004
Suspicion of committing a crime	0	0	0	0	0
Launch of prosecution	0	0	0	0	0
Bringing of charge	1	1	0	0	0
Conviction	0	0	2	0	0
Discharge	0	0	0	0	0

Table 14

Survey of prosecutions for the crime of depriving a person of their personal freedom (section 232 of the Penal Code) for the period 2000-2004

Stage of criminal investigation/year	2000	2001	2002	2003	2004
Suspicion of committing a crime	0	0	0	0	0
Launch of prosecution	0	0	0	0	0
Bringing of charge	1	1	0	0	0
Conviction	0	0	2	0	0
Discharge	0	0	0	0	0

Informing persons deprived of or limited in their freedom (para. 2)

139. For purposes of criminal matters, a person may be deprived of or limited in his freedom by being placed in a police cell in the following cases:[72]

- Detention - Sections 75 and 76 of the Code of Criminal Procedure (No. 141/1961 Coll.);
- Arrest - Section 69 of the Code of Criminal Procedure;
- Transportation to serve a prison sentence - Section 321, paragraph 3, of the Code of Criminal Procedure;
- Escort from custody or prison by police officer to perform procedural acts.

140. The period and content of instructions for a person deprived of or limited in their freedom by the police depends on whether the police act in the criminal proceedings, i.e. whether the person has been detained or arrested, or whether it concerns the limitation of a person's freedom outside criminal proceedings through their detention in a police cell or their essential presence at a police station, e.g. to ascertain identity.

Instruction by the police of the rights and obligations of persons deprived of or limited in freedom, communication of the reasons for the intervention in personal freedom and information on recommendation No. 17 concerning people who have been detained[73]

141. Instruction on procedural rights of persons placed in a police cell and whose freedom has otherwise been limited comes before the beginning of questioning, both for the police approach in criminal proceedings and outside such proceedings, irrespective of whether the person questioned has limited freedom (detention, arrest), or is only submitting an explanation. Documentation of the instruction forms part of the file and is thus viewable. The fact that the instruction on rights forms part of the file (protocol on the questioning), and is not a separate form, means that the person whose freedom has been limited cannot keep it, although he can ask for a copy of the protocol on the questioning. Records of people who do not speak Czech always record in writing that they were instructed in a foreign language. Since 2003, in cases of deprivation or limitation of freedom by the police in criminal proceedings, all police departments have used forms that contain written instructions on rights in the most commonly spoken European languages.[74] Moreover, since 2004 every police officer has had the possibility of using the Police Headquarters website to download forms with instructions on rights for people deprived of or limited in their freedom in English and German. Regional police administrations[75] that border with neighbouring states have forms in the relevant language of the neighbouring State. If the incident involves a person who does not speak any of the mentioned languages there will always be an interpreter for the language that the person states.

142. From the very beginning of the limitation of freedom, not until before the questioning, the form of written instructions on rights, both procedural and substantive, appears the most suitable solution both for people who speak Czech and for people who are also deprived of freedom outside criminal proceedings. For this reason, at the turn of 2004/2005, the Police Headquarters prepared forms offering instructions on rights and obligations for persons placed in police cells. The written instructions should be available in Czech and foreign languages. Police officers will give the instructions to people placed in police cells.

143. In relation to the rights and obligations of a detained person who is placed in a police cell and who is suspected of committing a crime, the amendment to the Code of Criminal Procedure (sect. 76, para. 6)[76] in January 2002 provided greater detail and also broadened the procedural rights of a detained suspect. His right to choose a defence counsel and gain his advice during detention was expanded to include the right to speak with the defence counsel during detention without third parties being present. Also, as the police body, the police officer must not only instruct the detained person of these rights but also make possible their full enforcement. Detained persons who have already been charged with committing a crime and who are placed in police cells are instructed in their rights at the time they obtain the decision on the launch of the prosecution. Like detained persons under suspicion, since January 2002 all law enforcement bodies must instruct the accused of his rights and provide him with the full possibility to enforce them. These chiefly concern the:

- Right to choose a defence counsel;

- Right to speak with defence counsel without the presence of a third person;

- Right to ask to be questioned in the presence of the defence counsel, although he cannot consult with him on how to answer a question that has already been asked; and the

- Right to request that the defence counsel attend other procedural acts.

Grounds for arrest and custody[77]

144. The grounds for detention and subsequent placement in a police cell are described in the initial report. The person suspected of committing a crime learns of the grounds for his detention from the protocol on questioning, as under the Code of Criminal Procedure (sect. 76, para. 3) the police are obliged to state these grounds in the protocol. This obligation does not apply if the detained person has already been charged.[78]

145. In the period 2000 to 2004, legislation on the grounds for arrest did not change. Because the purpose of arrest is to get the accused before the court, which is obliged to hear the arrestee immediately, the formal grounds for arrest are stated in the court order for arrest. Arrest is made by the police, who are obliged to instruct the person arrested of their rights, but not to inform them of the grounds for the arrest. The law of the Czech Republic therefore does not impose the formal obligation to communicate the grounds of arrest on any law enforcement body.

146. Under the amendment to the Code of Criminal Procedure (Act No. 265/2001 Coll.) in January 2002, the grounds for custody (sect. 67) have undergone the following changes. In addition to specific facts that would meet certain grounds for custody,[79] these grounds must now also be based on the specific acts of the accused person. Regarding the decision on whether to place the person in custody and its duration, the court is now also limited by having to consider not only the matter in hand and the degree of the accused's participation but also other measures that would achieve the effect of custody without the accused actually being taken into custody. The Code of Criminal Procedure explicitly rule out the possibility of custody for persons prosecuted for deliberate criminal activity, unless the upper limit of the sentencing guideline exceeds two years, or for a crime committed through negligence, unless the upper limit of the sentencing guidelines exceed three years (sect. 68, para. 2).[80] Conditions have thus been tightened up for placing the accused in custody. The accused or the defendant is informed of the grounds for being placed in custody in the decision on custody.

147. In 2004, the Constitutional Court considered the right of the accused to be heard during the court's decision-making on remaining in custody in relation to the right only to be prosecuted or deprived of freedom on grounds and by a method stipulated by the law and in relation to the right to a judicial review of the legality of the deprivation of freedom.[81] The Constitutional Court stated that the approach of the ordinary courts, which does not give space for the accused to be heard during proceedings on remaining in custody, is isolated because it does not respect the principle of giving precedence to international treaties,[82] and is therefore not in accordance with the Constitution. According to the Constitutional Court it is therefore necessary for the ordinary courts to change their approach and to adopt the established and unambiguous interpretation of the right to a judicial review of the legality of deprivation of freedom. The

Constitutional Court also found that, because of the public prosecutor's role in criminal proceedings, the decision of the public prosecutor to leave the accused in custody does not correspond to the principle of impartiality and independence of the review of the decision on deprivation of freedom. The Constitutional Court expressed the opinion that decision-making on leaving the accused in custody is by its nature the decision-making of a court of first instance, i.e. it should also be in open court.[83] The Constitutional Court thus concluded that the failure to respect the right of the accused to be heard during decision-making on remaining in custody represented an inadmissible deprivation of freedom, which is at variance with the stated rights.

Length of limitation of freedom (para. 3) and information on recommendation No. 18[84]

148. The length of detention may not exceed 24 hours from the moment of the limitation of freedom, not from the time the person is placed in a police cell, i.e. including possible prior limitation of freedom of movement on grounds of aggression or during attendance in order to issue an explanation.[85] After this time has expired, the police must release the individual. There is no exception to this rule of the maximum length of detention, on the contrary, if the grounds for which the individual was detained cease to exist the police must release the individual immediately and not wait for the period to expire.

149. The length of detention and arrest did not change in the period 2000-2004.[86]

150. An important change was made to the legislation on the duration of custody. The amendment to the Code of Criminal Procedure states that so-called collusion custody (sect. 67b) may last for no more than three months, with the exception of cases where the accused has already influenced witnesses or accomplices, or otherwise frustrated the investigation of facts important for the prosecution. The length of custody is graded according to the gravity of the crime for which the accused is prosecuted. The total length of custody in criminal proceedings may not exceed:

(a) One year, if the prosecution is for a crime which can be dealt with by a single judge - i.e. with a sentencing guideline not exceeding five years (sect. 314a);

(b) Two years if the prosecution is for a crime which can be dealt with in the first instance by the senate of a district or regional court (sects. 16 and 17), and where the crime is not particularly grave and deliberate or a crime for which an exceptional sentence can be laid down;

(c) Three years, if the prosecution is for a particularly grave and deliberate crime (sect. 41, para. 2); and

(d) Four years if the prosecution is for a crime for which an exceptional sentence can be imposed (sect. 29).

One-third of the total time of custody is taken up in preparatory proceedings and two-thirds in proceedings before the court.

Table 15

Survey of the number of persons placed in custody from 2000-2002 and 2003-2004 in relation to the change in legislation on the duration of custody and its inspection

Monitored item/year	Legislation valid up to 31.12.2001		Legislation valid from 1.1.2002		
	2000	2001	2002	2003	2004
Average length of custody (in days)*	253/106	265/107	267/108	237/163	227/97
Number of people in custody	-	4 583	3 884	3 409	3 262
Number of people released from custody upon request	648	626	380	332	345
Number of persons released from custody after a complaint has been met for non-release from custody	Data not available				
Number of persons released from custody on expiry of the period laid down by law	81	107	150	121	112

* The stated figures are divided according to whether the district or regional courts decide on custody.

151. Since January 2002 it has not been possible to substitute custody with a moral bond by a credible person or civic association.[87] Substitution of custody by means of a financial guarantee (bail) is now also understood as an active right of the accused or person who offers to put together the financial guarantee, and not as a question to be considered by law enforcement bodies under their own initiative.

Table 16

Number of instances of bail and their total value 2000-2004

Monitored item/year	Legislation valid up to 31.12.2001		Legislation valid from 1.1.2002		
	2000	2001	2002	2003	2004
Instances of bail	109	101	160	112	114
Total amount (in CZKč)	18 924 000	43 528 999	41 088 000	36 506 000	45 559 500

152. In 2003, the Constitutional Court looked at the right to be deprived of freedom only on grounds and by the method stated by the law with regard to respecting the obligation of an ordinary court to review the justification for the duration of custody every three months.[88] As in the specific case considered the ordinary criminal court decided to prolong the complainant's custody during the lawful three-monthly time limit (sect. 71, paras. 4 and 6) only on the basis of the accused's request for release from custody (sect. 72, para. 3), the Constitutional Court stated that the court's inactivity resulted in a violation of the accused's rights. The Constitutional Court

expressly stated that neither the decision on the accused's request for release from custody nor the decision on the complaint lodged against this decision could replace the decision to leave the accused in custody on the basis of obligatory and regular decision-making.[89]

153. It emphasized that whereas in relation to the decision-making on the request for the accused's release from custody the ordinary criminal court only considers whether the grounds for custody still apply in the case of the accused, in relation to decision-making on the accused remaining in custody the ordinary criminal court must also prove the fulfilment of other, cumulative conditions.[90]

154. In 2004, the Constitutional Court looked at the interpretation and application of the exception where in deciding on placing someone in custody the limitation of the upper border of the prison sentence facing the accused does not apply if the accused continued in the criminal activity for which he is prosecuted (sect. 68, para. 3e of the Code of Criminal Procedure). The Constitutional Court concluded[91] that as this rule implies the necessity when making decisions on custody to take into account only that continuation in criminal activity which follows after the launch of the prosecution, and it is not possible to take into account the previous actions of the accused for which he has been convicted. The grounds for custody according to the stated provision can thus not be applied to cases where a prosecution is launched against an accused who has been convicted in the past of the same crime. The opposite interpretation would be too extensive as the legal grounds for limiting freedom must always be interpreted restrictively. If this exception also applied to a crime for which the accused has already been sentenced, it would then be necessary to take into custody everyone who had committed this crime in the past. This would result in an increase in the number of people in custody.

Judicial inspection of deprivation or limitation of freedom (para. 4)

155. In the case of attendance at the police, limitation of an aggressive person's freedom and detention, no inspection exists for the material substantiation of the police approach. An inspection can be enforced indirectly through compensation for damage for an incorrect official procedure only if the relevant individual proves that his material loss was caused by the police behaviour.

156. Legislation covering the judicial inspection of detention and arrest before the decision of the public prosecutor or court has not changed. In the case of detention, the detained must be either taken before a court or released within 48 hours. If the detained is taken before a court this has 24 hours to decide whether he should be placed in custody or released. In the event of arrest, the accused must be taken before a court within 24 hours, and this must hear him within the next 24 hours and decide on whether to place him in custody or release him. If the court fails to do so the accused must be released.

157. Inspection of the placement of the accused/defendant in custody develops along two lines - from an official authority and at the initiative of the person placed in custody. At the request of the public prosecutor, a court always decides on the initial placement in custody. An amendment to the Code of Criminal Procedure in January 2002 altered the procedure for the review of custody by an official authority. Before charging the accused, i.e. in pretrial

proceedings, the public prosecutor must decide on the length of custody for the accused every three months. After the charge has been brought, the court must decide on the length of custody within 30 days of bringing the charge or of accepting the criminal case of the defendant. The court must also, like the public prosecutor, repeatedly decide every three months on the length of custody or on whether to release the defendant.

Table 17

Survey of decisions on the deprivation or limitation of freedom by the Constitutional Court in criminal cases[92]

Monitored item/year	2000	2001	2002	2003	2004
Number of incoming cases	681	650	590	638	699
Proportion of all incoming cases (in %)	22.1%	21.6%	18.7%	25.5%	25.7%
Decided by finding and satisfied	33	39	26	25	37

Right to compensation for unlawful custody or other penal limitation of freedom (para. 5)

158. There were no changes in the system for providing compensation for deprivation or limitation of freedom between 2000 and 2004.[93] There was only an expansion of the cases where compensation does not occur, which among others include custody of delivery and custody of transfer in proceedings on the transfer of criminal proceedings abroad.

159. In April 2002, the Constitutional Court cancelled the possibility of limiting a person's right to compensation for property damage caused by an unlawful decision.[94] According to the cancelled rule, contained in the Act on Liability for Damage Caused in the Performance of Public Authority by a Decision or Incorrect Official Procedure (No. 82/1998 Coll.), it was not possible to provide compensation for damage to persons affected by an unlawful decision unless they also suffered further damage at the same time. The Constitutional Court stated that if compensation is to be provided both for damage caused by unlawful decision and incorrect official procedure it was not possible to make other changes of content on grounds of the existence of two types of infringement of rights. A decision on the launch of a prosecution is thus a decision which, if found to be unlawful does not require the injured party to suffer other property damage in order for him to ask for compensation. The Constitutional Court also concluded that if the Act on Liability for Damage Caused in the Performance of Public Authority by a Decision or Incorrect Official Procedure differentiated between damaged persons without justifiable substantiation, it was establishing an unsubstantiated difference in the legal status of the injured parties.

160. At present, an amendment is being prepared to the Act on Liability for Damage Caused in the Performance of Public Authority by a Decision or Incorrect Official Procedure, which would make it possible to provide compensation not only for damage, i.e. for interference in property, but also compensation for loss in the form of non-property damage. As far as practice is concerned, the years 2000-2004 registered a significant increase in requests for compensation for damage caused by incorrect official procedure or unlawful decision. There is also an increase

in requests and subsequently also court actions for payment of default interest in cases in which compensation for damage was admitted in the past. The prepared broadening of the possibility to ask for compensation means that the number of requests is likely to rise further.

Table 18

Survey of the number of cases of compensation for unlawful decisions or incorrect official procedure in matters of custody and imprisonment acknowledged by the Ministry of Justice or court

Monitored item/year		2000	2001	2002	2003	2004
Compensation for execution of custody	Compensation acknowledged without legal action	18	25	77	54	62
	Compensation acknowledged by a court	5	13	10	4	5
	Total	23	38	87	58	67
Compensation for execution of prison sentence	Compensation acknowledged without legal action	5	0	2	4	3
	Compensation acknowledged by a court	6	4	3	1	5
	Total	11	4	5	5	8

Article 10

Rights of persons deprived of or limited in their freedom (para. 1)

Conditions for ordinary deprivation or limitation of freedom by police under the Police Act

161. In these cases the limitation of freedom is relatively brief, meaning that it should not exceed 72 hours.[95] For this reason, lesser demands are usually placed on regulating conditions in police cells than on regulations in facilities, where people are subjected to long-term deprivation or limitation of freedom. The legal regulation of conditions in police cells is further developed in the order and binding instructions of the Police President on Police Cells.[96] The order contains a definition of a police cell and also regulates the placement of persons in cells, the regime and execution of surveillance, provision of food and equipping of cells.

162. Although the limitation of freedom of movement of aggressive people and attendance in order to issue an explanation is governed by the Police Act, the Act does not regulate the conditions for executing these types of limitation of freedom unless other conditions are fulfilled for detention.

Conditions for people placed in facilities for the detention of foreigners for their administrative deportation

163. Conditions in facilities for the detention of foreigners in which foreigners are placed for the purpose of their deportation are contained in the Aliens and Immigration Act (No. 326/1999 Coll.), which came into effect at the beginning of 2000.

Table 19

Survey of capacity of facilities for the detention of foreigners

Monitored item/year	2000	2001	2002	2003	2004
Number of places	Data not available			715	724
Total of detained foreigners	4 513	7 240	3 239	2 209	1 448

164. A facility for the detention of foreigners has two regimes - strict and moderate. Sections with a strict regime are for foreigners who are seen as a risk to the purpose of the detention, who are aggressive, do not fulfil their obligations or breach internal rules, who are in quarantine or whose identity cannot be verified. In other cases the police place foreigners in a section with a moderate regime. Since January 2004 it has not been possible to place foreigners in a section of the facility with strict regime if it is not possible to verify their identity.[97] At the end of 2003, this change caused the reconstruction of existing facilities in order to expand capacity in the section with moderate regime at the expense of the section with strict regime so that roughly 80 per cent of the capacity of all facilities constituted sections with moderate detention regime. In relation thereto, changes were introduced to the internal organization of space so that limitations on freedom of movement are kept to a minimum.

165. When placing foreigners in detention facilities the police take care to separate men from women, and foreigners - children under 15 from older people. In both cases, the police respect the wishes of people related to each other not to be separated, and the separation of a family must be justified and proportionate to the consequences of the family's separation. In practice, this means that there may be cases where members of a family are separated from each other.[98] On 10 June 2002, facilities for the detention of foreigners were opened in Bělé-Jezové, intended for mothers with children, or for large families with small children.

166. The daily regime is different in each type of detention. In the strict regime, the foreigner is entitled to a daily walk within a defined space of the facility and of a minimum length of one hour. In the section with a moderate regime, foreigners can move freely and can make contact with other foreigners from this section of the facility.

167. Detained foreigners are not compelled to wear state clothes if their own meet the hygiene and aesthetic conditions. The facility's medical staff judge the hygiene and aesthetic standards of the foreigner's clothing, laundry and footwear. This assessment results in a record, which is kept in the foreigner's files.

168. A detained foreigner has the right to receive visits of no more than two people once every three weeks and lasting 30 minutes. He is entitled to receive visits from a person providing legal assistance without limitation. Once every two weeks he can receive a package containing food, books and personal items up to a weight of 5 kg.

169. With regard to the ombudsman's recommendation, the police adopted measures with the aim of ensuring the consistent fulfilment of the obligation to take into account cultural customs when choosing food for foreigners, especially in relation to their religious persuasion. Contractors therefore supply the facility's management with the meal suggestions one week in advance so that management can react to any changes.

170. A further humanization of facilities for detaining foreigners should come with the change in the Aliens and Immigration Act governing conditions in such facilities. The internal regime of the facilities should be comparable to the reception asylum facilities, with the difference that, except on legal grounds, a foreigner will not have the right to leave the facility during his detention. A foreigner may be placed in the strict detention regime for a proportionate, essential period only in justifiable cases (e.g. a detained foreigner is aggressive towards other detainees or the facility's staff, or fails to fulfil obligations imposed on him by the internal rules). From November 2005, the amendment to the Aliens and Immigration Act regulates the aforementioned aspects influencing the detainee's regime as follows:

- The facility's internal rules should include inter alia psychological and social care; greater emphasis will be placed on free-time activities and exercise; movement through a facility with moderate regime should have minimal limitation;

- Children under 15 will be given meals meeting correct dietary needs five times a day;

- Children under 15 living in a facility with a legal guardian will be able to leave it in order to attend mandatory schooling if this is not offered within the facility;

- Foreigners will be able where possible to wear their own clothes;

- The frequency of receiving visitors will increase from the current once every three weeks to once a week; the limitation on the number of visitors (currently a maximum of two people) will be cancelled.

171. In recent years, conditions in facilities for the detention of foreigners in which foreigners are placed for the purpose of their administrative deportation or transfer under an international treaty (so-called readmission agreement) have been the subject of investigation and constant criticism from non-governmental organizations, the ombudsman, the Committee for the Rights of the Child, the Human Rights Committee of the Council of Europe and the European Committee for the Prevention of Torture. The aforementioned legislation is undoubtedly a positive change compared with the situation at the end of 1999.

Conditions for people placed in asylum facilities

172. In asylum facilities, asylum-seekers have the right to meals three times a day. As in the case of detained foreigners, these should as far as possible respect cultural and religious customs. Asylum-seekers also have the right to medical care in the scope of public health insurance, although only from those doctors who have a contract with the Ministry of the Interior essential for the payment of the medical care provided. As there are fewer of these doctors compared with normal medical care, asylum-seekers who do not live in asylum facilities have worse access to it. For those asylum-seekers who do not have their own financial funds, it is difficult to pay for certain medications even in the system of public health insurance.[99]

173. In 2004, public and media attention were drawn to the case of the cancellation of electric sockets in asylum facilities. The administration of refugee facilities decided on the gradual removal of electric sockets from certain buildings, including rooms used to house

asylum-seekers waiting for a decision from the Ministry of the Interior as the decision-making body of first instance. This measure was criticized by non-governmental organizations and the ombudsman. It was motivated chiefly by the need to ensure the technical security of the facilities. Some asylum-seekers destroyed the basic protection system when trying to connect their electric appliances, which did not correspond to Czech technical norms. Meetings between the Administration of Refugee Facilities and representatives of non-governmental organizations highlighted the need to define the term dignified living conditions. The Administration of Refugee Facilities subsequently prepared Accommodation Service Standards in Residential and Reception Centres, which contain detailed accommodation conditions for asylum-seekers. Electric sockets will be available in all asylum facilities.[100]

174. Regarding the asylum facilities in the transit areas of the Prague international airport, there is no systematic solution to the access of international and non-governmental organizations to the transit areas in the event that employees from these organizations want to provide asylum-seekers with legal and social advice. The possibility of visits here is not excluded, but certain procedures must be applied for visitors for security reasons. The administration of refugee facilities intends to solve this problem by building a new asylum facility with a separate entrance or its placement in a newly built building. The asylum facility in the transit area should be operational from January 2006, should have a separate entrance, space for walks and free-time activities.

Conditions for the execution of a disciplinary prison sentence

175. Conditions for the execution of a disciplinary prison sentence in military prisons are only partially governed by the Act on Military Service (No. 220/1999 Coll.). The details of the conditions for disciplinary prison sentences and the internal running of military prisons were stipulated by the President of the Republic as the chief commander of the armed forces in the Prison Rules.[101]

176. Prison rules govern, for example, a soldier's obligation on entering prison to undergo a personal inspection and the removal of his personal items, such as valuables or items that could be dangerous for the sentenced soldier (e.g. belts). The prison rules also contained a prohibition on receiving visits during the sentence, with the exception of a priest, and prohibitions concerning behaviour in prison, e.g. a prohibition on lying on a bed and sleeping outside the time allocated for nightly rest etc. The execution of a disciplinary prison sentence was also problematic due to the fact that it expressly allowed a soldier to have access to running water and the toilet only after calling a guard. The Council for Human Rights thus recommended to the Ministry of Defence that soldiers performing a disciplinary prison sentence should have the following rights:

- The right to move without limitation in the areas of the prison designated for prisoners;

- The right of constant access to hygiene facilities, including toilets and basin with running drinking water;

- The right to bathe at least twice a week and always after physically demanding work;

- The right to lodge a complaint and request the relevant bodies to settle it; a complaint or request must be sent immediately to the body to which it is addressed;

- The right to interrupt the prison sentence on days on which a referendum is held if it is declared in an electoral ward where the prisoner is registered on the electoral list;

- The right to receive and keep prepaid press, literature and military regulations which are delivered to him from the units or which the prisoner has brought himself;

- The right to receive and at his own expense to send correspondence;

- The right to purchase minor items for personal use at his own expense.

The situation changed over the course of a few months, requiring the formulation of new internal regulations.[102]

Treatment of individuals in custody and serving a prison sentence (paras. 2 and 3)

177. The beginning of 2000 saw the introduction of a new Act on the Execution of a Prison Sentence (No. 169/1999 Coll.), which brought in certain changes concerning the rights and obligations of individuals in prisons. These changes were not received positively by prisoners (e.g. sending packages) or which are problematic in general (contribution by prisoners to payment of costs for execution of prison sentence). In the following years, the new rules were partly modified or altered for rules pertaining to the execution of a prison sentence or custody[103] so that there was no confusion in practice. In addition to the amendment to the Act on the Execution of a Prison Sentence (No. 169/1999 Coll.), there was also a change to the Act on the Execution of Custody (No. 293/1999 Coll.). A very similar regime now applies both for people in custody and people serving a prison sentence.

General characteristic

178. During the monitored period of 2000-2004 there was a fall (particularly in 2002) in the number of individuals in custody and serving a prison sentence. In the case of people in custody, this trend was caused by an amendment to the Code of Criminal Procedure, which came into force at the beginning of 2002 (No. 265/2001 Coll.), and which limited the length of custody. From 2002 it has been possible to impose alternative sentences other than a prison sentence; if these are not fulfilled the individual can still be punished by being given a prison sentence.

179. The number of people in prison has increased significantly since the middle of 2003. This frequently led to the accommodation capacity (4.5 m^2 per person) being exceeded.[104] At the beginning of July 2004, changes were introduced in the rules for the execution of custody and a prison sentence. The changes stipulated a minimum accommodation area of 4 m^2 per prisoner. The actual total accommodation capacity fell as the sections for the execution of custody were closed in four prisons.[105]

Table 20

Survey of number of people placed in prisons in the period 2000-2004

Monitored item/year		2000	2001	2002	2003	2004
Custody (accused)	Men	5 604	4 341	3 250	3 244	3 078
	Women	363	242	162	165	784
	Total	5 967	4 583	3 412	3 409	3 262
Prison sentence (convicted)	Men	14 966	14 190	12 411	13 298	14 423
	Women	605	547	510	570	640
	Total	15 571	14 737	12 921	13 868	15 063
Total number in prisons	Men	20 570	18 531	15 661	16 542	17 501
	Women	968	789	672	735	824
	Total	21 538	19 320	16 333	17 277	18 325

Change in the Act on the Prison Service and Judicial Guard

180. The amendment to the Act on the Prison Service and Judicial Guard (No. 555/1992 Coll.), which came into effect at the beginning of 2004, expanded the list of coercive means used by members of the Prison Service to include the so-called expansion weapons, which are included among the arms used by the relevant units for operations under united command. The stated advantage of the expansion weapon is that its use does not cause a threat to life and health. The amendment to the Act also expands the possibility of using chains, handcuffs or handcuffs with holding belt without fulfilling the basic conditions of using coercive means under the Act for the accused and for all convicted persons, irrespective of the type of prison in which the sentence is being served, and regardless of the existence of justified concern that they could behave in an aggressive way. This justified concern must come from the previous behaviour of the accused or the prisoner. The Prison Service is still not authorized to take biological material from the accused or the convicted for purposes of identification or future identification.

181. A major change is the Prison Service's new authorization in its buildings to use auxiliary search methods similar to those of the police, but at the stage of preventing and detecting deliberate criminal activity among people in custody and serving a prison sentence, staff and civilian employees and other persons are to be found in Prison Service buildings. The new powers are a response to the worrying situation in prisons caused in particular by criminal structures. These produce a real risk of further crime being committed, and which is very difficult to detect.

So-called special regime

182. In 2003, the Chief Public Prosecutor drew attention to the problem of placing highly dangerous members of organised crime in the so-called special regime.[106] The Prison Service introduced the special regime as part of the extensive preventive action "Alcatraz", in which it prevented the outbreak of a major prison revolt. The vast majority of people placed in the special regime were citizens of the former Soviet Union. According to the Chief Public Prosecutor, people placed in the special regime were subjected to an unjustified breach of the

equality of their rights in many respects compared with other prisoners and in addition there had been an unlawful use of coercive means. The question of the special regime's legality was addressed by the Inspection of the Ministry of Justice and the ombudsman.

183. In the prisons, for example, there was a breach of the right of prisoners to talk to their lawyer without the presence of third parties. A case was also recorded where a prisoner had been unjustifiably isolated, handcuffed and limited in their attendance at cultural and sporting activities. The relevant public prosecutors reacted to this breach of the law through orders issued in the individual prisons. Together with the Chief Public Prosecutor, the leading public prosecutor in Prague then initiated a change in the internal regulation which contained a provision prohibiting the shared accommodation of individuals from the same state. These states constituted all the states of the former Soviet Union and Yugoslavia. Public prosecutors also found that persons included in the special regime had been moved through various prisons at intervals of two months without any special reason. In contradiction with the basic principle for the execution of the sentence, these transfers made it impossible for prisoners to fulfil their treatment programme and create the conditions for their being moved to a more moderate type of prison, or the conditions for release. The public prosecutors also found unlawful the fact that decisions on placement in the special regime could not be reviewed. Since then, public prosecutors have regularly inspected the observance of the rights of imprisoned foreigners.[107]

184. The issue of the special regime was also addressed by the International Analytic Group for the Security of the Due Execution of Custody and Imprisonment, whose creation was initiated by the Chief Public Prosecutor on the basis of information on the situation in prisons. The group's activity resulted in a change to internal norms governing the special regime. The Analytic Group completed its work in September 2003.

185. Since the beginning of 2003, high-risk prisoners have been placed in the prison Stráž pod Ralskem with a special high-security section. This makes it possible to execute the sentence for high-risk prisoners without the Prison Service having to take special security measures.

Obligation of prisoners to pay the costs of their imprisonment

186. At the beginning of 2000, this obligation was introduced for all prisoners, and also applied to prisoners who, despite wanting to work, are not employed due to a lack of work opportunities or because of the state of their health.

187. The amendment to the Act on the Execution of a Prison Sentence (No. 52/2004 Coll.), which came into effect in July 2004, governed cases where prisoners are exempted from the obligation to pay costs for their prison sentence. These concern, for example, prisoners who for no fault of their own are unable to work and who have no other income or money, as well as prisoners under 18, prisoners placed in educational or therapeutic programmes of at least 21 hours a week, and prisoners who are taking part in judicial proceedings as a witness or the injured party.[108] Other prisoners will not have to pay interest on loans for their stay in prison. In some cases, therefore, following their release from prison prisoners may owe substantial sums of money, which, given the problems they face in obtaining employment on the labour market can be a major obstacle to their re-integration in society. Moreover, the recovery of costs is not very effective.

Right of individuals in prison to receive visits

188. The new Act on the Execution of a Prison Sentence (No. 169/1999 Coll.) only contained the maximum period for a visit, without stipulating the minimum period. An amendment to the Act (No. 52/2004 Coll.) specified from July 2004 the right to receive visits for a total of three hours per calendar month, or five hours per calendar month for children-persons under 18. It does not however permit visits by people other than relatives without serious reasons. Another change to the visiting rules concerns the possibility of a contact visit for prisoners. The Prison Service may require non-contact visits only in justifiable cases following an individual assessment of safety risks. There was also an expansion of the possibility of prisoner visits without visual or auditory supervision by members of the Prison Service. The Prison Service cannot even listen to the telephone calls of people to whom prisoners may talk during visits without the presence of a third party.

Purchases by visitors in prison shops and the possibility to use money sent to prisoners to the prison to purchase items in prison shops

189. The amendment to the Act on the Execution of a Prison Sentence introduced from July 2004 clear rules on the possibility of prisoners using one half of the amount sent to them in prison in order to buy and pay for above-standard medical care. This definitively ended the practice that had lasted since 2002, when visitors to prisoners purchased items for the prisoners in prison shops. This measure brought protest from prisoners in some prisons, which led in turn to hunger strikes and mass demonstrations.[109]

190. The practice where visitors purchased items in prison shops was introduced by the General Directorate of the Prison Service because before the change to the Act on the Execution of a Prison Sentence prisoners could not use money sent to them to buy things in prison shops, with the exception of basic hygiene necessities. However, in the opinion of the public prosecutor this practice was discriminatory for those prisoners who did not receive a visit, and also circumvented the regulation limiting packages. The amendment to the Act now states that a prisoner who has not paid compensation for the damage caused by his crime, debts relating to criminal proceedings and compensation for damage that he has caused the Prison Service during the execution of his prison sentence can use half of the amount sent to make purchases and pay for above-standard medical care. The prisoner uses the other half to pay the aforementioned debts.

191. For those prisoners who regularly receive visits and who are obliged to pay for the aforementioned debts the situation has worsened in comparison with previous practice, while the position of those prisoners who do not receive visits has improved. Withdrawal of permission for visitors to purchase items does not apply to those prisoners who are not obliged to pay the aforementioned debts and can therefore spend the entire amount sent to them without limit.

192. We can therefore summarize that the amendment to the Act on the Execution of a Prison Sentence, together with the new practice, puts all prisoners on an equal level. It is, however, necessary to point out that the rules relating to the execution of a prison sentence still allow a Prison Service director or delegated employee to permit the hand-over of items during a visit if the prisoner has urgent reason. The items must, however, be connected to the prisoner's further education, treatment programme, or hobby activities, including electrical appliances.

Treatment of prisoners with life sentences and certain prisoners who serve sentences in high-security prisons

193. In order to streamline the execution of prison sentences for prisoners serving life sentences and other prisoners who have been specified higher detention, the Prison Service General Directorate issued an internal regulation - methodological document No. 13, in 2001. The document applies to two groups of prisoner:

- Prisoners serving a life sentence; here, the methodological document divides prisoners into three different groups, ranging from the most moderate regime in the first group to the strictest regime in the third; and

- Prisoners who serve their sentence in a high-security prison, and are therefore placed in a fourth group.

194. However, the new methodological document does not reduce the isolation of prisoners serving life sentences. This only came about with the amendment to the Penal Code (No. 140/1961 Coll.) and the Act on the Execution of a Prison Sentence (No. 169/1999 Coll.) effective from the beginning of 2002, because the amended Penal Code now makes it possible for a life sentence to be imposed on an individual who has a chance of gaining legal remedy. Individual Prison Service treatment programmes are currently offered only to this group of life prisoner.

195. Prisoners generally serve life sentences in high-security sections. During walks they may only be handcuffed only in specially justified cases, and their visits usually take place in a contact manner. Life prisoners in all categories take their walks separately from other differentiated groups.

196. The methodological document contains a requirement to appoint employees with a high professional level and relevant experience to oversee prisoners serving a life sentence and prisoners in the fourth differentiated category in high-security prisons. It also includes the obligation to develop an individual education plan for each prisoner with the aim of improving communication skills and other aspects of treating prisoners serving long and life sentences.[110]

Article 11

Deprivation or limitation of freedom due to inability to meet contractual undertakings

197. During the monitored period 2000-2004 there were no changes in the Czech Republic compared to the initial report.

Article 12

Freedom of residence and movement (para. 1)

198. The principle of freedom of residence is practically expressed in those laws which cover population records and the residence of foreigners in the Czech Republic, irrespective of the length of this residence. A Czech citizen is always entitled to reside on the State’s territory due

to holding Czech citizenship. Foreigners are usually differentiated according to whether they have the citizenship of another EU member State. An independent category of residence in the Czech Republic is that of asylum-seekers, who are allowed to live in the Czech Republic on the basis of a request for international protection until such time as a final decision is reached.

Maintaining population records in relation to freedom of movement

199. Since July 2000, when the new Act on Population Records (No. 133/2000 Coll.) came into effect, there has been a major change in the residential records of Czech citizens in the Czech Republic. Not only has the maintenance of records of the population - Czech citizens shifted from the police to local administrative bodies, the actual procedure for changes in permanent residence have been simplified.[111] The simplification lies chiefly in the fact that Czech citizens are no longer obliged to register a change in their permanent residence within three days, when they had to have available all necessary documents (e.g. on the purchase of the property, agreements entitling them to accommodation, owner's consent, etc.). Although changes in the formal residence permit are relatively infrequent, this requirement to register within three days was very strict and up to 1989 was used by State bodies to monitor any movement by Czech or Czechoslovak citizens across the State.

200. The new concept of permanent residence of Czech citizens as an institute for formal contact between public authorities and Czech citizens was reflected chiefly in the fact that a Czech citizen is no longer obliged to register a change of residence and cannot be prosecuted for not having registered permanent residence in the place where he actually lives. The obligation was also cancelled for Czech citizens to register temporary residence as an alternative to permanent residence so that the formal situation corresponds to the actual situation as closely as possible.

201. During the period under review, foreigners, on the other hand, were still required to apply for a residence permit in the Czech Republic. A change was introduced 1 May 2004, when the Czech Republic became a member of the EU, for foreigners - citizens of other EU member States, Switzerland and other member States of the European economic zone.[112] Citizens of other EU member States can live legally in the Czech Republic without the consent of the public authorities. If, however, they intend to stay for more than three months in the Czech Republic they must register their residence, mainly for the needs of daily life. If they are registered for residence of three years they can apply for permanent residence. Unlike Czech citizens, however, they must fulfil the stipulated conditions,[113] although unlike all other foreigners they have a legal right to reside in the Czech Republic if they meet these conditions. Other foreigners can reside in the Czech Republic either temporarily or on the basis of permanent accommodation. The police decides on resident permits for foreigners who are not citizens of another EU member State. Until the end of March 2004, foreigners had to report a change in their place of residence to the police; since April 2004 foreigners report a change in residence to residence registration offices in the same way as Czech citizens.

202. Every foreigner may apply for permanent residence who meets the many conditions thereto, including the general requirement to have had 10 years temporary residence in the Czech Republic. There are exceptions to this condition, chiefly for uniting nuclear families with children - minors or due to dependency of parents, usually of pension age, and where at least one member of the family has Czech citizenship.

203. An amendment to the Act on Population Records (No. 320/2002 Coll.), which came into effect at the beginning of 2003, introduced a more practical procedure to determine the place of permanent residence in the following cases: for Czech citizens returning usually from long-term stays abroad the place of permanent residence is considered to be the registered office of the local authority where they last had permanent residence. If this cannot be identified, the place of permanent residence will be the registered office of the local authority in which district the citizen was born. For foreigners who have been granted Czech citizenship the place of permanent residence for a Czech citizen is the place where he was registered for residence, either under the Asylum Act (No. 325/1999 Coll.), if he was an asylum-seeker, or under the Aliens and Immigration Act (No. 326/1999 Coll.) for other foreigners. In the case of an applicant who has been granted asylum, his residence is considered permanent residence.

204. A foreigner's residence status, i.e. type of residence, affects the level of rights accorded to him under Czech law. This difference is most apparent regarding access to the labour market and in the area of social security and health care. Foreigners who have been permitted permanent residence can be gainfully employed in the Czech Republic without permission from the Labour Office or other public authorities bodies and are automatically included in the public health insurance system, from which medical care is paid. Their status is thus factually identical to that of Czech citizens if they are registered as having permanent residence in the Czech Republic.[114] If, however, a foreigner only has temporary residence (issued with validity for one year), in order to have gainful employment, for example, he needs the permission of the public authorities bodies that administer the labour market.

Relationship of population records and property rights and effect on other rights

205. Another amendment to the Act on Population Records effective from April 2004 (No. 53/2004 Coll.) newly imposed the obligation on residence registration offices (public administrative bodies) within 15 days to inform owners of property intended for accommodation of any change in the number of people who are registered for permanent residence and of which the users agreed to the application for residence, or withdrew his consent. The owners of property intended for accommodation criticized the rules for reporting changes in the number of registered persons as they were not able to find out how many people are registered for residence in a specific property intended for accommodation, or to which tenant someone registered or deregistered. Property owners encountered problems not only in enforcing property rights, but above all in fulfilling obligations such as fees for services associated with accommodation, the size of which is dependent on the number of people who use the services (water and sewerage, but also fees for the removal of domestic garbage or energy costs).[115]

206. All individuals, irrespective of their citizenship or residence status, have the same rights and obligations concerning their freedom of movement within the country.

Right to leave the Czech Republic (para. 2)

207. People who wish to leave the Czech Republic, irrespective of their citizenship or residence status, must have a valid travel document in addition to choosing their route across the border (including international airport). Exceptions to the obligation to cross the State border at border crossings apply to designated tourist paths.

Table 21

Survey of illegal migration through State borders, 2000-2004

Monitored item/year			2000	2001	2002	2003	2004
Total of illegal migrants			32 720	23 834	14 741	13 206	10 695
Of which	Total foreigners		30 761	21 090	12 632	11 125	9 433
	Of which	Into the CR	4 031	4 814	4 136	2 596	1 957
		Out of the CR	26 730	16 276	8 496	8 529	7 476
	Total Czech citizens		1 959	2 744	2 109	2 081	1 262
	Of which	Into the CR	1 103	2 042	1 373	1 204	795
		Out of the CR	856	702	736	877	467

Czech citizens

208. In order to travel abroad, Czech citizens need a travel document - passport.[116] A Czech citizen applies for a passport at local authorities with so-called expanded powers.[117] When applying, a Czech citizen shall usually also submit his identity card, name and surname, date of birth and Czech citizenship. The local authorities issue the passport within 30 days and the passport is valid for 10 years (5 years for a child under the age of 15). The administrative fee for issuing a passport is CZK 200 (only CZK 50 for children under 15). It is also possible to ask for a passport to be issued in a shorter time, although the fee then rises to CZK 600. This type of passport does not contain the security devices used for identity documents, such as protection against misuse, and they are valid only for one year.

209. The local authority that issues travel documents can only withdraw them from a Czech citizen if by staying abroad the Czech citizen were to frustrate the ordered execution of a judicial decision, distraint, or criminal proceedings against him. These do not concern all criminal proceedings, however, but only investigations into crimes which have a lowest prison sentence of three years. The travel document is also withdrawn from a Czech citizen who has been convicted and received a prison sentence but who has not yet served the sentence.

210. In the middle of July 2001, Great Britain introduced so-called pre-embarkation checks for people flying from Prague-Ruzyně airport. This was designed to reduce the number of asylum-seekers from the Czech Republic in Great Britain. The measure was interrupted several times after July 2001, although always renewed after a few weeks by the British side.

Foreigners

211. In the case of foreigners, it is essential to distinguish between two basic situations - forced departure from the Czech Republic (deportation) and voluntary departure. The police may also prevent foreigners from leaving if the foreigner leaves behind in the Czech Republic a child under the age of 15 which does not have its own travel document and who is not looked after by an adult or has not been placed in institutional care and who is hospitalized. In the last case, the police take into account instances where it is not possible to

force the foreigner to reside in the Czech Republic and it is clear that the child will leave after hospitalization. The police resolve these cases through a statement that the departure of the parents is usually not in conflict with the interests of the hospitalized child.

Limitation of freedom of residence and movement (paras. 3 and 4)

General possibilities of limiting freedom of residence and movement

212. The possibility to limit the freedom of residence and of movement proceeds from the principle of the limitation of such rights. In the Czech Republic there are three model cases for the limitation of the freedom of residence and movement. The first of these is the limitation of these rights as a result of the declaration of a state of crisis, which allows for the limitation of certain human rights and freedoms;[118] the second is the limitation of the freedom of residence and movement as a result of the deprivation or limitation of personal freedom either de jure or de facto[119] and the third is the limitation of freedom of residence and movement in specific places, where the limitation is foreseeable and is not linked to a specific individual. These concern, for example, cases of environmental protection, where the degree of limitation of the freedom of movement and residence rises according to the degree of environmental protection provided, cases of protecting health against the spread of infectious diseases, or the stipulation of highway rules in order to protect public order. An exception because of the impossibility of forcing a Czech citizen to leave the Czech Republic.

213. In criminal proceedings, a court can impose on both foreigners and Czech citizens a sentence banning residence. The following survey covers only judicial decisions as in the Czech Republic it is not possible to impose a sentence banning residence in so-called administrative punishment.

Table 22

Survey of court-imposed sentences banning residence, 2000-2004

Monitored item/year		2000	2001	2002	2003	2004
Total number of sentences banning residence		381	331	489	695	879
Of which	Czech citizens	355	316	465	674	826
	Foreigners	26	15	24	21	53

Specific limitation of freedom of residence and movement in the case of foreigners in general

214. Unlike Czech citizens, foreigners can reside in the Czech Republic not only by right but also on an unauthorized basis. The unauthorized residence of a foreigner refers to every stay by a foreigner in the Czech Republic which does not fulfil the conditions for residence in the Czech Republic, although it is not decisive whether he fulfils these conditions in the past or whether he has never fulfilled them and resides in the Czech Republic as a result of illegal

migration. If the police find that the foreigner resides in the Czech Republic on an unauthorized basis, it can deport him, according to how serious the case is. This is an instance of so-called administrative deportation and before this takes effect the foreigner can be detained in facilities for the detention of foreigners.[120]

Specific limitation of freedom of residence and movement in the case of asylum-seekers

215. At the beginning of 2000, a new Asylum Act (No. 325/1999 Coll.) came into effect in the Czech Republic which limits the freedom of residence and movement of asylum-seekers only in certain precisely defined cases. In this it differed markedly from the previous Act on Refugees (No. 498/1990 Coll.), which permitted asylum-seekers to live outside asylum facilities rather as an exception, for which the asylum-seeker required the consent of the asylum facility management. According to the Asylum Act (No. 325/1999 Coll.), except in specific cases asylum-seekers can choose not only the place of residence in the Czech Republic but also move freely according to the ordinary rules and regulations. As for accommodation they can use so-called residence centres set up by the State. Residence centres are part of the network of asylum facilities used to accommodate asylum-seekers. Asylum-seekers may also arrange their own accommodation. They pay for this accommodation out of their own funds.

216. An asylum-seeker's freedom of residence and movement is limited from the very beginning of asylum proceedings, when he is placed in a reception centre. He may not leave this until certain identification procedures have been completed, i.e. the taking of fingerprints and photographs, medical examination in order to find whether the asylum-seeker suffers a disease that threatens his life or health or the life or health of others. Subsequently, the Ministry of the Interior grants the asylum-seeker a visa for the purpose of asylum proceedings.

217. An asylum-seeker registered to reside in an asylum facility can leave it for at most 30 days before returning to the asylum facility. He can repeatedly stay outside the asylum facility for up to 30 days on a repeated basis. If the asylum-seeker will stay outside the asylum facility for a period exceeding 24 hours he must inform the Ministry of the Interior in writing. In this announcement he must state the address where he will live, and the length of the stay outside the facility. If he intends to spend more than three days outside the residence centre he must inform the Ministry of the Interior in writing at least 24 hours before leaving the asylum facility.

218. An exception to leaving the asylum facility is the asylum-seeker's residence in an asylum facility in a transit space. The police place the asylum-seeker here if he arrives in the Czech Republic by plane. The mandatory stay in this reception centre is not linked to the completion of the identification procedure and the medical examination of the asylum-seeker, but it is limited by a 5-day period for the issue of an administrative decision on asylum, a 30-day period for a court decision on an action against a Ministry of the Interior decision on asylum, or the granting of suspensory effect for a cassation appeal as an extraordinary legal remedy.[121] If the time limits stated by the Asylum Act are observed and the Supreme Administrative Court does not grant cassation appeal suspensory effect, the asylum-seeker's status will change to that of a foreigner in general. Until such time as he leaves the Czech Republic the former asylum-seeker must remain in the asylum facility in the transit area. If the stated time limits are

not observed, or the Supreme Administrative Court grants a cassation appeal suspensory effect, the asylum-seeker is transferred to an asylum facility within the country, where he will be subject to the rules and regulations of an ordinary asylum facility.

219. If the asylum-seeker intends to reside outside the asylum facility he has to gain the consent of the Ministry of the Interior to the chosen place of residence. The Ministry of the Interior's consent is also required for a change in the residence outside the asylum facility. The Ministry of the Interior, which runs the asylum facilities, judges the place of residence chosen by the asylum-seeker in respect of the asylum-facility's accessibility for purposes of ongoing asylum proceedings.

220. A specific regime has been in place since May 2004 and is related to the Czech Republic's accession to the EU. It concerns those asylum-seekers who fall under the so-called Dublin regime. Community law[122] does not permit foreigners whose asylum proceedings have been legally suspended on grounds of the inadmissibility of the application due to the fact that their asylum application should be heard by another EU member State than the Czech Republic, to leave the asylum facility before their transfer to the State that should hear their asylum application. It should, however, be emphasized that this limitation only relates to a limited category of foreigners and a time-bound section. If the asylum proceedings is not suspended because the Czech Republic is not the right State to hear the relevant asylum-seeker's asylum application, the asylum-seeker is in the same regime as other applicants.

221. We should also add that Czech asylum law also allows asylum applications to be made by foreigners placed in detention facilities, in custody, including extradition, or who are serving prison sentences. Asylum proceedings by their nature do not lead to the foreigner's automatic release from the detention facility or remand prison.

Article 13

Principles for the deportation of foreigners living lawfully in the Czech Republic

222. As in the previous period (up to 1999), during the monitored period 2000-2004 there existed in the Czech Republic two types of deportation of foreigners: judicial, as the type of punishment imposed by a court in criminal proceedings, and administrative, as a decision issued by an administrative body, which is the police.

223. Since May 2004, when the Czech Republic became a member State of the EU, a different, more moderate deportation regime has applied for foreigners who are citizens of another EU member State. Such foreigners can only be deported if they threaten state security or seriously upset public order, and where the formal withdrawal of authorization for residence would be insufficient.

Administrative deportation

224. A police decision on deportation is only not subject to judicial review in cases of the foreigner's unauthorized residence in the Czech Republic, i.e. a foreigner who resided in the Czech Republic by right and who the police decided to deport has the right to file an action

against the decision of the police as an administrative body. The foreigner may then not be deported until the court decides on the action (suspensory effect). His right to expert legal assistance is not expressly contained in Czech law.

Judicial deportation - deportation custody

225. During the monitored period 2000-2004 the length of deportation custody was lengthened in the Czech Republic. This is a consequence of administrative obstacles, where foreigners who are to be deported on the basis of a court decision do not have the necessary documents to leave the Czech Republic. The situation is to a large degree exacerbated by States that do not issue their citizens travel documents for deportation. In practice, deportation custody often lasts a long time and execution of deportation is often frustrated.

226. An amendment to the Code of Criminal Procedure effective from the beginning of 2002 (No. 265/2001 Coll.) does not adequately resolve the following problematic questions:

- Maximum length of deportation custody;
- Right of the convicted to be heard by a court before the decision on deportation custody; and
- The regime of persons in deportation custody.

227. In the event of the maximum length of deportation custody under the Code of Criminal Procedure (No. 141/1961 Coll.) it is not absolutely clear whether the maximum assessment of deportation custody as custody exclusively judicial must be shortened by one third. In practice, the length of deportation custody for foreigners convicted of crimes with the same upper limit frequently differs.

228. The Code of Criminal Procedure does not contain a guarantee of a hearing before a court before a decision on whether to take a foreigner into deportation custody. In reaching its decision, a court must consider whether there is a risk that the convicted will go into hiding or otherwise frustrate the execution of the deportation sentence, and whether custody cannot be replaced by a guarantee, promise or financial guarantee. However, the judge's obligation to hear the foreigner before the decision on deportation custody is not stipulated in the Code of Criminal Procedure. This shortcoming was resolved in 2003 by the Constitutional Court, which in its decision[123] stated that under the Code of Criminal Procedure it was always necessary to hear the convicted before deciding on deportation custody.

229. In the majority of cases, deportation is imposed in addition to a prison sentence, and convicted foreigners after completing their prison sentence and then placed in deportation find themselves in custody conditions with all limitations. Although deported convicted persons comprise a different group from the accused, they require different treatment and also have different rights and obligations (e.g. regarding the degree of limitation of freedom and contact with the outside world), the Act on Execution of Custody (No. 293/1993 Coll.) did not contain any specific provisions in relation thereto.

230. Due to the unsatisfactory situation regarding deportation custody and the execution of deportation, the ombudsman decided to use his right to submit a recommendation for a change in legislation and had recourse to the Government with a recommendation for an amendment to the Act on Execution of Custody (No. 293/1993 Coll.). A suitable solution was the proposal for explicit regulation of the proceedings on deportation custody and the execution of deportation custody which would reflect the purpose of this limitation of personal freedom. The ombudsman also pointed out the need to ensure better cooperation and mutual assistance by the interested bodies of public authority and to specify the procedures leading to the execution of the deportation sentence by means of internal regulations. The amendment to the Act on the Execution of Custody was adopted, and an amendment to the Code of Criminal Procedure will be included before the comprehensive recodification of criminal procedure.

Parallel proceedings on administrative deportation and proceedings on granting asylum, and the combination and implementation of court imposed deportation and proceedings on granting asylum

231. In 2003, pursuant to information from the ombudsman, the Supreme Court adopted two unifying standpoints on the decision-making activity of the courts in matters concerning deportation custody and execution of deportation. The first standpoint[124] concerns the collision of asylum proceedings with the execution of deportation. The Supreme Court concluded that ongoing asylum proceedings do not prevent execution of deportation. The Ministry of the Interior, however, as the administrative body which decides on whether to grant asylum, with regard to the Czech Republic's international legal commitments remains of the opinion that the launch of proceedings on the provision of asylum as a form of international protection prevents the ordering and execution of deportation.

232. The second standpoint[125] concerns the maximum lawful length of deportation custody and the convicted person's hearing in the event of a decision on his being taken into deportation custody. The Supreme Court concluded that the convicted person must be heard before the decision on the deportation custody and that the length of deportation custody cannot be shortened by one third.

233. One of the problems is the fact that the proceedings on administrative deportation and on the granting of asylum run concurrently. The problem affects foreigners who at the time of the launch of proceedings on administrative deportation live in the Czech Republic on an unauthorized basis. According to information from the UNHCR office in Prague, when deciding on administrative deportation, and in executing it in cases when the foreigner has been put in detention, do not investigate whether obstacles to the foreigner's departure exist in the case of his deportation.

234. The prepared amendment to the Act on Aliens and Immigration (No. 326/1999 Coll.) already states the investigation into the existence of obstacles to departure as an obligatory part of the proceedings on administrative deportation and decision. This means it may also be subject to review by a court.

Table 23

Survey of the structure of foreigners deported in administrative proceedings according to nationality in 2000-2004

State	Monitored item/year Deportation stage	2000	2001	2002	2003	2004 (from 1.5.2004)*
Ukraine	Number of imposed sentences	5 428	5 252	7 117	8 914	10 158
	Number of executed sentences	554	942	937	343	244
China	Number of imposed sentences	62	150	1 089	1 452	1 130
	Number of executed sentences	0	17	35	51	32
Russia	Number of imposed sentences	195	183	264	294	818
	Number of executed sentences	9	27	30	11	23
Viet Nam	Number of imposed sentences	134	417	520	495	584
	Number of executed sentences	7	5	18	7	8
Belarus	Number of imposed sentences	241	293	446	432	450
	Number of executed sentences	23	51	42	14	15
Moldova	Number of imposed sentences	1 614	1 296	801	536	357
	Number of executed sentences	163	520	198	67	30
Georgia	Number of imposed sentences	22	149	111	105	205
	Number of executed sentences	3	23	12	10	11
India	Number of imposed sentences	77	661	579	404	142
	Number of executed sentences	3	**	**	2	**
Romania	Number of imposed sentences	971	852	146	130	117
	Number of executed sentences	**	**	**	**	**
Bulgaria	Number of imposed sentences	167	200	134	139	86
	Number of executed sentences	11	49	24	10	**

Table 23 (*continued*)

State	Monitored item/year Deportation stage	2000	2001	2002	2003	2004 (from 1 May 2004)*	
Slovakia*	Number of imposed sentences	102	131	130	104	43	23
	Number of executed sentences	**	**	**	**	**	**
Lithuania*	Number of imposed sentences	14	61	117	223	52	9
	Number of executed sentences	4	24	23	27	9	2

* Slovakia and Lithuania are EU member States and it is therefore necessary since the Czech Republic's accession to the EU (together with Slovakia and Lithuania) to distinguish the moderate deportation regime for citizens of other EU member States.

** Data are not available.

235. The marked disparity between the number of foreigners who have been served with administrative deportation and the number who have actually been deported can be ascribed to several important factors:

- Facilities for the detention of foreigners have only limited capacity;
- A foreigner who cannot be placed in a detention facility before deportation due to reasons of capacity is given a time limit by police to leave the country (including travel pass[126]);
- While in a detention facility, many foreigners apply for asylum which, due to the need to consider the granting of this international protection, holds up the execution of the decision on administrative deportation until the end of the asylum proceedings.

236. The disparity between the number of people on whom a decision has been reached for their administrative deportation, and the number of people who have actually been deported is due to the fact that since the beginning of 2003 a change in the Act on Aliens and Immigration (No. 217/2002 Coll.) has allowed proceedings on administrative deportation and asylum proceedings to be held concurrently. Administrative deportation can therefore be imposed on a foreigner who is applying for asylum, although the decision can only be executed after the asylum proceedings have ended, including administrative proceedings against a decision of the Ministry of the Interior.

Article 14

Principle of equality before courts and protection of public interests (para. 1)

237. Compared to the situation described in the initial report, a new type of procedure has been introduced as of 1 January 2003 in addition to the three existing types (civil, criminal and constitutional procedure) - procedure before the Administrative Court. Only the procedure before the Constitutional Court has remained unchanged.

Principle of equality of parties in civil procedure

238. The Constitutional Court commented on the principle of equality of parties before courts in October 2000.[127] The plaintiff withdrew his petition, because the accused (defendant) - debtor paid, in the course of the procedure, the whole amount due which the plaintiff claimed in the procedure. Subsequently, the defendant filed an appeal against the court of first-instance's decision on reimbursement of the costs of procedure. The plaintiff to whom the appeal was sent for response provided his response to the appeal court. However, the appeal court returned the response to the plaintiff and did not take it into consideration when deciding on the reimbursement of the costs of procedure. It decided on a change of the manner of payment of the costs of proceedings and ordered the costs to be borne, instead of the defendant who acknowledged his debt by paying it to the plaintiff during the procedure, entirely by the plaintiff, i.e. the party that sought court protection of his rights. The Constitutional Court cancelled the decision of the appeal court on reimbursement of the costs of procedure, stating in the reasoning, among other arguments, that "the conduct of the court which refused to accept properly the response of the plaintiff with respect to the defendant's appeal constituted a breach of the fundamental principle of the court procedure - the equality of parties before courts, as one of the parties was allowed to perform procedural acts and file briefs with the court, while the other party was not allowed to do the same."

Principle of equality of parties in criminal procedure

239. The concept of equality of parties in criminal procedure has been modified starting from 1 January 2002 by the amendment of the Code of Criminal Procedure (Act No. 141/1961 Coll.). The objective of the amendment was to rectify the main defect of the valid law, which was excessive complexity of the criminal procedure, in particular of the process of evidence documentation and decision-making. At all stages, the procedure had a rigid form and the activities of individual bodies of the criminal procedure were often duplicated instead of being mutually linked.

240. This change is closely related to the changed position of public prosecutors as defenders in public prosecution. The position of public prosecutors in the pretrial stage is more significant: they are obliged to perform regular checks of case files in the course of pretrial supervision and decide by means of written reports on steps to be taken by the police and their timing. Except for termination of investigation due to the fact that the police have not found even a suspicion of a crime (so-called shelving), public prosecutors have exclusive powers to make all decisions in the pretrial stage, i.e. until the charge is brought. During the proceedings before court, i.e. after bringing the charge, public prosecutors are obliged to ensure clarification of all fundamental facts decisive with respect to the charges brought. For this reason, public prosecutors, either at their own initiative or upon the court's request, obtain additional evidence that was not obtained or performed in the pretrial stage. Until the end of 2001, public prosecutors only proposed evidence, now they obtain them with the consent or upon request of the court if the evidence supports the accusation and if it proves to be needed in view of the proceedings before the court. After bringing the charge, public prosecutors also obtain evidence at the initiative of other parties.

241. With regard to the equality of parties, the activity of the defence is regulated in the same scope when evidence is given. This activity, based on the right of the accused (defendant) to defend him or herself as he/she deems appropriate, is formulated as a right, not an obligation as is the case with public prosecutors. Together with strengthening the contradictory nature of criminal procedure, the Code of Criminal Procedure newly regulates also the institute of objections in law. Either party may raise objections in law at any time during the proceedings, of which the court decides and enters them in the trial protocol.

Principle of equality of parties in administrative courts procedure[128]

242. Pursuant to the Code of Administrative Procedure (Act No. 150/2002 Coll.), valid since 1 January 2003, administrative courts have full jurisdiction over decisions of the public administration bodies. Thus, they are not only entitled to review the lawfulness of decisions made by administrative bodies, as was the case by the end of 2002, but to perform a full review as an independent body.

243. Simultaneously with the introduction of administrative courts procedure by the Code of Administrative Courts Procedure, changes were also made to the Code of Civil Procedure (Act No. 99/1963 Coll.) under which the lawfulness of decisions made by public administration bodies was reviewed by courts until the end of 2002. Full review of the so-called administrative decisions pursuant to the Code of Administrative Courts Procedure applies only to the review of decisions relating to public-law matters, while full review pursuant to the Code of Civil Procedure applies to the review of decisions relating to private-law matters. The legal nature of the case - review of the correctness of decisions made by public administration bodies on rights and obligations thus results in the identical position of parties in civil procedure and in administrative courts procedure.

244. The court is obliged to provide the parties with the same opportunities to exercise their rights and to inform them of their procedural rights and obligations within the scope necessary for avoiding their harm in the procedure. The costs of proceedings related to inviting an interpreter are covered by the State. A party that documents the lack of sufficient funds can be at least partially relieved from court fees.[129] However, if the court evaluating an application for waiver of court fees concludes that the application cannot be successful for obvious reasons, the application is rejected and the party must pay the court fees. The court may cancel the acquitted waiver of court fees at any time after the effective termination of the proceedings, even with retroactive effect, if it is found that the financial situation of the applicant did not justify the waiver.

Public character of court proceedings and publication of court decisions

245. During the monitored period, no substantial changes occurred in relation to the public character of court proceedings and publication of court decisions. The Czech Republic does not collect statistical data with regard to court decisions on excluding the public from the hearing. There is also no case law focusing on this issue.

246. A partial change was brought to the criminal procedure by the amendment of the Code of Criminal Procedure effective since the beginning of 2002 regarding the obligation to order a

public hearing in the case of settlement approval in criminal procedure. Until the end of 2001, the court always had to decide in a public hearing. Since 2002, the court may order a public hearing of a case if it is necessary for the purpose of interrogating the accused and the damaged party or for the purpose of performing other acts in order to ascertain conditions for this manner of resolving the case. If the necessary acts, including interrogation of the accused, have already been performed in the course of a trial that was adjourned, e.g. for the purpose of requesting an opinion from the damaged party - legal entity (which can also be requested in writing), the court may also decide in a non-public hearing.

247. Since 2004, there has been an absolutely new concept of the public character of proceedings with juveniles aged 15 to 18, who have partial criminal liability, and with children under 15 who have no criminal liability.

248. Pursuant to the Act on Trials of Juveniles (Act No. 218/2003 Coll.), the law enforcement bodies may only publish such information that does not endanger the achievement of the trial objective and that is not contrary to the requirement of personality protection of not only punished juveniles, but for example also of damaged juveniles and other persons participating in the proceedings. This restriction is valid until the legally effective completion of the proceedings. Special interest in the protection of privacy and personality of juveniles justifies the preference of non-publication of information relating to their offence over the constitutionally guaranteed principle of public trial. The sense of this procedure based on the principle of the presumption of innocence is reducing the harmful effects of trial on juveniles to the minimum extent possible, including defamatory effects on their person. In the case of juveniles with partial criminal liability, this concept is supposed to prevent their being stigmatized.[130]

249. In general, it is prohibited to publish in any manner in the public media any information containing the juvenile's name or any data allowing the juvenile's identification prior to the final decision. An exception to this rule applies to criminal law enforcement bodies in cases where such publishing is necessary for clearing up the case and at the same time there is a reasonable fear that the juvenile may be dangerous to other persons and publication of the information is necessary for his or her arrest (e.g. in the case of an escape). Another exception applies to disclosure of information to other persons by a probation officer if necessary for obtaining information relating to drafting a report on the juvenile by the probation officer, where it would be impossible without such information to professionally supervise or care for the juvenile or to monitor the fulfilment of conditions and restrictions imposed on the juvenile, and to ensure security of persons getting in contact with the juvenile. The persons having received information in this manner may not disclose it any further.

250. The court announces its decision in a public hearing in the presence of the juvenile. An effective judgement may be published, but usually without the juvenile's name so as to protect the juvenile against defamatory effects.

251. As a sanction for publishing a report on a juvenile's offence and stating the juvenile's name, his or her picture or other facts allowing the juvenile's identification, a fine up to CZK 50,000 may be imposed.

252. In practice, judges demonstrate a different understanding of the court's possibility to decide on "another manner of publishing a sentencing judgement" on a juvenile's offence other than publishing such a sentencing judgement in the public media without stating the juvenile's name and surname. This is because it is not quite clear what is meant by "another manner of publishing a judgement": whether it is the manner in which the judgement is published (e.g. posting on the court's official notice board) or the scope of data the court may publish. For this reason, the Czech Republic is preparing an amendment to the Act on Trials of Juveniles (Act No. 218/2003 Coll.) so that it clearly indicates that the court may decide both on publishing a sentencing judgement under stricter conditions, i.e. with specification of even a wider range of data on the juvenile not allowed to be published in addition to the name and surname (e.g. by specifying certain parts of the judgement), and under less strict conditions, i.e. stating the juvenile's name and surname and other personal data of the juvenile necessary for the protection of society. This can include publishing the juvenile's picture, as publishing the name and surname does not necessarily guarantee the protection of society, because nobody who lives far from the scene of the crime will know the identity of the sentenced juvenile, which is why they need to know his or her appearance as well.

253. The decision on determining a wider range of data that may not be published is based on the less serious and dangerous nature of the committed offence and the need to protect the juvenile's interests, while in the case of a greater need to protect society preference is given to society's protection over the protection of the juvenile's privacy and to informing the public on the juvenile's identity in view of the seriousness of the committed offence. All these circumstances will continue to be evaluated and decisions will continue to be made by courts. The range of cases when a judge may decide on publishing the identity of the juvenile should be restricted to extremely serious offences,[131] as these are the only cases when the juvenile's privacy protection can be broken.

Exclusion of judges for prejudice

254. In the monitored period of 2000-2004, the concept of judge's prejudice in civil procedure was changed at the beginning of 2001, since when it has no longer been sufficient to have doubts regarding the unbiased approach of the judge, it is necessary to have reasons for such doubts. Thus, if one of the parties raises objections with respect to the judge's prejudice, it must also specify the reasons causing such prejudice. Together with this change, the possibility to raise objections with respect to prejudice of associate justices was also extended. In either case, however, the objecting party may not explain the prejudice by the court's proceedings in this or any other trial. Objections with respect to the court's prejudice in civil procedure may be in general raised within 15 days of the occurrence of the situation allegedly causing the prejudice or within 15 days after the objecting party learns of the alleged prejudice.

255. An objection of prejudice raised by at least one party of the trial is submitted by the court chair together with the response of the relevant judge/associate justice to the superior court. The regional court senate decides on whether to exclude a judge/associate justice of a district court. The High Court senate decides on excluding a judge/associate justice of a regional court. The Supreme Court senate decides on excluding a judge of the High Court or the Supreme Court. No appeals may be filed against a decision of a superior court on excluding a judge/associate justice. If a supreme court decides on exclusion, the court chair appoints another judge, associate justice

or senate. If all judges of a given court are excluded, the superior court assigns the case to another court at the same level of the judicial hierarchy as the court whose judges were excluded from hearing the case.

256. The Ministry of Justice, as the State body for courts administration, does not keep any records on decisions on objections of prejudice. The obtained findings indicate that the most frequent reason for raising objections are the court's decisions regarding the subject matter of the case which cause the parties to feel, sometimes even before they are announced, that the court favours the other party. It is not uncommon that parties object against prejudice of all judges of the court before which the trial is held, possibly even of appeal court judges. The objections are mostly rejected as unjustified. Excluding a judge on the basis of his or her declarations is unique and only occurs in cases where the judge personally knows one of the parties.

257. In administrative courts procedure judges are excluded from hearing and deciding cases in trial for the same reasons as judges in civil procedure and also in cases when they have participated in making the decision of a public administration body that is challenged by the respective petition or in making decisions in previous administrative court proceedings relating to cassation appeals. A party of the trial may object against prejudice of the judge and must raise this objection within one week of having learned of the prejudice. If a party finds out about the prejudice during the trial, he must raise an objection of prejudice at this trial. The Supreme Administrative Court decides on raised objections.

258. In criminal procedure no changes occurred during the monitored period of 2000-2004 with respect to legal regulations applicable to excluding persons performing the activities of law enforcement bodies, i.e. it is sufficient that any doubts exist with respect to the possibility of the affected person not acting without bias.

Presumption of innocence (para. 2) and information regarding recommendation No. 20[132]

259. In the monitored years, no significant changes occurred with respect to the presumption of innocence. It is possible to detect a growing tendency in international treaties and newly created framework decisions of the EU relating to the proceeds of criminal activities attempting to introduce a reverse burden of proof with respect to documenting the origin of assets for which there is a suspicion that it originates from criminal activities. In view of the need to insist on the presumption of innocence principle in criminal procedure, these attempts have been refused in the Czech Republic.

260. Czech criminal law does not know the institute of plea-bargaining. However, the Czech Republic counts with the possibility of the accused to admit guilt (plea) under the prepared new codification of the criminal procedure.[133]

261. Since the beginning of 2002, it has only been possible, contrary to the earlier period, to use a punishment order of a court for imposing a suspended sentence without a time restriction if the length of imprisonment would not exceed one year.

Minimum guarantees in criminal procedure (para. 3)

Right of the accused to be informed of the reasons of accusation without delay

262. Before charges are brought against a suspect, he has to be accused of having committed a crime, as it is the accusation which starts the criminal proceedings. The reasons for the accusation, description of conduct considered to constitute a crime, and its legal classification consisting of specifying the merits of the case must be, pursuant to the Code of Criminal Procedure, included in the decision on initiating criminal prosecution. The accused receives this decision in writing. If charges are brought against the accused after the investigation, they may be brought only with respect to the conduct described in the accusation. If the public prosecutor changes the legal classification of the unlawful conduct, he is obliged to notify the accused and his legal counsel of such a change so they have an opportunity to propose additional investigation.

263. If the accused or defendant's freedom is limited (in a police cell or custody), the process of informing them of the reasons for their confinement or restriction of their freedom is described in the text pertaining to article 9, paragraph 2.

Right of the accused to be informed in a language he understands and to get assistance of an interpreter

264. The manner and scope of informing an accused person who is confined or whose freedom is restricted and who does not understand Czech about the reasons for intervening in his or her personal freedom is described in the text pertaining to article 9, paragraph 2. A major change in the right to an interpreter in criminal procedure has been brought by the amendment to the Code of Criminal Procedure (Act No. 141/1961 Coll., amended by Act No. 265/2001 Coll.) effective since the beginning of 2002. Until the end of 2001, the police did not engage interpreters in criminal proceedings until the accusation. If the police were negotiating with a suspect prior to the commencement of criminal proceedings, the person himself had to arrange for the presence of an interpreter. Under the new regulation, the police are obliged to engage an interpreter in criminal proceedings against a suspect who does not speak Czech and is not confined or whose freedom is not restricted no later than upon notification of the accusation which initiates the criminal prosecution. However, because the police may deal with suspects who are subsequently accused of having committed a crime even before the criminal proceedings commencement, they usually engage an interpreter as of the very first contact with the suspect.

265. The new amendment to the Code of Criminal Procedure effective since the beginning of 2002 also stipulates the rules for engaging an interpreter. The decisive language is the language specified by the accused as a language which he understands and speaks. At the same time, it is necessary that a certified interpreter for the given language exists. If there is no such certified interpreter and the accused has specified a language which is not the official language of the country of his citizenship or permanent residence or the language of a national minority to which he professes, a formal interpreter is assigned. The formal interpreter interprets the language of the country of the accused person's citizenship or permanent residence or, as the case may be, of his origin. In practice, everybody is thus instructed of their right to use their mother tongue, irrespective of their position in the criminal proceedings.

266. Starting from the moment of accusation and, therefore, potential subsequent bringing of charges, the accused person has the right to translation of the decision on criminal prosecution commencement, decision on custody, charges, punishment proposal, sentence, punishment order, decision on appeal and on conditional suspension of criminal prosecution. The possibility to request translation of other documents is not counted with, as it might cause a delay in the proceedings by the accused person. The accused must be informed of this right and may waive it. If a written document relates to several persons and if it is feasible, the law enforcement bodies only arrange for translation of the respective sections relating to the person entitled to an interpreter for time and financial reasons.

267. In order to avoid reduction of time periods due to the translation process, the relevant time periods do not start to run until delivery of the translated document.

Right to reasonable period of time for preparation of defence and right to consult a defence counsel

268. The provision of adequate periods for the preparation of a defence is not regulated in criminal proceedings by means of express specification of time periods for these purposes, but is generally indicated by the rights of the defence in criminal proceedings, the possibility to inspect files, the rules of notification on the course of criminal proceedings, and the entitlement of the defence to participate in individual procedures.

269. The changed concept of criminal procedure expressed in the amendment of the Code of Criminal Procedure effective since the beginning of 2002 is based on the idea that criminal procedure should take place before a court. This means a conceptual change in transferring the process of probation to the trial stage and restricting the possibility of probation during the pretrial stage. For this reason, the amended Code of Criminal Procedure to a certain extent limits the right of the defence to participate in the pretrial processes only to the interrogation of the accused, participation in the so-called non-suspensory and unrepeatable acts, inspection of the case files and familiarization with the pretrial stage outcomes.

270. With respect to the defence preparation, the defence counsel has in particular the following rights:

- To delivery of a copy of the resolution on criminal proceedings commencement within 48 hours of being chosen or appointed;

- In all stages of the criminal proceedings to request in advance a copy or counterpart of a protocol on each act performed in the criminal proceedings;

- To inspect case files, make excerpts and notes thereof and to obtain copies of case files or their parts at his own cost;

- If reachable, the defence counsel has the right to be present at the interrogation of arrestees and of detained suspects and to ask them questions;

- To request presence at investigation acts which the police must allow and to question interrogated witnesses;

- To be present at investigation acts, the outcome of which can be used as evidence in the trial, unless such investigation acts cannot be postponed and the defence counsel cannot be notified thereof;

- If witnesses were interrogated prior to the commencement of criminal proceedings and if the procedure can be repeated, the defence counsel may request the law enforcement bodies to repeat the interrogation in his presence or request personal interrogation of such witnesses in the trial.

271. After the investigation is completed, the police must allow the accused and the defence counsel within a reasonable period to peruse the files and propose additional investigation. The accused and the defence counsel must be notified of this right at least three days in advance. This period may be reduced subject to the consent of the accused and the defence counsel.

Right to be tried within a reasonable period

272. Since the beginning of 2002, when the Code of Criminal Procedure was amended, courts have been obliged to perform an act aimed at completing the criminal proceedings within a statutory deadline after bringing charges, i.e. to order the hearing and to proceed so as to complete the trial without undue delay. If the decision on guilt and sentence is to be made by a district court at the first instance, the first procedural act must be made within three weeks, if the decision on guilt and sentence is to be made by a regional court, the first procedural act must be made within three months of the charges being brought by the public prosecutor.

273. Since the beginning of 2002, the possibility of courts to return the case to the public prosecutor at the stage of the preliminary hearing of the charges is limited only to the cases of material procedural defects that cannot be removed in further proceedings and to the cases where fundamental facts are not clarified without which the criminal proceedings completion cannot be expected. Besides, their investigation in the trial must be substantially more difficult compared to the possibilities of the pretrial stage.

274. The court delivers a copy of the charges to the accused and his defence counsel at the latest together with the writ of summons to the hearing or notification thereof. At the same time, the court invites them to submit any proposals for further probation at the hearing to the court on time and to specify the circumstances to be clarified by such probation.

275. The court determines the date of the hearing so that the accused and the defence counsel have at least five business days to prepare for the trial. This period starts to run at the moment of notification of the date of the hearing and may only be reduced with the consent of the accused.

276. The defence counsel has the right to be present at the public hearing. The date of the public hearing is determined by the senate chair so as to allow at least five days of preparation to the defence counsel starting from the notification of the date of the hearing. This period may only be reduced with the consent of the person whose interests are to be protected by such period.

Table 24

Survey of average length of criminal proceedings (pretrial and trial)

Monitored item (in days)/year	2000	2001	2002	2003	2004
Length of investigation concluded by suspension (shelving)	53.2	52.8	65.5	73.6	72.3
Length of investigation concluded by accusation	15.2	14.5	23.3	41.4	40.7
Length of investigation concluded by bringing charges	59.8	59.2	60.6	56.3	60
Length of trial	256	272	284	278	275

Right to legal assistance, including so-called free legal assistance, and right to be tried in person and information regarding recommendation No. 21 pertaining to legal assistance in criminal procedure[134]

277. The right to a defence counsel of the accused person's own choosing and specification of cases of the so-called necessary defence when a person must have a defence counsel have not substantially changed during the monitored period. The reasons for necessary defence have been extended to the following cases:

- Since the beginning of 2002, an individual in criminal proceedings must also have a defence counsel in proceedings on extraordinary remedies (complaint on a breach of laws, extraordinary appeal) and in the proceedings on renewal of trial;

- Since November 2004, an individual must have a defence counsel after extradition to the Czech Republic for criminal prosecution if he intends to waive the right to be prosecuted only for the crime for which he was extradited to the Czech Republic from abroad (so-called principle of speciality), in proceedings on extradition to a foreign country, in proceedings on transfer of criminal prosecution to another EU member State, and in proceedings on recognition of a foreign court's judgement.

278. The Code of Criminal Procedure emphasizes the right to choose the defence counsel also in the cases of necessary defence. Only if an individual does not choose a defence counsel is the counsel assigned by the court. The accused may even change the defence counsel assigned by the court by choosing a different counsel. If such a change occurs during the trial, it is usually connected with the necessity to adjourn the trial or, as the case may be, public hearing regarding an appeal or complaint on a breach of laws. However, due to the deadlines stipulated by the Code of Criminal Procedure in some cases,[135] it has not been unusual in practice that an accused has tried to achieve the lapse of a statutory deadline in vain and thus thwarting the criminal proceedings by repeatedly changing his defence counsel. For this reason, the amendment of the Code of Criminal Procedure effective since the beginning of 2002 sets out the rule that it is not possible to notify the newly chosen defence counsel on time, the defence is performed by the existing defence counsel until the new counsel takes over. Thus, this amendment does not restrict the right of the accused to the defence counsel, including the right to choose the counsel

at any time during the criminal proceedings, but only imposes the obligation on the previous counsel to continue the defence until the newly chosen counsel takes over the defence in person in order to ensure the smooth course of the criminal proceedings.

279. Until the end of 2001, the Code of Criminal Procedure did not allow the court to exclude a defence counsel when the quality of defence could be seriously doubted (e.g. the defence counsel is prosecuted himself for an intentional crime, does not perform the defence, does not appear at the hearings where his presence is necessary, etc.). The amendment of the Code of Criminal Procedure effective since the beginning of 2002 sets out the rule that in such serious cases the court may propose excluding the defence counsel. The court is obliged to exclude a defence counsel if he represents two or more accused whose interests are in mutual conflict and if he himself does not abandon the power of attorney or applied for being released from the defence.

280. In the period of 2003-2004, the Constitutional Court dealt with the issue of necessity of the defence counsel in criminal proceedings to have a certificate of the National Security Authority for being provided with classified information pursuant to the Act on Protection of Classified Information (Act No. 148/1998 Coll.).[136] The issue was submitted to the Constitutional Court by a court that had to decide whether a defence counsel in criminal proceedings does or does not need a certificate of the National Security Authority allowing access to classified information during the criminal proceedings. The Constitutional Court focused on the relationship between suitability of means chosen to protect public assets - national security - and adequacy of their intrusion in a wide range of rights and principles of law. It concluded that security checks of attorneys only in criminal proceedings are not adequate, because "… the desired objective can be achieved in criminal proceedings by a sum of partial instruments - instruction given by the court, confidentiality obligation under the Act on Attorneys, etc., which do not affect or restrict the fundamental right to defence, equality of arms and right to make statements on all evidence, which rights collide in the given situation with the public assets (national security)".

281. The Constitutional Court has also analysed the legal regulations governing the participation of attorneys in trial, irrespective of its type (criminal, civil or administrative). The Constitutional Court had to decide not only whether the access of attorneys in criminal proceedings is subject to the Code of Criminal Procedure or the Act on Protection of Classified Information, but also analysed the issue of legal regulations applicable to the protection of classified information in trial in general. The Constitutional Court concluded that protection of classified information in criminal proceedings represents a specific situation in which the Code of Criminal Procedure are applied as a special law, not the Act on Protection of Classified Information as a general law. Otherwise, it could happen that "… an attorney in criminal proceedings would need to pass security checks in order to get access to evidence containing classified information, while in civil proceedings or administrative court proceedings the same attorney in the position of an authorized representative of one of the parties would not need to pass the check in order to get access to the same piece of evidence containing the same classified information. … If the legislator stipulated in the Act on Protection of Classified Information the obligation of attorneys acting as defence counsels in criminal proceedings to pass security checks in order to get access to classified information, the consequences of this regulation would have to be reflected in a special situation constituting a reason for excluding the chosen defence

counsel … and releasing an appointed defence counsel from defence". The Constitutional Court thus concluded that pursuant to the laws of the Czech Republic it is not permissible to request attorneys in criminal proceedings to obtain a certificate of authorization to access classified information, i.e. passing of security checks.[137]

282. An individual may still have more defence counsels in criminal proceedings. However, as it is necessary to clearly specify to which counsel the court is supposed to deliver correspondence, the amendment of the Code of Criminal Procedure effective since the beginning of 2002 requires for the sake of swiftness and smoothness of criminal procedure that an individual appoint one defence counsel authorized to receive correspondence. If an individual fails to do so, such counsel is appointed by the court.

283. While until the end of 2001 only attorneys testifying as witnesses in a given criminal procedure, preparing expert opinions or acting as interpreters could not act as defence counsels in such proceedings, the amendment of the Code of Criminal Procedure effective since the beginning of 2002 further stipulates that attorneys against whom criminal prosecution is or was conducted cannot act as a defence counsel in criminal procedure either, which means that attorneys in the position of an accused, witness or participant may not act as defence counsels in a given criminal procedure.

284. The issues of legal assistance are not governed uniformly by the Czech legal regulations, individual procedural acts, including the Code of Criminal Procedure, stipulate their own rules for provision of legal assistance by attorneys for reduced fees or free of charge.

285. An amendment to the Code of Criminal Procedure effective since 1 July 2004[138] brought certain positive developments in the area of criminal procedure. Thus, since the middle of 2004, the provision of the so-called free legal assistance in criminal procedure has not been viewed as an active right of an individual on which the court decides upon application of the individual for the provision of such service, but as the court's obligation to decide on an individual's right to legal assistance free of charge or for reduced fees even without the individual's application. The court adopts this decision if it is obvious that the individual has no sufficient funds for covering the costs of his defence. For these purposes, the courts keep alphabetical lists of attorneys who wish to perform the obligations of defence as appointed defence counsels. The attorneys on the list are appointed by the court as defence counsels for individual accused persons in the alphabetical order of their surnames in the list.

286. Substantial changes have been introduced by the amendment to the Code of Criminal Procedure effective since the beginning of 2002 also in the area of probation in trial. Until the end of 2001, the trial could be held in the absence of the accused who did not appear before the court despite having been duly summoned. However, the law made probation by means of reading a protocol on a testimony of a witness, another accused person or by means of reading an expert opinion in these cases conditional upon the consent of the accused. Thus, if the court acted in the absence of the accused, the hearing usually had to be adjourned in order to summon witnesses, as it was impossible to obtain the accused person's consent with reading the protocols. For this reason, the Code of Criminal Procedure effective since the beginning of 2002 presumes that if the accused does not appear before the court despite having been duly summoned, he does not wish to exercise his right to be present at the probation and the probation can take place in

his absence. The Czech Republic adopted this regulation in order to eliminate delays caused by passivity on the part of the accused who were duly and timely summoned to the trial. The factual obligation of the accused to be present at the trial has been replaced with the possibility to read protocols on the testimony of witnesses, experts and other accused persons if the summoned accused does not appear before the court without an apology. The accused must be informed of this possibility in the writ of summons.

Right to propose evidence and actively participate in interrogating witnesses

287. The police may admit the participation of the accused in the investigation and allow the accused to question the interrogated witnesses. This happens in particular in situations when an individual has no defence counsel and the interrogated witness has the right to refuse to testify.

288. The amendment to the Code of Criminal Procedure effective since the beginning of 2002 has extended the right of the parties to perform probation before the court, as until the end of 2001 the parties were entitled to request that the court allow them to perform probation only with respect to a witness interrogation. Now, a defence counsel or an individual without a defence counsel can perform all probation in favour of the defence in the trial and public hearing with the consent of the court, including interrogation of a witness or an expert. In the trial, public hearing, or in the course of other procedure of the court performed in the presence of the accused, the accused may raise objections against the manner of conducting the procedure at any time during its course.

289. Since the criminal prosecution commencement, the defence counsel is entitled to be present at such parts of the investigation the result of which can be used as evidence in the trial. This does not apply to the so-called “non-postponable” evidence the probation of which in the trial would no longer be possible. The defence counsel may question the accused and other interrogated persons after the police finish their interrogation. Objections against the course of investigation may be raised by the defence counsel any time during the investigation. If the defence counsel is present at the interrogation of a witness whose identity is to be kept secret, the police are obliged to adopt adequate measures preventing the defence counsel from finding out the witness’s identity.

290. In general, the accused and his defence counsel in criminal proceedings are entitled to participate in all acts of probation in the trial, including the interrogation of witnesses. During the probation in the trial and in public hearing, the defence counsel is entitled with the court’s consent to perform probation in favour of the defence within the same scope as the public prosecutor. The public prosecutor, the accused and his defence counsel can request that the court allow them to perform probation, including in particular interrogation of a witness or an expert. The court is not obliged to acquit their request in the case of interrogation of an accused, interrogation of a witness younger than 15 years, an ill or injured witness or if probation by one of the aforementioned persons would not be appropriate for another serious reason. The court may only interrupt interrogation if it is not conducted in compliance with the law, if the interrogated person is put under pressure by the interrogator, the interrogation is conducted in another inappropriate manner, or if the court deems it necessary to ask the interrogated person a question the asking of which cannot be postponed until after the interrogation. After the completion of the interrogation or its part, the other party has the right to question the interrogated person

291. The amendment to the Code of Criminal Procedure effective since the beginning of 2002 has further newly regulated the possibility of the so-called presentation of a protocol on testimony of a witness obtained at pretrial stage without the presence of the accused person's defence counsel for the purpose of evaluating the witness's credibility, because when the defence counsel did not have the opportunity to be present at the witness's interrogation at the pretrial stage, discrepancies may occur between the witness's repeated testimony before the court. For this reason, it is necessary to consider the significance of the protocol on the witness's testimony obtained at the pretrial stage and its usability before the court with respect to the principle of verbal character, directness and right of the accused to be at least once present at the probation and question the interrogated persons.

292. The presentation consists of reproducing the relevant parts of the previous protocol obtained at the pretrial stage without the presence of the defence counsel with a request for explanation of discrepancies compared to the new testimony provided before the court. This protocol only serves for the witness to explain any discrepancies between their testimony given at the pretrial stage and before the court and for the court to make a conclusion on the basis of such explanation regarding the witness's credibility. As opposed to the read protocol on a witness's testimony, which represents a full-value piece of evidence on which the court may base its decision on the accused person's guilt, the presented protocol on a witness's testimony cannot in itself or in conjunction with other evidence be used for deciding on the accused person's guilt. Exemptions of this rule are permitted mainly in the case of performing so-called unpostponable or unrepeatable acts prior to the commencement of criminal proceedings when correctness and lawfulness is guaranteed by the presence of the judge, in the case of interrogating juvenile witnesses, or in the case when a witness testified under pressure, was bribed, etc.

293. Instead of interrogating a witness, a protocol on his testimony may be read in the trial if the court does not consider personal interrogation necessary and the public prosecutor and the accused agree with it. A protocol on the testimony of another accused person or a witness may be read without their consent if the witness is missing, lives abroad for a long term, his health condition makes the interrogation impossible, or has died.

294. It is also possible to read before the court the testimony of a witness who refused to testify in the trial without the right to do so or who substantially deviates from his earlier testimony. The protocol on the testimony of a witness who exercised his right to refuse to testify in the trial may only be read if the witness was duly informed prior to the interrogation of his right to refuse to testify and expressly stated that he did not wish to exercise this right, the interrogation was conducted in a lawful manner and the accused or his defence counsel had the opportunity to be present at the interrogation.

Criminal proceedings against juveniles (para. 4)

295. Effective as of 1 January 2004, a system change was adopted in trials of juveniles with partial or no criminal liability. Criminal offences committed by juveniles are no longer tried by general criminal courts, but by so-called courts for juveniles, the judges of which specialize in criminal offences committed by juveniles. Thus, the issues of trying criminal offences committed by juveniles were excluded from the Code of Criminal Procedure (Act No. 141/1961 Coll.) and without any substantial factual changes transferred to the Act on Trials of Juveniles (Act No. 218/2003 Coll.).

296. Pursuant to the Act on Trials of Juveniles (Act No. 218/2003 Coll.), children younger than 15 years still do not have criminal liability,[139] but the law allows the State to respond to offences committed by these children in civil proceedings through various educational measures. It is possible to impose custody of a probation official on children under the age of 15, order their placement in therapy, psychological or another suitable educational programme in an educational centre or under protective custody. In the case of offences committed by children under 15, the courts for juveniles proceed in compliance with the rules applicable for civil procedure, as set out in the Code of Civil Procedure (Act No. 99/1963 Coll.). Where the following text mentions criminal punishment of juveniles, it refers to juveniles with partial criminal liability aged between 15 and 18.

297. Criminal offences committed by juveniles with partial criminal liability are in general tried separately without the presence of the other, mainly adult, accused persons. The trial may only be attended by another accused juvenile, his confidant, his defence counsel, his legal custodians and relatives in the direct line, siblings, spouses, damaged persons, witnesses, experts and probation officials.

298. A major difference between the court hearing of juvenile offences until the end of 2003 and since the beginning of 2004 consists of a significant possibility to restrict the public character of the proceedings in favour of the juveniles.[140] The imposed sanctions are no longer called punishment, but measures. The measures include punishment measures, protective and educational measures. The priority is the interest to protect juveniles against harmful influences, creation of conditions for their healthy future development at a social and mental level, restoration of their social relations distorted by their conduct, and achieving their abstention from criminal activities in the future.

Punishment measures

299. A significant change introduced by the Act on Trials of Juveniles (Act No. 218/2003 Coll.) in the imposition of sentences is the extension of alternatives to the sentence of imprisonment. A court may impose the following punishment measures on juveniles for committed crimes:

- Public works;
- Financial measures;
- Financial measures with conditional suspension;
- Forfeiture of a thing;
- Prohibition of activities;
- Expatriation for a definite period of time;
- Imprisonment which can be conditionally suspended, including the condition of custody.

300. It is also possible to apply the extended possibility to refrain from punishment and impose alternative punishment measures with or without probation elements wherever there is a possibility of active influence of the juvenile's close social environment and specific influence of probation officials. The precondition of refraining from the imposition of punishment measures is the admission of guilt by the juvenile with partial criminal liability to committing a crime that represents no more than a minor danger to society and the juvenile's regret and desire to reform himself.

301. The court may refrain from imposition if the nature of the committed offence and the former life of the juvenile make it possible to assume that the trial itself had sufficient educational impact on the juvenile. The court also takes into consideration the consequences of the offence affecting the juvenile, in particular if they are so burdensome that a sentence of imprisonment would be inadequate. Another case when the court may refrain from imposing a punishment measure is a situation when a juvenile committed an offence due to an excusable lack of knowledge of legal regulations.

302. The Act on Trials of Juveniles (Act No. 218/2003 Coll.) has further introduced the possibility of refraining from the imposition of punishment measures in connection with receiving a guarantee for the juvenile's reformation, taking into consideration the educational influence of the person providing the guarantee. In this case, the court must take into consideration also the nature of the committed offence and the person of the juvenile which must guarantee that the imposition of punishment measures is not necessary. If the court refrains from imposing punishment measures on a juvenile, it can leave the resolution of the case and possible punishment or imposition of another adequate measure to the juvenile's legal custodian or the school which the juvenile attends or educational institution in which he lives. In such a case, the court requests their opinion in advance. The court can also issue a reprehension to the juvenile. Leaving the punishment of a juvenile with partial criminal liability can be very efficient especially in the cases of minor offences where stricter supervision or restrictions by the parents over the performance of ordered obligations or restrictions can be more influential and educational for the child than imposition of punishment measures by the court.

303. It is also possible to refrain from imposing punishment measures if the juvenile committed the criminal offence in a state caused by a mental disorder and the court believes that ordering a protective treatment will ensure better reformation than punishment measures. The court may further refrain from imposing punishment measures on a juvenile if it imposes other protective or educational measures instead. These other cases of refraining from the imposition of punishment measures represent significant extension of the alternatives of resolving the case, allowing the court to select the most suitable alternative for each case, taking into consideration the nature of the offence and the person of the offender.

304. The court may also conditionally suspend the imposition of punishment measures if it deems it necessary to monitor the juvenile's conduct for the specified period. This happens mainly in the case when the juvenile requires supervision by a probation official or imposition of other protective or educational measures for the sake of ensuring his future proper conduct and it is not clear whether it will not be necessary to impose punishment measures as well as in the case of a failure of the protective or educational measures.

305. In the case of a suspended sentence or suspended sentence with supervision the court sets out a probation period of one to three years. The supervision of the sentenced juvenile is carried out by a probation official. He assists the juvenile in finding the appropriate treatment, psychotherapeutic and other programmes, accommodation, jobs, etc. At the same time, he supports the juvenile's education and influences the juvenile together with the authorized educator and legal guardian. In the course of the probation activities, the probation official has the right of access to the juvenile. The assistance and consulting is carried out by the probation official mainly in the course of preparation and implementation of a programme drafted individually for the given juvenile.

306. The Act on Trials of Juveniles (Act No. 218/2003 Coll.) expands the list of mitigating circumstances, as the court determining the punishment measures must always take into consideration as a mitigating circumstance the fact that the offender has successfully gone through an adequate probation programme or another suitable programme of social training, psychological counselling, therapy or public works, educational, training, requalification or other suitable programme aimed at development of social skills and personality, or has provided satisfaction to the damaged person, has fully or at least partially compensated the caused damage and remedied or at least reduced the harm caused, has endeavoured to restore the legal and social relations disturbed by his conduct, or has behaved after the offence committed in a manner allowing for reasonable assumption that he will commit no more criminal offences in the future.

307. The court is also obliged, when determining the type and length of punishment measures, to take into consideration as aggravating or mitigating circumstances the fact that a juvenile committed an offence in a state of reduced soundness of mind caused by abuse of addictive substances, in particular if the court simultaneously orders protective treatment or another educational measure aimed at elimination or moderation of the juvenile's addiction. The Act on Trials of Juveniles (Act No. 218/2003 Coll.) thus responds to the quite frequent cause of offences committed by juveniles with partial criminal liability who represent a group especially vulnerable to abuse of narcotic and psychotropic substances, which problem must be dealt with by adequate measures, mainly by ordering protective treatment or another educational measure aimed at eliminating or moderating the juvenile's addiction.

308. The length of sanctions consisting of public works, financial sanctions, prohibition of activities and expatriation is reduced to one half in the case of juveniles with partial criminal liability, with the maximum length of the sanction being determined and, where justified, also the minimum length.

309. Compared to the previous legal regulations of imposition of individual types of punishment measures, the Act on Trials of Juveniles (Act No. 218/2003 Coll.) contains the following differences as opposed to the Penal Code (Act No. 140/1961 Coll.): for the imposition of public works a statement or consent of the punished juvenile with partial criminal liability is required, which guarantees the positive motivation of the juvenile and his cooperation in serving the sentence. Financial sanctions may only be imposed on a juvenile who works or has sufficient funds. The new regulation also makes it possible to determine the amount of financial sanctions in the form of a daily rate, which is a newly introduced manner of calculating the total amount of the financial sanction.[141]

310. It is possible to order a sentenced juvenile after the legal effectiveness of the sentence as an alternative to substitute imprisonment to carry out public works within a probation programme subject to the juvenile's consent should the juvenile fail to pay the financial sanction. If the sentenced juvenile performs the public works, the court decides on whether to pardon the substitute imprisonment.

311. In the case of financial sanctions, a conditional suspension for a trial period of up to three years is possible if it can be expected, taking into consideration the nature of the offence and person of the juvenile, that he will commit no more offences in the future. In such a case, the court decides on attestation and the juvenile does not pay the financial sanction. Otherwise, the court decides on serving the sentence, with a possibility to carry out public works instead of the substitute imprisonment under the same conditions as in the case of an unpaid financial sanction that has not been suspended.

Educational measures

312. Educational measures are aimed at regulating the juvenile's lifestyle and thus supporting and ensuring his education. Educational measures are imposed by the court and at the pretrial stage by the public prosecutor. Pursuant to the Act on Trials of Juveniles (Act No. 218/2003 Coll.), educational measures are the following:

- Supervision of a probation official;
- Probation programme;
- Educational obligations;
- Educational restrictions and reprehension with warning.

313. If the nature of the educational measures permits, they can be applied to juveniles either instead of punishment measures or in addition to punishment measures or in connection with diversion from criminal prosecution (conditional suspension of criminal prosecution, settlement and concession from criminal prosecution).

314. Educational measures can also be imposed in the course of the criminal proceedings with the consent of the juvenile against whom the proceedings are held. Such imposed and performed educational measures do not have an immediate impact on the course of further criminal proceedings (e.g. suspension or interruption of criminal prosecution), but it is naturally reflected in the court's decisions on the application of a diversion, refraining from punishment or imposition of punishment measures.

315. If the court concludes that it is in the juvenile's interest that his proper education be supervised in his own family in which the juvenile lives, it orders supervision of the juvenile by a probation official of the Probation and Mediation Service. Supervision of a probation official means long-term work with the sentenced juvenile during which the juvenile is obliged to be in regular contact with an official of the Probation and Mediation Service.

316. The supervision carried out by the Probation and Mediation Service is one of the intensive means of influencing juvenile offenders. Its objective is to reduce the risk of continuing criminal activities and to contribute to the juvenile's reintegration in society. For the work with juvenile offenders during the probation period to be effective, it must integrate both help and professional guidance and supervision. After imposition of the supervision, the probation official carrying out the supervision must draft an individual programme of the supervision implementation in cooperation with the juvenile. As it can prove during the supervision implementation that complete or timely performance of educational obligations or educational restrictions is impossible or cannot be reasonably requested from the juvenile, the probation official may also propose that the court cancel or modify the imposed obligation or restriction. The court may also adopt such a decision at its own initiative (official obligation) on the basis of the probation official's report.[142]

317. If the juvenile on whom the court imposed supervision of a probation official seriously or repeatedly breaches the terms of the supervision, the probation official informs the court accordingly without undue delay. In the case of less serious breaches, the probation official may warn the juvenile himself. The probation official may not issue more than two warnings in the course of one year. The probation official may also inform the juvenile of any ascertained insufficiencies and warn him that should a breach of the determined conditions, restrictions and obligations be repeated or be more serious, the official will inform the court.

318. Another educational measure is the ordering of a probation programme, which means the juvenile's obligation to go through a probation programme, including but not limited to a social training programme, psychological counselling, therapy or public works, educational, training, requalification or other suitable programme aimed at developing the social skills and personality of the juvenile. The probation programme can bring various limitations of ordinary life routines.[143] The Act on Trials of Juveniles (Act No. 218/2003 Coll.) sets forth quite strict conditions for ordering a probation programme. The juvenile is supposed to have an opportunity to be informed of the contents of the probation programme and must agree with his participation in the programme.[144] The juvenile participates in the probation programme under the supervision of the probation official.

319. Educational obligations imposed on juveniles include in particular the payment of a financial amount within a specified deadline as financial aid to the victims of criminal activities, the performance of public works of a certain kind in his leisure time and without consideration, compensation for damage caused by his offence in a manner corresponding to his powers or otherwise a contribution to eliminating the consequences of the offence, an attempt to reach a settlement with the damaged party, etc. The court may only order public works for a juvenile to such an extent that serving the sentence does not disturb his school attendance or his job for a period not exceeding 4 hours a day, 18 hours a week and 60 hours in total.

320. Educational restriction can prohibit a juvenile for a determined period not exceeding three years to go to certain places and establishments, be in contact with certain people, carry or keep certain things that might stimulate him or give him an opportunity to commit further criminal offences, abuse addictive substances or participate in gambling. Educational measures can also be used to order a juvenile not to live at certain places or within a certain area, etc. During the performance of educational obligations the juvenile is obliged to subject himself to the supervision of a probation official.

321. Reprehension with warning is a strict reproach of the judge and at the pretrial stage of the public prosecutor addressed to the juvenile in the presence of his legal custodian with respect to the unlawfulness of his offence and information of the specific consequences threatening to the juvenile should he commit any further unlawful acts in the future.

Protective measures

322. In addition to general protective measures - protective treatment and forfeiture of a thing, which are imposed under the Penal Code, the law also regulates protective education.

Right to remedies in criminal procedure (para. 5)

Extraordinary remedies

323. The amendment to the Code of Criminal Procedure effective since 1 January 2002 has introduced extraordinary appeal ("*dovolání*") as a universal extraordinary remedy. The extraordinary appeal may only be filed by the accused person's defence counsel. If the accused person's competence to perform legal acts is limited or does not exist, the extraordinary appeal may be filed not only by the defence counsel, but also by the legal custodian since 24 May 2002 (amendment to the Code of Criminal Procedure by Act No. 200/2002 Coll.).

324. In 2001, the Constitutional Court abolished, effective as of 1 January 2002, the possibility of the Minister of Justice to achieve a change of judgement by filing a complaint on a breach of laws (extraordinary remedy) to the detriment of the convict against a legally effective judgement in criminal procedure.[145] The Constitutional Court in particular pointed out that this was a remedy available to the executive power vis-à-vis the judicial power and the convict without the latter having a similar tool, which was an intervention in the principle of equality of arms embodied in the right to fair trial.

325. A complaint on a breach of laws to the detriment of the convict filed by the Minister of Justice can no longer be used in order to achieve cancellation of the challenged judgement, but only an academic statement of the Supreme Court of the Czech Republic that the law was breached.

Right to compensation of damage suffered by unlawful verdict (para. 6)

326. The information pertaining to compensation of damage suffered by legally effective verdicts sentencing an individual whose innocence is proven in a subsequent court review is set out in the text pertaining to article 9, paragraph 5, relating to the restrictions of freedom not representing penal sanctions. Because compensation of damage is provided in the Czech Republic in the same manner both under article 9, paragraph 5, and under article 14, paragraph 6, the information on damage compensation is summarized at the same place for both cases.

Principle *non bis in idem* (para. 7)

327. The principle of no second prosecution for the same offence (*non bis in idem*) has been specified and supplemented by the amendment to the Code of Criminal Procedure (Act No. 265/2001 Coll.) effective since 1 January 2002. Pursuant to the Code of Criminal

Procedure, an obstacle of judged cases is newly not considered a sentence of another partial offence of a continuing crime. If the law enforcement bodies proceeded in compliance with legal regulations valid till the end of 2001 and decided on the merits of one such offence, they thus created an obstacle for the judged case. Consequently, the court could not decide on some partial acts despite having conducted all necessary probation with respect thereto. After the amendment of the Code of Criminal Procedure, the court can decide only on a part of criminal activities with respect to which necessary evidence has been brought and the rest can be dealt with in further proceedings. This amendment of the Code of Criminal Procedure has made it possible to speed up and in some cases complete the trial on criminal activities committed in the form of a series of partial offences constituting in aggregate a single crime.

328. In addition, the Code of Criminal Procedure effective since 1 January 2002 expressly enumerates decisions of law enforcement bodies representing an obstacle for new criminal prosecution. Criminal prosecution cannot be commenced and if already commenced, cannot be continued and must be suspended:

- Against a person against whom an earlier prosecution for the same act was terminated by a legally effective judgement of a court or was suspended with legal effect by a decision of a court or another competent authority, provided that the decision was not cancelled in the prescribed proceedings;

- Against a person against whom an earlier prosecution for the same act was terminated by a legally effective judgement on settlement, provided that the judgement was not cancelled in the prescribed proceedings;

- Against a person against whom an earlier prosecution for the same act was terminated by a legally effective judgement on cessation of the case with a suspicion that the given act constituted a penal offence, tort or another disciplinary wrong-doing, provided that the judgement was not cancelled in the prescribed proceedings.

329. The principle *non bis in idem* has further been extended since July 2004 (amendment of the Code of Criminal Procedure by Act No. 283/2004 Coll.) to include decisions adopted by the public prosecutor in the course of an abbreviated pretrial stage, because this stage does not represent a criminal prosecution and the rule applicable since the beginning of 2002 could not thus be applied to it. Since July 2004, the Code of Criminal Procedure stipulates these further cases of inadmissibility of criminal prosecution on the basis of the principle *non bis in idem*:

- If settlement was approved and case shelved with respect to the same act and the same suspect;

- If a decision on conditional suspension of the punishment proposal was adopted with respect to the same act and the same suspect and the individual on probation has or is deemed to have acquitted well.

330. Since November 2004, another amendment of the Code of Criminal Procedure (Act No. 539/2004 Coll.) extended the principle *non bis in idem* with respect to the requirements for unification of proceedings of law enforcement bodies in the member States of the

European Union in order to respect the fundamental principles of criminal procedure in compatible decisions adopted by law enforcement bodies in the EU member States. The Czech laws award the same legal effects to these decisions as to decisions adopted by Czech judicial bodies.

Article 15

Principle of the ban on retroaction (para. 1)

331. The concept of retroaction did not change in the monitored period of 2000-2004. The Czech Republic does not keep any records of proceedings suspended due to negative prescription of allegedly committed crimes.

Punishment for crimes under general principles of law recognized by the international community (para. 2)

332. During the entire monitored period of 2000-2004, the concept of punishment only for acts criminal under the laws or international treaties incorporated in the Czech laws applied in the Czech Republic. In the monitored period of 2000-2004 the Czech Republic did not become a contracting party to the Statute of the International Criminal Court which would represent such treaty. However, the Czech Republic has been preparing for its adoption not only by amending its criminal law regulations, but also by amending the Constitution of the Czech Republic, which sets out the rules pertaining to immunities of constitutional officials.

333. Since the beginning of 2002, pursuant to the amended Code of Criminal Procedure, an international court or tribunal established under a pronounced international treaty by which the Czech Republic is bound (sect. 375) is considered a court of another country - foreign sovereignty. This regulation allows for the application of regulations governing judicial relations with foreign countries also to international courts and tribunals established not only by international treaties, but also by resolutions of the United Nations Security Council.

334. Starting from November 2004, another amendment to the Code of Criminal Procedure (Act No. 539/2004 Coll.) ensured the actual implementation of cooperation with international courts and tribunals by extending judicial relations with foreign countries to cooperation in proceedings on requests of the International Criminal Court established on the basis of an international treaty by which the Czech Republic is bound or of the International Criminal Tribunal established by decision of the United Nations Security Council issued pursuant to Chapter VII of the United Nations Charter. This applies also for proceedings and decisions on extradition of persons to the International Criminal Court or Tribunal, for proceedings and decisions on transit of persons through the territory of the Czech Republic for the purposes of hearing before the International Criminal Court or Tribunal, or for the purposes of serving sentence imposed by the International Criminal Court or Tribunal. However, it is still impossible to extradite or hand over Czech citizens. Enforcement of decisions of the International Criminal Court or Tribunal is governed by the rules applicable to recognition and enforcement of foreign decisions.

335. However, the ratification of the Statute of the International Criminal Court[146] is still prevented by constitutional obstacles, specifically by procedure-law and substantive-law

immunity of constitutional officials, unlimited right of the President to grant pardons and amnesties, and the prohibition to force Czech citizens to leave their home country. For this reason, the Constitution of the Czech Republic should have newly contained a rule under which the immunities of members of Parliament, senators, judges of the Constitutional Court and the President would be excluded in the case of crimes subject under an international treaty to the jurisdiction of the International Criminal Court and under which the President would not be entitled to exercise the right to grant a pardon or amnesty and under which a Czech citizen could be committed for trial before the International Criminal Court.

336. However, ratification of the Statute of the International Criminal Court[147] is still prevented by constitutional obstacles, i.e. the procedural-law and substantive-law immunity of constitutional agents, the unlimited right of the President of the Republic to grant pardons and declare amnesties, and the ban on forcing Czech nationals to leave their country. Therefore, there were plans to incorporate a new rule into the Constitution of the Czech Republic whereby members of Parliament, senators, judges from the Constitutional Court and the President would not have immunity in relation to crimes where an international treaty dictates that an international criminal court has jurisdiction, whereby the President would not be able to grant pardons or amnesty for such crimes, and whereby a national of the Czech Republic could be handed over to such a court.

Article 16

Legal personality of an individual

Legal personality

337. In the reporting period (2000-2004), there was no change in the concept of the legal personality of the individual.[148]

Legal capacity and standing to be a party to legal proceedings

338. In the 2000-2004 reporting period, there were no changes in legislation regulating legal capacity.[149] An individual acquires legal capacity gradually, based on the intellectual and volitional development of his personality. An exception is the capacity to enter into matrimony in cases where an individual is not yet 18 but is more than 16 years old. In these cases, the court makes a decision on the legal capacity to be joined in matrimony. Where a marriage terminated (irrespective of the method of termination) before an individual reaches the age of 18, the legal capacity acquired judicially remains in force.

339. The court makes decisions on any restriction, deprivation or reinstatement of legal capacity. The judicial procedure is regulated by the Code of Civil Procedure (Act No. 99/1963).

340. The capacity to be a party to legal proceedings, which means an individual's capacity to appear independently in proceedings on rights and obligations and the binding nature of the decision in the proceedings on the individual, has been subject to changes intended to reinforce the protection of an individual's rights. In some administrative proceedings, the individual has full capacity to be a party to legal proceedings on reaching the age of 18, whereas before the usual age limit was 15.[150] In judicial proceedings, the extent of the capacity to be a party to legal

proceedings in the case of children, as persons under 18 years old, corresponds to their degree of legal capacity. Because judicial proceedings may place more of a burden on a child than ordinary hearings, the court is required to assess whether it is advisable for a child to be represented in court proceedings concerning a matter in which the child acts autonomously.

Legal liability

341. In the 2000-2004 reporting period, there were no changes in the concept of general legal liability, unlike criminal liability.

342. In the 2000-2004 period, a broad discussion took place on criminal liability concerning the lower age limit for criminal liability and a reduction in this limit. The issue of reducing the age for criminal liability to at least 14 years was discussed in particular in connection with the new Act on the Judiciary in Cases Involving Young People (Act No. 218/2003); during parliamentary debates, MPs proposed a reduction in the age limit for the partial criminal liability of children.[151] These proposals were prompted by escalating brutality among children under the age of 15, and their greater degree of maturity, enabling them to understand the consequences of their actions.

343. The Act on the Judiciary in Cases Involving Young People (Act No. 218/2003) lays down an age limit of 15 for criminal liability, although this is an institution of relative, rather than absolute, liability. In this respect, the law takes account of the fact that the level of intellectual and moral maturity, especially in persons around 15 years old, varies considerably from child to child. Therefore, a child who, at the time of the perpetration of a crime, does not have sufficient intellectual and moral maturity to recognize the danger of the crime to society or is unable to control his conduct is not held criminally liable for such an act. This means that the child need not be criminally liable even if he has reached the age of 15.[152] The immaturity of a partially criminally liable child must be a significant factor, i.e. it must be evident that at the time of the act the child's intellectual or moral stage of development is generally below that of his peers. In practice, an expert in child psychiatry is commissioned to examine a partially criminally liable child only in cases where, based on the results of the evidentiary proceedings, there are doubts about the child's mental maturity.

344. The latest discussion was prompted by several brutal murders committed by children under 15 years old (the stabbing of an old lady with scissors, the rape and subsequent killing of a classmate by a 13-year-old boy, etc.).[153] Voices have been heard among the public calling for the age limit to be cut to a level as low as 10 years. However, these proposals were hardly made en masse; they were at the same level at which the public ordinarily demands other changes such as bringing back the death penalty.

Article 17

Right to privacy (para. 1)

345. In real life, the right to privacy does not include only positively defined individual rights, supporting criminal-law protection, and the prohibition of the State from intervening in these rights, but also a right respected by a multitude of private entities. This requirement has become very topical, especially with the development of information technology.

Office for Personal Data Protection

346. The Office for Personal Data Protection ("Office") launched its operations in the Czech Republic in 2000. The Office is an independent institution, the main mission of which is to make a major contribution to protection from unlawful interference in the private and personal life of individuals through the unauthorized collection, publication or other abuse of personal data. Besides overseeing the personal data protection as an integral part of the right to privacy, the Office receives complaints from individuals concerning violations of the Personal Data Protection Act (Act No. 101/2000) and provides consulting in the field of personal data protection. In 2004, the Office's powers were extended to include oversight of the use of personal ID numbers in accordance with the Act on the Registration of Inhabitants and Personal ID Numbers (Act No. 133/2000), and the supervision of observance of the Act on Certain Information Society Services (Act No. 480/2004), which laid down rules for the possibility of using electronic communications to send business communications.

347. In its oversight of personal data protection, the Office is the administrative authority responsible for keeping a register of personal data administrators, carrying out checks, making decisions on breaches of personal data protection and imposing fines for such breaches. All its decisions are reviewable by the courts. However, such reviews are not a widespread phenomenon and, furthermore, in most cases the Office's decisions have been upheld by the courts.[154]

Selected examples of practice

348. Only significant problem areas concerning the protection of privacy in the processing of personal data in 2000-2004 are presented. Many of them are of a protracted nature and require not only a change of law, but also a shift in the perception of certain phenomena in the context of human rights and freedoms.

349. A significant problem is the acquisition of personal data and their sources used to address clients in connection with direct marketing.[155] As a rule, at some stage in the past the addressees had been customers of mail order sales, which enjoyed a boom in the Czech Republic in the first half of the 1990s. Relatively large sets of information were created that mainly contained data about addresses and names. The problem is that personal data cannot be passed on to other companies for business purposes without the clients' permission. The Office is tackling this situation in cooperation with like institutions in other countries. Nonetheless, it is a very slow process, due in part to the fact that it can be quite difficult to make contact with the parties distributing these offers.

350. A specific problem is the overuse of personal ID numbers, based on the mistaken assumption that a personal ID number is some sort of absolute identifier of individuals and hence a natural appendage to a name. Myriad registers and databases containing information about the private and family life of individuals are maintained on the basis of personal ID numbers in the Czech Republic. Modern information and communication technology facilitates data searches by means of personal ID numbers, thus resulting in the serious risk of illegitimate invasion of the privacy of the individual. A significant change in this field occurred when the Act on the Registration of Inhabitants and Personal ID Numbers (Act No. 133/2000) was amended as of April 2004.[156] This Act now allows for the general use of personal ID numbers solely by

authorities responsible for state administration, courts, and notaries (for the purposes of the central record keeping of wills or with the permission of the individual whose personal ID number is at issue).

351. In the provision of their services, some service providers demand a copy of personal documents as a precondition for the provision of the service (formally the conclusion of a contract). However, personal documents hold more information than is required for the provision of a service. Therefore, the view advanced by the service providers, that they are aiming for maximum precision in the personal data of consumers, is unacceptable. As in the previous example, the situation improved after an amendment was made to the relevant legislation, in this case the Identity Cards Act (Act No. 328/1999) and the Travel Documents Act (Act No. 329/1999), which prohibited these identity documents from being copied without the individual's consent. Furthermore, this consent must be evidenced by the person who makes copies of the identity documents.

352. In practice, unlawful requests for personal ID numbers and other identification information persist. In many public access buildings, personal data are gathered and processed in excess of the reasons why they are collected.[157] In these cases, the reason is the subsequent identification of the visitor, either in or after an emergency that occurs during their time in the building. As a rule, the police would be responsible for investigating such an event; however, all they need to identify and track down an individual is the full name together with the number of the individual's identity document or other documentation used by a visitor to prove his identity. That said, the scope of the data acquired varies.[158] In all cases, keeping records of visitors entails the collection of personal data, and therefore all building operators must take all measures to prevent the misuse of such data.[159] As a result of this superfluous acquisition of personal data and inadequate security of their physical safety, the Office handles complaints where documents containing personal data have been found in public places.

353. In 2000-2004, the activities of banks (i.e. their activities per se and the legislation applicable to their operations) attracted attention. In terms of the banks' physical activities, the focus centred on the establishment of a register of client information.[160]

354. At the end of 2001, several banks launched a campaign to obtain their clients' permission to process their personal data. Because the purpose of this register was to enable banks to carry out client credit scoring, it involved the processing of personal data above the banks' authorization in relation to clients.[161] This register is available to all banks, and therefore all the information about the clients of one bank is accessible to other banks. However, the banks presented the provision of client consent (and thus placement in the client information register) as a direct means of speeding up services - especially lending. The Office therefore inspected these banks, concentrating on whether, and in the processing of which personal data, the banks can and should request permission. The Office went on to recommend that the banks' clients withhold such permission for the simple fact that the Banks Act does not allow for this approach by the banks or the further handling of personal data.

355. Between May 2002 and July 2004, banks were able, under the Banks Act (Act No. 21/1992) to obtain and process personal data - including sensitive data - for the purposes of banking business in order to carry out transactions without unreasonable risks. The banks were not required to fulfil the following obligations of a personal data processor:

- Every year, inform clients of all the client personal data collected;

- On provision of personal data to another country, the Office's consent was required only for the first such transfer, not every transfer;

- Banks were also able to transmit personal data to another country via a private entity (legal person) who was not a bank, thus diminishing protection from misuse; and

- The client's permission was not required to provide the client's personal data to another country in which the bank operated.

356. In this respect, the content of the Banks Act, or its amendment,[162] was inconsistent with the Czech Republic's commitments under international law, specifically the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.[163] For the same reasons, albeit primarily from the aspect of community law, the European Commission studied the amendment to the Banks Act and stated that there was a high degree of incompatibility between the amendment to the Banks Act and community law in terms of personal data protection.[164] The Office had serious reservations regarding the amendment to the Banks Act.[165] These reservations focused on the intervention in the rights not only of banks' clients, but also of other individuals, most often relatives or persons with whom banks' clients live in the same household. This could happen specifically if the database of bank clients were connected to the databases of other non-banking business entities, such as energy suppliers, telecommunication companies or leasing companies.[166]

357. However, according to the Constitution of the Czech Republic, throughout the force of the amendment to the Banks Act from 2002 it was not possible to apply the disputed rules because of their inconsistency with rules contained in an international treaty to which the Czech Republic is a State party, as the rules contained in the international treaty prevailed.

358. The Ministry of Health responded to the ongoing spread of SARS at the beginning of 2003 by issuing an emergency measure.[167] All persons flying to the Czech Republic were required to fill in a landing card.[168] The completion of the card involved supplying the person's given name and surname, the flight number, the date on which the flight commenced, passport number, place of stay in the Czech Republic, and date of planned departure within 20 days of arrival. Airline staff distributed the landing cards to passengers on-board all aircraft landing in the Czech Republic, and passengers handed in their completed cards during check-in (in the event of transit) or to police officers. Every day, the police forwarded the collected landing cards to staff from the City of Prague Hygiene Department, which stored them in sealed crates in a locked room to which only designated persons had access. A branch of the City of Prague Hygiene Department officially took receipt of these stored cards on working days. On expiry of a period equal to twice the incubation period, the cards were officially incinerated. A member of staff of the hygiene department was present during disposal and drew up a disposal report. This system was designed in order to track down any persons who, during a trip to the Czech Republic, came into contact with a person who was suspected of contracting SARS or became ill with SARS and could have infected other passengers during travel. The Ministry of Health repealed the obligation to fill in and hand over landing cards with effect as of 1 July 2003.

359. In May and June 2003, more than 1.3 million passengers travelled via Prague-Ruzyně Airport. If it had been necessary to find all fellow passengers and other passengers that could have come into contact with a person suspected of contracting SARS, on average more than 30,000 landing cards per day would have to have been sorted.[169] Because the landing cards were officially incinerated, claims from the time of this measure that some passengers handed in incomplete or blank cards cannot be verified. In these circumstances, it ensues that it could have taken longer than a day to track down all passengers potentially at risk, and the group of people who came into contact with an at-risk passenger would have expanded; in some cases, incomplete information in the cards could have made it impossible to find all persons.

360. The Office expressed fundamental opposition to the method employed to obtain personal data during the emergency measure. Other EU member States did not introduce similar record-keeping methods. If a similar situation occurs in the future, the Czech Republic will be governed by WHO recommendations and will coordinate its approach with that used by EU member States in accordance with measures adopted by the European Commission.[170] At the same time, it will consider what methods can be used not only to prevent the blanket collection of personal data, but in necessary cases also how the system for tracking down passengers who may have come into contact with a suspected SARS victim and other persons can be made more efficient.

361. Since September 2004, the possibility of concealed births has existed in the Czech Republic.[171] These should enable pregnant women to give birth without subsequently having to disclose personal data.[172] The fact that this is not a simple matter and that it is accompanied by other rights and their aspects is reflected in the views on the existence of this possibility. Advocates stress women's right to a concealed birth as an alternative to an abortion, while opponents argue that a child has the right to know who its parents are[173] or point to the unequal status of married and single women - only a single woman may have a concealed birth.

362. However, this right of the child is not absolute, and even the Convention on the Rights of the Child admits that it must be exercised in keeping with other commitments of States parties under international law. Here the right to privacy should be cited in particular.[174] A concealed birth may be sought only by a woman who is not married and where the father of the child is not automatically considered the child's father under the Family Act (Act No. 94/1963). If a married woman were given the right to have a concealed birth, the child's father (the husband) would be deprived of parental rights under the law and the child would be deprived of the right to be brought up by its parents.

363. A concealed birth is arranged by sealing the health-care documentation of the woman who gave birth to the child, because without these personal data it would be practically impossible to secure relevant information of a health nature that could be highly significant for the protection of the child's health. The health-care facility reports the birth of the child to the registry in order to register it in the birth register and have a birth certificate or registry document in general issued. However, this document will not contain personal data about the parents; information about the mother remains in sealed health-care documentation.[175] The possibility of perusal for health and other professions shall not apply to the sealed documentation because a court shall make decisions on the availability of personal data.

364. In the last decade, there has been fast-paced development in the use of camera systems in public areas in the Czech Republic. In general, the Personal Data Protection Act can be applied to records of camera systems containing personal data. Another decisive circumstance is the entity that uses (collects and processes) information from camera systems. A special measure to obtain and process personal data from camera systems applies to the police force and municipal police under the Police Act (Act No. 283/1991) and the Municipal Police Act (Act No. 553/1991). A number of municipalities have opted to install camera systems as a means of ensuring public order. Camera monitoring and use of recordings were discussed and criticized because the municipal police operated these public camera systems without legal authorization in the Municipal Police Act until the end of 2002. Since 2003, the municipal police have had this power.

365. Other entities for the processing of personal data obtained via camera systems need the permission of the individual whose personal data have been obtained via camera systems. They must also inform the individual of the scope and purpose of personal data processing, who will process the personal data and how, and who will have access to the personal data. Under the Personal Data Protection Act, the use of such a camera system must be duly registered with the Office.

366. Although the Personal Data Protection Act applies to entities which do not have their own personal data handling system, in the future it will be necessary to cope with objections related to the individual's freedom of will on entering publicly accessible premises controlled with camera systems, especially in those cases where the individual de facto has no other opportunity of entering the controlled premises. In cases where the handling of personal data takes place without an individual's permission, the Office will examine the following conditions:

- The legitimate purpose for which the acquired recordings will be used must be clearly established;
- A warning about the monitoring must be made in advance (e.g. in the form of a visibly placed sign);
- Monitoring must not be carried out in areas intended for solely private purposes;
- The acquired recordings must be effectively protected from misuse.

However, according to the remarks of the Office, these conditions are not respected in many cases.

367. During 2003, a dispute arose on the installation of audiovisual monitoring technology in facilities for the institutional and protective upbringing of children.[176] In addition to the ombudsman and the Attorney-General's Office, the Czech Schools Inspectorate and several non-governmental organizations also expressed their opposition to the instalment of cameras in institutions. The need to protect children and educators from violence and bullying conflicts, in this case, with the right to privacy; the adequacy of invading privacy in relation to the purpose to be achieved is a key issue.

368. A clearly positive characteristic of this dispute was the gradual harmonization of the opinions of the above-mentioned institutions and the Ministry of Education, Youth and Sports

("Ministry of Education"), which had been diametrically opposed at the beginning.[177] However, in the handling of this problem, the Ministry distanced itself from the opinion of the Institute of State and Law and adopted the opinion of the Attorney-General's Office.[178] This opinion states that the installation of this technology in educational establishments without legal basis is in contravention of international conventions on human rights. Further, it is stated that this technology may be placed only where there could be uncontrollable movement of persons who are not facility employees, which is substantiated by concerns for the safety of children. In the end, the Ministry of Education recommended that the directors in these establishments remove cameras from areas where the privacy of children should not be invaded (bedrooms and sanitary facilities); it claimed that other areas were not residential areas by nature (e.g. corridors).

369. The amendment to the Act on the Institutional or Protective Upbringing (Act No. 109/2002) now contains authorization to use audiovisual systems. In this respect, decisions on the use of audiovisual systems should rest with directors exclusively in those establishments where children have been placed under protective upbringing. Areas should also be defined where audiovisual systems can be used, and the director is obliged to inform the children and employees of their establishment in advance of the installation and method of use of audiovisual technology.

370. A specific case in which the right to privacy conflicts with the right to information occurred in the publication of documents produced in the scope of a municipality's activities on the Internet. The conflict of these two rights can be effectively prevented by ensuring that the municipality renders any personal data in published documents anonymous. Many municipalities have started to act this way in practice.

371. Another interesting issue which includes not only the protection of privacy, but also the right to information, in the 2000-2004 reporting period was the method and scope of information made accessible from the patient's health-care documentation. Since August 2001, all patients have had the right, under the Human Health Care Act (Act No. 20/1966) to the provision of all information contained in their health-care documentation. This also includes other information related to patients' state of health and not directly specified in the health-care documentation. This right to information is restricted by the protection of third parties, whereby patients cannot find out information about a third party.

372. At present, health-care facilities do not all have the same practices. Some health-care establishments allow patients to peruse their health-care documentation but not make copies, even if patients are willing to cover the copying cost themselves. In other places, health-care facility staff state that they are allowed to present health-care documentation to patients only in the presence of qualified medical personnel, making the process excessively onerous. If patients or their survivors do not receive information from doctors, they must contact the entity running the health-care facility. This entity might be a municipality, region, the Ministry of Health or a private entity. If patients or their survivors still receive no information, they must apply judicial protection or seek the services of the ombudsman, who may investigate complaints concerning public administration.[179]

373. The approach to the health-care documentation of remand or sentenced prisoners is even more complicated. A methodological letter of the Director of the Health Service Department of the General Headquarters of the Czech Prison Service provides that defence counsels (lawyers)

are not supplied, on request, with information on the state of health of their client or with photocopies of the health-care documentation of their client in prison, even if the clients give written permission, because defence counsels are not law enforcement agencies. Similarly, information about the state of health of a patient who is a foreign national and is in the care of a health-care facility run by the Prison Service is not sent abroad, except in cases where foreign judicial authorities request.[180]

374. In 2002 and 2003, a dispute about the posthumous protection of moral rights of a deceased person attracted considerable attention from the lay public and professionals alike. There were two cases where survivors sought information about the causes and circumstances of the death of their next of kin.[181] Because the Human Health Care Act (Act No. 20/1996), which contains rules for the relationship between the individual (the patient) and the doctor, generally refers solely to officials or professionals who are entitled to familiarize themselves with the information contained in health-care documentation, the Ministry of Health refused the possibility of acquainting survivors with information contained in health-care documentation. The survivors therefore had the chance to seek their rights before a court and trust that the court would acknowledge the principle of the transfer of moral rights to survivors even in the case of the right to health and life and information about them. However, they took the less formal approach and lodged a complaint with the ombudsman. As the ombudsman was unable to find a solution to this matter, he turned to the Government. The Government, although it is not competent to make a decision, only to express an opinion, stated in both cases that it believed that the information should have been made available to the survivors, and that if the health-care documentation of the deceased contains sensitive personal data about other individuals, only this specific information needs to be protected.

375. According to the Health Care Act which is under preparation, all patients should be entitled not only to information about their state of health, as contained in their health-care documentation, but also to copy their health-care documentation. At the same time, parts of the health-care documentation which a patient is not entitled to see (e.g. those parts of the documentation which contain information protected by ownership of intellectual property rights) are specified. The group of officials and experts who are entitled to be acquainted with the content of health-care documentation will also be expanded to include the ombudsman in order to prevent questions as to whether this non-sanctioning inspection body can peruse health-care documentation in an investigation. Survivors will be able to learn of the content of health-care documentation if the deceased grants permission before his death. In cases where it is not possible to determine or exclude persons who are entitled to learn about the content of health-care documentation, this right shall rest solely with the next of kin.[182] Until the Health Care Bill is passed, the Ministry of Health has proposed that the issue of informing survivors of the content of a deceased person's health-care documentation be resolved by means of a situation where a superior authority waives the obligation of confidentiality imposed on medical personnel.

Protection of privacy (para. 2)

Judicial practice

376. There have been no changes in moral rights compared to the situation described in the initial report. Judicial decisions continued their established trend, where courts grant

compensation running into tens of thousands of crowns for interference in moral rights with no impact on health or life, and amounting to hundreds of thousands of crowns if interference in moral rights affects health. In several particularly serious cases, damages have totalled more than a million crowns. In the 2000-2004 period, the application of the right to personal confidentiality became more widespread.

Table 25

Overview of judicial decisions concerning moral rights in 2000-2004

Monitored factor/year	2000	2001	2002	2003	2004
Number of actions brought	*	*	*	*	*
Number of enforceable decisions	493	407	600	725	721

* Information not available.

377. The method used by the courts to make decisions and the method used to terminate judicial proceedings have not been ascertained. Therefore it is not known how many of the actions brought were retracted, in how many cases the litigation ended in conciliation approved by the court, in how many cases the action was upheld, in how many cases the action was upheld at least partially, and in how many cases the action was rejected by the courts.

Table 26

Overview of the application of criminal-law protection in the case of crimes related to the protection of privacy

Crime/year		2000	2001	2002	2003	2004
Unauthorized use of personal data (§ 178)	Complaints submitted	*	*	*	*	*
	Ex officio investigations	*	*	*	*	*
	Discontinued	9	3	8	2	17
	Commencement of criminal investigation	17	25	121	78	62
	Indictments brought	11	13	13	10	14
	Judgement of acquittal	0	0	1	0	0
	Judgement of conviction	6	6	4	11	4
Libel (§ 206)	Complaints submitted	*	*	*	*	*
	Ex officio investigations	*	*	*	*	*
	Discontinued	39	26	57	63	51
	Commencement of criminal investigation	169	166	236	183	152
	Indictments brought	63	70	70	56	53
	Judgement of acquittal	6	11	24	18	12
	Judgement of conviction	18	20	21	24	19

Table 26 (*continued*)

Crime/year		2000	2001	2002	2003	2004
Interference with another person's rights (§ 209)	Complaints submitted	*	*	*	*	*
	Ex officio investigations	*	*	*	*	*
	Discontinued	184	171	173	178	262
	Commencement of criminal investigation	1 248	1 129	1 146	922	1 071
	Indictments brought	336	372	366	359	453
	Judgement of acquittal	5	11	11	10	15
	Judgement of conviction	117	97	96	117	118
Forcible entry into a dwelling (§ 238)	Complaints submitted	*	*	*	*	*
	Ex officio investigations	*	*	*	*	*
	Discontinued	19 195	16 187	18 542	19 147	18 011
	Commencement of criminal investigation	31 671	27 967	30 899	30 768	29 025
	Indictments brought	6 167	5 856	5 539	5 916	5 357
	Judgement of acquittal	108	141	168	212	241
	Judgement of conviction	4 120	3 790	3 865	3 825	3 649
Infringement of the confidentiality of messages in transit (§ 239)	Complaints submitted	*	*	*	*	*
	Ex officio investigations	*	*	*	*	*
	Discontinued	9	5	8	22	14
	Commencement of criminal investigation	196	99	41	106	45
	Indictments brought	18	22	14	14	19
	Judgement of acquittal	0	1	0	0	0
	Judgement of conviction	6	8	6	3	3
Infringement of the confidentiality of messages in transit (§ 240)	Complaints submitted	*	*	*	*	*
	Ex officio investigations	*	*	*	*	*
	Discontinued	0	0	1	1	0
	Commencement of criminal investigation	3	2	5	5	6
	Indictments brought	1	1	3	4	4
	Judgement of acquittal	0	0	0	1	0
	Judgement of conviction	0	0	0	0	4

* Information not available

Excessive use of the criminal-law protection of personal confidentiality for libel purposes

378. The public - in particular the media - devoted greater attention to the submission of complaints based on the suspicion of libel.[183] One of the reasons was the fact that complaints were submitted by or against publicly known persons.

379. The financial aspect is a contributory factor in the submission of complaints based on a suspicion of libel. While filing a complaint does not cost anything, the bringing of an action for the protection of the personality in civil judicial proceedings is subject to court fees. Criminal protection may be applied only in cases where untruthful claims have been made, whereas in civil judicial proceedings damages can be sought even for claims which hold some truth but which could interfere with the rights of the individual. These are also reasons why the criminal protection of rights, which is generally provided as subsequent protection, is often applied first, and why, if this step is unsuccessful, the parties concerned only then apply those means of protecting rights which are intended to prevent the submission of a criminal complaint.

380. From 1991 to 2000, the amount of the court fee for a petition to commence civil judicial proceedings for the protection of the personality, containing compensation for non-property loss, was set at CZK 4,000 without prejudice to the specific sum sought. Following the amendment to the Court Fees Act (Act No. 549/1991), since 2001 the determining factor when filing an action for libel is whether the claimant is seeking damages or not. If he is, and if the damages sought are in excess of CZK 15,000, the court fee is set at 4 per cent of the proposed damages. As a result, the amendment to the Court Fees Act removed the imbalance making it possible to obtain up to several million crowns as compensation of a property or non-property nature for a relatively low amount. However, at the same time, it indirectly opened up the issue of how to place a value on the protection of the personal confidentiality of persons whose financial relations are at a level where the court fees can be waived, compared to persons who are capable of bearing the full costs as of the start of the proceedings. Because they are unable to pay the court fee of 4 per cent of the damages sought, persons in a less favourable financial situation will apply for damages only up to an amount on which they will be able and willing to pay the court fee.

381. The excessive use of libel, like other cases of unwarranted submissions of complaints (e.g. on suspicion of a hoax), has an adverse effect on the development of the legal culture in the Czech Republic and results in justified criticism from the media and foreign observers. This is particularly pertinent in cases where known persons in the public domain, and even public servants, seek protection in this manner.

Article 18

Religious freedom (paras. 1, 2 and 3)

382. The situation regarding religious freedom in the Czech Republic has not changed much from the situation described in the initial report. A significant factor has been the change in the right of a church or religious community to be registered by the State, which was introduced in 2002 when the new Churches Act (Act No. 3/2002) was adopted. A church or religious society is entitled to State registration if it presents a registration petition signed by at

least 300 adults residing in the Czech Republic who claim to be members of the church.[184] Before the new Churches Act was passed, 10,000 adults were required. This step was intended to help significant, but in the Czech Republic less numerous confessions, to formalize their existence in relation to the State. Another change has been the expanded requirements placed on the church's basic document which is enclosed with the application for registration. This document must contain a list of the rights and obligations of church members and information about the inclusion of the church or religious community in international structures outside the Czech Republic. If a church is engaged in business, the subject of its gainful activities and the method in which its liquidation surplus is to be handled must also be specified.

Non-military national service

383. From 1992 to the end of 2004, non-military national service existed as an alternative to military service in the Czech Republic.[185] Non-military national service was discontinued on 22 December 2004 when the fully professional army came into existence.

384. All those who declared that, on grounds of conscience or religious conviction, they refused to serve with weapons had to register for non-military national service ("civilian service") by means of the following procedure: conscripts in the period prior to the commencement of basic military service, reservists, and soldiers whose military service had been interrupted had the opportunity to submit a written declaration on their refusal to take part in basic military service on grounds of conscience or religious conviction. Conscripts had the chance to refuse to take part in military service within 30 days of the end of the conscription procedure. In the event of preceding permission to postpone national service, conscripts had to make this refusal known within five days of expiry of the reason for the permission to postpone military service. Reservists could refuse to fulfil their military duty by 31 January of each calendar year; soldiers whose military service had been interrupted could refuse to take any further part in military service within five days of the expiry of the reason for the interruption.

385. As of 1 January 2005, the refusal to take part in special services has been regulated by the Conscription Act (Act No. 585/2004). This law retains the general defence duty solely in the event of a national emergency or state of war. In times of peace, the armed forces comprise solely professional soldiers who have joined up of their own accord. Under the Conscription Act, on grounds of conscience or religious conviction a reservist may refuse to take part in special service, i.e. mandatory service during a state of war or national emergency,[186] within 15 days of the date on which the decision on his ability to take part in active military service, issued in the conscription procedure, is delivered, or within 15 days of the effective date of the declaration of a national emergency or state of war. This individual is then required to assume work duties under the Act on the Defence of the Czech Republic (Act No. 222/1999).[187]

Table 27

Numbers of statements of refusal to take part in military service submitted in the 2000-2004 reporting period

Monitored factor/year	2000	2001	2002	2004	2004
Declaration of refusal to take part in military service	13 695	13 118	11 767	5 255	374

Information concerning Observation No. 22[188]

386. The Czech Republic is fully aware of the fact that one of the manifestations of religious freedom is the freedom of the persons of the same religion to associate with each other in various religious communities. Church registration is for purposes of notification and therefore no principle of admissibility is applied. The idea is not to ensure the formal establishment of a church, but to provide the church with legal personality.[189] Legal personality enables a church to enter into legal relations not connected with the realization of religious freedom and is also used to increase legal certainty for the partners of churches in these external legal relations by minimizing a situation of unlawful interference with their rights. Through their very existence, churches are thus independent of the State, and as regards freedom of religious conviction the Churches Act does not distinguish between registered and non-registered churches. However, a registered church may seek the granting of authorization to exercise "special rights". In relation to registration, the Constitutional Court repealed[190] the above-mentioned purpose of registration in the Churches Act - "for the purpose of the organization, profession and dissemination of religious faith" (sect. 6 (2)) - because the national level of the protection of human rights guarantees churches the right to set up religious orders and other church institutions independently of State authorities.[191] The Churches Act does not regulate relations between registered and non-registered churches, and therefore the Committee's concern about different treatment, including the restriction in the religious freedom of various religions based on whether or not they are registered, is unfounded.

387. Nevertheless, in the group of registered churches the Churches Act makes a certain distinction in that the State recognizes the activities of certain churches as its own. This entails the granting of "special rights", such as religious teaching in schools open to the public, the performance of pastoral activities in the armed forces and at facilities where people are subject to a restriction or the deprivation of personal freedom, and the performance of ceremonies when couples enter into matrimony in a church. In order for these special rights to be granted, in addition to registration the new Churches Act also requires the fulfilment of other conditions, such as the signatures of at least one per mille of the population of the Czech Republic based on the last census[192] professing to be members of the church; this requirement has now been made contingent on the duration of church registration and the results of the church's financial management. In its decision-making on the above-mentioned constitutional complaint, the Constitutional Court assessed inter alia the new conditions for the granting of special rights. It decided that these conditions complied with international human rights treaties and only cancelled the obligation of the Ministry of Culture, as an administrative authority, to make decisions on the revocation of authorizations to exercise special rights in cases where a church fails to publish an annual report every year (sect. 21 (1) (b)). In particular, churches that are less numerous and have not been registered for long do not acquire the rights of churches that they would have acquired under the previous legislation. Therefore, the churches striving to attain the same status as traditional churches tend to view the new Churches Act as a more stringent piece of legislation.[193]

Freedom as regards the religious education of children (para. 4)

388. At primary and secondary schools funded by the State, a region, a municipality or association of municipalities, i.e. public schools, religion is taught as an optional subject. In

order to teach religion, pupils from one or more schools, regardless of which grade they are in, can be combined if at least seven children enrol for religious education provided by a given church or religious society. The maximum number of pupils per group is 30. Churches ascertain children's interest among the children's parents and then take further steps for the teaching of religion. At faith schools, where parents enrol their children of their own free will, religion is taught as a compulsory subject. Religion in public schools may be taught solely by a representative of a church which is authorized to teach religion.[194] The church representative must also meet the requirements to carry out teaching activities. The heterogeneity of religion in schools is not monitored; schools are not obliged to report which religion is being taught.

Article 19

Freedom of expression and freedom of opinion and the possibility of restrictions therein (paras. 1 and 3)

389. Freedom of expression and opinion, and possible restrictions, evolved further in 2000-2004 on a general level and on the level of the protection of the rights of persons whose rights may be affected by the exercise of another person's right. As a general right, freedom of expression especially conflicts with the right to the protection of privacy and the ban on hatred and intolerance.[195] Therefore the following part of the report focuses in particular on the freedom of expression/opinion and justifiable restrictions.

390. In the 2000-2004 reporting period, in their decision-making the courts reinforced the differences in the concept of protection of personal confidentiality under civil-law and criminal-law criteria. While civil-law protection focuses on protection from encroachment on moral rights with at least partially true claims, the requirement of criminal-law protection is the untruthfulness of a claim and the knowledge of the person making the claim that it is untruthful information. In its decision on an assessment of the criminality of a defamatory statement about a judge, the Supreme Court stated that the untruthfulness of the claim must be verifiable and therefore "claims which are solely of an evaluative nature and which express the subjective opinion of the person making the statement" cannot be considered sufficient for criminal prosecution, and that "Gross verbal insults aimed at a public official for exercising his powers do not in themselves justify" a criminal penalty.[196] The Supreme Court also discussed the establishment of criminal liability for invading privacy with untrue information from the aspect of intensity.[197] In an individual invasion of privacy due to libel, the threat must be significant - not just a low or normal threat. However, the threat must cover not only the consequences that are already apparent, but also the consequences which are still a risk.

New legislation on radio and television broadcasting and the status of publishers of periodicals

391. Under the new Radio and Television Broadcasting Act (Act No. 231/2001) the right to disseminate radio and television broadcasting is subject to an authorization. This is issued by the Council for Radio and Television Broadcasting which, as an inspection body, may impose fines in cases where there is a breach of the ban on broadcasting programmes which could incite hatred on grounds of race, sex, religion, nationality or membership of a particular group of the population, or a ban on the broadcasting of programmes promoting war, cruel or inhuman

conduct in a manner which disparages, apologizes for or approves them. The Radio and Television Broadcasting Act also prohibits the transmission of programmes which could seriously impair the physical, mental or moral development of children, in particular by containing pornography and gross, gratuitous violence, and by depicting, without good reason, persons dying or exposed to physical or mental suffering in a manner which degrades human dignity. The Radio and Television Broadcasting Act bans the broadcasting of commercials which diminish respect for human dignity, attack faith and religion or political or other beliefs, or contain discrimination on grounds of sex, race, colour, national language, social origin or membership of a national or ethnic minority. The previous law only allowed for fines in cases where obligations were infringed; the new law permits the revocation of the broadcaster's licence. In most cases, the Council imposes fines for the broadcasting of programmes that could threaten the mental development of children.

392. As radio and television broadcasters operate a public service[198] that is covered by the payment of direct fees and by public budgets, the law subjects them to the obligation to ensure impartiality and balance in their news programmes and the obligation to prepare programming offering a balanced range of programmes for all members of the public, with consideration for their age, sex, colour, faith, religion, political or other beliefs, national, ethnic or social origin and membership of minorities.

393. In the emergency situation which emerged at Czech Television at the end of 2000, the provision of balanced, impartial information by both rival groups (the leadership of the newly appointed Director General on the one hand, and the reporters who rejected his leadership on the other) was severely compromised. In the news bulletins provided by the two groups, one-sided information and interpretations were expressed; the news supplied by the then Director General failed to provide information about circumstances of fundamental significance (e.g. the content of decisions by the Chamber of Deputies) and attempted to criminalize opponents of the then director general.[199]

394. Since 2000, the free dissemination of information and opinions via periodicals has been subject to new regulation. Under the Periodicals Act (Act No. 46/2000) the publication of periodicals is not licensed. Publishers only register their periodicals with the Ministry of Culture and are subsequently obliged to send compulsory issues to certain libraries. The Periodicals Act regulates the protection of the source and the protection of the information content, which can be viewed as a reinforcement of the protection of freedom of expression in journalism. The Periodicals Act introduced the institutions of the right to reply and the right to subsequent disclosure, which contribute to the protection of the rights of individuals from abuse of the freedom of expression by periodicals.[200] The obligations stemming from the right to reply and the right to subsequent disclosure were also imposed on radio and television broadcasters.

395. The protection of the source and information content is a right of the natural or legal person who contributes to the acquisition or processing of information for publication or published in radio or television broadcasting to refuse to provide a court, another state authority, or a public administration authority with information on the origin or content of this information. However, the right to protect an information source or information content, like the freedom of expression, is not an absolute right. The right to protect the source and content of information

cannot be sought in cases where exercising this right would result in a suspicion of the perpetration of the crime of abetting,[201] failure to impede an offence[202] and failure to report an offence.[203]

396. Despite incorrect interpretations to the contrary, this right does not just belong to persons in a journalistic profession, but to any person who contributes to the acquisition or processing of information for the publication of such information in radio or television broadcasting.

397. Subsequent disclosure is the entitlement of a natural or legal person, about whom news of criminal proceedings or proceedings in misdemeanour cases (administrative delicts) that have not yet ended with an enforceable decision has been published in a periodical or in radio or television broadcasting, to demand that the press publisher or broadcaster publish information about the outcome of such proceedings as subsequent disclosure. The periodical publisher or broadcaster is obliged to comply with this request only if it does not commit an administrative delict or crime itself by such publication, or if the information aired was a quote from a third party or a truthful paraphrasing of this quotation and presented as such. Therefore it is not an absolute right (as it is sometimes incorrectly interpreted).

398. The right to reply is the general right of a natural person or legal person to demand that the publisher of a periodical or a broadcaster publish a reply in cases where, in the press or in a transmission, a communication is published containing a claim that affects this person's honour, dignity or privacy in the event of a natural person, or name and reputation in the case of a legal person. The broadcaster is obliged to publish the reply at this person's request.

399. In both cases, i.e. in the event of subsequent disclosure or the right to reply, the Radio and Television Broadcasting Act and the Periodicals Act lay down time limits for the application thereof with the publisher of a periodical or broadcaster, the subsequent transmission thereof, and the conditions under which this obligation of the publisher or broadcaster is waived. However, the right to the publication of a reply or to subsequent disclosure is formulated as an active right. Any person seeking to exercise this right must provide the publisher or broadcaster with the text that is to be published. If the publisher or broadcaster fails to publish the reply or subsequent disclosure, the person who feels injured by the information disclosed may seek the imposition of the obligation to publish a reply or make a subsequent disclosure through the courts.

400. The obligation to publish a subsequent disclosure or reply does not terminate on the death of the natural person, as these rights transfer to the spouse of the entitled party, or the children or parents thereof, as moral rights.

Restriction in the freedom of expression and opinion

401. In the period from 2000 to 2004, an opinion professing the absoluteness and non-limitability of freedom of expression frequently appeared, especially in the daily press, with the justification that the constitutional architecture of the Czech Republic and some international human rights treaties which are binding on the Czech Republic guarantee freedom of expression.

402. Even the police have been ad hoc exposed to criticism from the media for commencing criminal proceedings related to crimes of a verbal nature. In certain specific cases, however, this criticism has seemed to be generally justified. In the Czech Republic, there were cases with high media coverage involving several individuals with a different, if not entirely opposite, set of views, where the police initiated criminal prosecution on suspicion of the offence of approving a crime (section 165 of the Criminal Code), even though those involved made statements distancing themselves from the approval of the crime claimed by the police.

Table 28

Overview of criminal investigations into the offence of approving a crime (section 165 of the Criminal Code) in the 2000-2004 period

Stage of criminal investigation/year	2000	2001	2002	2003	2004
Suspicion of the perpetration of a crime	1	4	1	1	1
Commencement of criminal investigation	1	3	0	1	1
Indictments brought	1	1	0	0	0
Enforceable convictions	0	0	2	0	0
Acquittals	0	0	0	0	0

403. A special obligation is imposed on radio and television broadcasters, who are required to ensure that the programmes they broadcast do not promote war or describe cruel or otherwise inhuman conduct in a manner that expresses disparagement, apology or approval, and not to broadcast programmes inciting hatred or violence against a group of the population based on race, nationality, sex or religion.

404. In 2000 the Constitutional Court[204] assessed the restriction in freedom of expression from the opposite angle, i.e. the non-collection and subsequent non-publication of information by the Czech press Agency (ČTK). This agency provides news as a public service. It also provides news to other mass media for a fee. The Constitutional Court stated that the Czech press Agency was not obliged to accept and publish news from every party that offered it information in the fulfilment of its public service for a fee. In cases where the receipt and publication of information is viewed as a paid commercial service, the rule of contractual freedom must be respected.[205]

405. In 2004, the Constitutional Court discussed the limitability of freedom of expression exercised by disseminating a work of art.[206] The Constitutional Court received a constitutional complaint against a decision by the criminal courts which punished the convicted person for perpetrating the crime of threatening morality (section 205 of the Criminal Code). He perpetrated this crime by producing, disseminating, circulating and making publicly available pornographic works in the Czech Republic and abroad, i.e. videocassettes threatening morality because they contained violence, disrespect to a person and other sexually pathological practices. The Constitutional Court did not doubt that this conduct was the convicted person's freedom of expression, but concentrated instead on the legitimacy of restricting this freedom.[207] It stated that the crime of threatening morality is described sufficiently comprehensibly in the Criminal Code as undesirable conduct to the extent that any person can identify this conduct and learn of

the consequences - punishment for such conduct. The criminal penalty is also used "to protect public morals, and there is no other reason to assume that in applying it in the case at hand the general courts were pursuing any other goals". The Constitutional Court also found that there was a need to curb the freedom of expression in that the "videotapes depicted violence on women connected with disrespect of women and their humiliation …" and in that "… they were made for purposes of public distribution with a view to making a profit". The Constitutional Court therefore did not find that there had been a breach of the freedom of expression as regards the limits laid down by law or in this individual case.

Right to information (para. 2)

406. In the initial report, the Czech Republic provided information about the Act on Free Access to Information (Act No. 106/1999), effective as of May 1999. Under this law, all State authorities, regional government authorities and institutions managing public funds are obliged to disclose information about the activities they carry out within their agenda.

407. Because this was a new law which had been in force for only a short while at the time the initial report was submitted, no information about the practical exercise of the right to information was available. In the 2000-2004 reporting period, in practice situations arose where, on the one hand, those that were meant to supply information failed to provide it and, on the other hand, many applicants requested information that would have infringed on the rights of other persons protected by the Covenant. The passage below discusses practical observations and judicial decisions concerning the right to information.

408. Those who are obliged to provide information adopted, in practice, a principle of selection, i.e. they could refuse to provide information only in cases defined under the law; where the reasons for the refusal affected only part of the information requested, they only withhold that part. This circumstance is not a reason to refuse to provide the rest of the information. The same principle applies in cases where the applicant requests a large quantity of information in a single application, and disclosure may be refused for only some information. The blanket exemption of information is possible only in exceptional cases to protect particularly significant areas that are clearly defined by the Act on Free Access to Information (Act No. 106/1999). The rigorous application of the above-mentioned selection principle can result in certain difficulties in certain cases, especially when requests seek the issue of extensive materials, primarily because the process of removing information which cannot be disclosed is laborious. However, any other approach would result in a fundamental restriction of the right to information and in the concealment of information which should be accessible.

409. Despite initial uncertainties, the opinion was established[208] that the separate provision of information in cases where applications are complied with in full is not an administrative procedure and therefore the process of providing information cannot be considered an administrative decision. This is important in particular from the aspect of the administrative difficulties of the whole proceedings. Administrative procedure is involved only in cases where the liable party refuses to provide information and issues a decision on the non-disclosure of information.

410. One of the first problems was the issue of which authorities are obliged to provide information. Because the term "public institution managing public funds" is not defined by law, this matter had to be resolved by the Constitutional Court.[209] The Constitutional Court, through its explanation of the term "public institution managing public funds", clarified that the obligation to provide information on activities within their remit does not apply just to administrative authorities. The Constitutional Court's decision eliminated the situation where those who were meant to provide information refused to provide it, citing that they were not State authorities or local government authorities.

411. Another interesting issue was the relationship between the protection of privacy and the right to information. The Act on Free Access to Information takes account of the right to privacy by preferring inter alia personal data protection contained in the Personal Data Protection Act (Act No. 101/2000).[210] In this respect, the courts discussed, in particular, the relationship between the Act on Free Access to Information and the Code of Administrative Procedure (Act No. 71/1967) along with the Building Act (Act No. 50/1976), which regulate the general perusal of files for administrative proceedings and the specific perusal of area planning documentation.

412. The courts of general jurisdiction have concluded that the Administrative Code (No. 71/1967 Coll.) is a special act, as it regulates access to information in such a complex manner, including the manner and form in which it is to be made accessible, that the Act on Free Access to Information cannot be applied. The courts have thus declared the right of parties to privacy in administrative proceedings superior to the right of anyone else to information from the file. The courts have also ruled that it is not necessary for special acts to be concerned exclusively with the provision of information. The courts thus deem the provision of the Administrative Act (sect. 23) an exhaustive specific regulation of access to information as it stipulates clearly who and under what conditions may gain access to a precisely defined range of information by a special way - by consulting [the file]. This rule as interpreted by the courts can be applied to all laws which speak of the consultation of files by parties.[211] That, on the other hand, does not mean that the applicant for information who is not a party to the proceedings, could not demand the information by other means, provided it is not expressly ruled out by the Act on Free Access to Information or individual procedural acts. The difference in these types of access is in that if the party exercises its right to consult the file, it has in principle access to all information contained in the file, whereas the access of an applicant under the Act on Free Access to Information is limited (in principle, personal information, information concerning the property and assets of a person who is not an obliged entity, etc.). This difference corresponds to the different objectives of the two regulations.

413. Although in the event of consulting zoning documentation[212] (sect. 133) pursuant to the Building Act (No. 50/1976 Coll.), the Constitutional Court ruled[213] that the Building Act "regulates special conditions for the provision of information concerning zoning and rules of building procedure by way of consulting zoning documentation and building documentation and in this respect amends the Act" on Free Access to Information. "It is evident from the above that the legal regulation contained in the Act" on Free Access to Information "applies to the provision of information by the obliged entity concerning its scope of responsibilities in zoning and rules

of building procedure matters" and "in providing the requested information by permitting the consultation of zoning and building documentation" only the protection of classified facts, business secret and the obligation to maintain confidentiality "must be respected".

414. The courts of general jurisdiction also contemplated on the issues of the protection of privacy as concerns the information about the property and assets of a person who is not obliged to provide the information. The court of general jurisdiction inferred that during a selection process for a lease agreement for council apartments there is no obstacle to the publication of the information about the amount of first rent, as this information is not information about the assets or property of the new tenant, but a publicly available piece of information. If any of the unsuccessful bidders for the rental of an apartment owned by a municipality subsequently demands information about the rent amount for which the municipality as the owner rented the apartment, there is no reason for not providing that information. The participation of the successful bidder and future tenant in the selection process in itself says something about his property or financial situation.[214]

415. Courts of general jurisdiction also had to address the question of the relationship of the right to information and the protection of business secret.[215] In practice, the parties obliged to provide that information due to the fact that they have received financial funds from public budgets, for example as remuneration for performing rendered on the basis of a contract, refused to provide the information stating that this is their commercial secret. Courts of general jurisdiction ruled in such cases that is it always necessary to consider whether it is indeed business secret or not, i.e. whether all aspects of business secret (formal and material) required by the Commercial Code (No. 513/1991 Coll.) are present. According to the courts, it is by no means sufficient to formally identify this information as a business secret as an element of its identification and protection, among other reasons also due to the fact that the opposite interpretation would lead to the absurd situation when a constitutionally guaranteed right to information could be limited by a right to a non-existent business secret. Furthermore, nearly anything could be labelled as business secret. The case law of courts of general jurisdiction also set the basic requirements for information on the provision of funds from public budgets: "Information about the scope of financial funds provided to a business from the budget of a municipality or a city can by no means constitute business secret, i.e. not even information about the price of the work rendered, which is paid from income obtained from tax payers. This fact underlines the fact that the expenditures of municipalities are a very public matter, that no business has any creative link to their source, which would even as much as hint at the thought that this could be a business secret, including the specific use of the budget funds. The provision of information about the scope of funds paid out from the state budget or the budget of a regional unit can therefore by no means be considered a breach of business secret."[216]

416. Another significant problem area during the monitored period was the consideration requested for the provision of information. Although information should in principle be provided absolutely free of charge, this requirement cannot be met in full. Most often, the reason is that the requests are demanding (i.e. for copies of multi-page materials) or that there is a great number of requests to be processed. Therefore, the Act on Free Access to Information enables the obliged entities to request compensation in connection with the provision of information,

which however, must not exceed the costs of the search for the information, the making of copies, the acquisition of technical data carriers, and the sending of the information to the applicant, etc. Given that even this narrowly specified possibility to request compensation for the provision of information was in practice used by certain obliged entities to discourage applicants or to make the exercise of their right as difficult as possible, the courts had to decide several cases concerning payment. The following principles flow out of their decisions:

- In connection with the provision of information only a payment explicitly provided for by the act may be charged, and none other;

- The payment may only be requested for information which was actually provided, not for information whose communication was denied;

- Payment may only be requested for searching for the information which had been requested, not for any additional information which the obliged entity looks up beyond the scope of the application; and

- If an advance is requested, then it must be a pro rata portion of the final amount requested as a payment, and is subject to the same limitations as this payment.

417. With the advance of time and in connection with the development of electronic communication systems, the Czech Republic puts an increasing amount of emphasis on electronic communication in the publication and provision of information, and on the publication of information through electronic communication networks and services - especially the Public Administration Portal should play a fundamental role in the sphere of public administration authorities. The planned change in the Act on Free Access to Information corresponds to this trend,[217] as it supports and accents the provision and publication of information through electronic means. Given that the change is coming after more than five years, the draft amendment of the Act on Free Access to Information responds also to issues which have arisen in the meantime. Changes will be made especially in the following areas:

- Broadening the list of obligatorily published information, publication of information on the public administration portal;

- A more detailed regulation of the requisite details of the submission and processing of applications for the provision of information, especially with a view to electronic communication; and

- The issuing of the information is tied to the payment of the requested payment, of whose amount the applicant is to be informed in advance.

Article 20

Prohibition of war propaganda (para. 1)

418. The Czech legal order only contains an explicit prohibition of war propaganda as a rule contained in international treaties which constitute a part of the Czech legal order.[218] Criminal

punishment is only possible if peace is threatened, under the Act on the Protection of Peace (No. 165/1950 Coll.). The threatening of peace means the disturbance of peaceful cohabitation among nations by instigating war, promoting war, or by other similar war propaganda, regardless of the manner in which it is carried out.

419. Currently, criminal law is being recodified in the Czech Republic. This recodification also explicitly stipulates the unambiguous culpability of war propaganda. The proposal for the introduction of new criminal offences of instigation of an offensive war and the preparation of an offensive war is to replace the existing definition of a criminal offence against peace under the Act on the Protection of Peace.[219]

Prohibition of the instigation of racial, national, and religious intolerance (para. 2) and recommendation No. 11[220] concerning protection against racial violence

420. The measure of danger involved in the instigation of racial, national or religious intolerance is so high that this conduct is subject to criminal sanctions.[221] Certain changes in the criminal-law protection against national intolerance occurred during the monitored period 2000-2004.[222]

421. Definitions of the criminal offences of:

- Violence against a group of inhabitants and against an individual (sect. 196);
- Defamation of a nation, an ethnic group, race, or conviction (sect. 198);
- Instigation of intolerance against a group of persons or the restriction of their rights and freedoms (sect. 198a);
- Murder (sect. 219 (2) (g);
- Wilful injury (sect. 221 (2) (b);
- Serious wilful injury (sect. 222 (2) (b);
- Extortion (sect. 235 (2);

contain, as July 2002, a qualified definition of a criminal offence, which pertains to attacks motivated not only by intolerance due to race, nation, confession,[223] or political conviction, but also motivated by the victim's belonging to an ethnic group. That means that such a criminal offence is subject to a stricter punishment under the Criminal Code than when they are committed without those aspects. No other definitions of criminal offences specified in the introductory report changed during the monitored period 2000-2004.[224]

Table 29

Overview of criminal offences committed on account of race, nation, belonging to an ethnic group, confession, or political conviction (in table identified as "qualified reasons")

Definitions of criminal offences/time period			Legal regulation applicable until 30 June 2002			Legal regulation applicable from 1 July 2002		
			2000	2001	2002 (until 30 June)	2002 (from 1 July)	2003	2004
Violence against a group of inhabitants and against an individual (§ 196)	Total	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	166	126	59	82	117	117
		Liberating judgement	7	6	8	2	28	1
		Condemning judgement	78	58	34	27	67	47
	Of that qualified reasons	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	85	64	23	34	31	46
		Liberating judgement	6	1	7	1	7	1
		Condemning judgement	29	34	23	12	38	22
Defamation of a nation, an ethnic group, race, or conviction (§ 198)	Total	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	129	118	41	57	77	101
		Liberating judgement	1	3	0	10	5	1
		Condemning judgement	36	40	24	21	29	42
	Of that qualified reasons	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	78	86	26	41	46	58
		Liberating judgement	0	1	0	2	4	0
		Condemning judgement	19	33	17	14	21	35

Table 29 (*continued*)

Definitions of criminal offences/time period			Legal regulation applicable until 30 June 2002			Legal regulation applicable from 1 July 2002		
			2000	2001	2002 (until 30 June)	2002 (from 1 July)	2003	2004
Instigation of intolerance against a group of persons or the restriction of their rights and freedons (§ 198a)	Total	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	14	16	3	0	7	5
		Liberating judgement	0	1	0	0	1	3
		Condemning judgement	7	5	2	1	1	2
	Of that qualified reasons	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	10	10	1	0	3	2
		Liberating judgement	0	1	0	0	1	3
		Condemning judgement	5	3	1	1	1	2
Murder (§ 219)	Total	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	201	186	94	106	171	196
		Liberating judgement	13	16	12	8	14	11
		Condemning judgement	163	144	80	72	173	143
	Of that qualified reasons	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	0	2	0	1	0	0
		Liberating judgement	0	0	0	0	0	0
		Condemning judgement	0	0	0	0	0	0

Table 29 (*continued*)

Definitions of criminal offences/time period			Legal regulation applicable until 30 June 2002			Legal regulation applicable from 1 July 2002		
			2000	2001	2002 (until 30 June)	2002 (from 1 July)	2003	2004
Wilful injury (§ 221)	Total	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	3 906	3 867	2 307	1 961	4 152	4 228
		Liberating judgement	151	180	116	145	297	141
		Condemning judgement	2 324	2 344	1 245	1 282	2 524	2 739
	Of that qualified reasons	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	27	33	17	11	22	16
		Liberating judgement	3	0	0	3	3	1
		Condemning judgement	16	6	6	3	7	16
Serious wilful injury (§ 222)	Total	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	834	808	456	522	899	904
		Liberating judgement	59	54	43	37	77	105
		Condemning judgement	480	508	254	265	509	534
	Of that qualified reasons	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	17	6	4	18	12	10
		Liberating judgement	1	0	0	4	6	3
		Condemning judgement	2	9	2	3	14	9

Table 29 (*continued*)

Definitions of criminal offences/time period			Legal regulation applicable until 30 June 2002			Legal regulation applicable from 1 July 2002		
			2000	2001	2002 (until 30 June)	2002 (from 1 July)	2003	2004
Extortion (§ 235)	Total	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	1 599	1 388	822	796	1 619	1 631
		Liberating judgement	229	216	130	113	243	270
		Condemning judgement	801	786	448	391	764	841
	Of that qualified reasons	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	4	7	4	0	9	3
		Liberating judgement	1	0	0	0	1	0
		Condemning judgement	4	5	2	0	0	2
Damaging another person's item (§ 257)	Total	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	6 479	6 218	1 614	1 713	3 868	3 592
		Liberating judgement	43	44	47	41	53	40
		Condemning judgement	653	731	305	222	424	469
	Of that qualified reasons	Investigation commenced	*	*	*	*	*	*
		Set aside	*	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*	*
		Charged	42	14	0	7	5	4
		Liberating judgement	0	0	0	0	0	0
		Condemning judgement	0	1	7	0	0	1

* Information about the pre-court stages of the criminal procedure not available.

Table 30

Overview of the criminal offences of restriction of freedom of confession, genocide, and support and promotion of movements directed at the suppression of the rights and freedoms of man

Criminal offence/year			2000	2001	2002	2003	2004
Restriction of the freedom of confession (§ 236)		Investigation commenced	*	*	*	*	*
		Set aside	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*
		Charged	0	0	3	0	0
		Liberating judgement	0	0	0	0	0
		Condemning judgement	0	0	0	0	0
Genocide (§ 259)		Investigation commenced	*	*	*	*	*
		Set aside	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*
		Charged	0	1	0	0	0
		Liberating judgement	0	0	0	0	0
		Condemning judgement	0	0	0	0	0
Support and promotion of a movement directed at suppressing the rights and freedoms of man	§ 260	Investigation commenced	*	*	*	*	*
		Set aside	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*
		Charged	67	41	67	17	25
		Liberating judgement	0	1	3	6	10
		Condemning judgement	11	24	19	18	18
	§ 261	Investigation commenced	*	*	*	*	*
		Set aside	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*
		Charged	102	164	132	84	90
		Liberating judgement	4	4	4	11	2
		Condemning judgement	82	86	125	83	57
	§ 261a	Investigation commenced	*	*	*	*	*
		Set aside	*	*	*	*	*
		Criminal prosecution commenced	*	*	*	*	*
		Charged	0	0	1	1	3
		Liberating judgement	0	0	0	0	0
		Condemning judgement	0	0	0	0	1

* Information about the pre-court stages of the criminal procedure not available.

422. Of the total number of criminal offences ascertained, the above-mentioned criminal offences with an extremist subtext constituted 0.09 per cent (2000), 0.10 per cent (2001), 0.10 per cent (2002), 0.09 per cent (2003) and 0.10 per cent (2004) in the relevant years.[225]

Table 31

Overview of the criminal offences of police officers with a racial or other extremist subtext

Criminal offences of police officers/year	2000	2001	2002	2003	2004
Investigation commenced	0	2	2	0	1
Set aside	*	*	*	*	*
Criminal prosecution commenced	*	*	*	*	*
Charged	0	0	5	0	1
Liberating judgement	0	0	0	0	0
Condemning judgement	*	*	*	*	*

* Information not available.

423. In practice, attacks motivated by belonging to a racial, ethnic, national or other group of persons occur relatively frequently, and the offenders often infer such belonging from skin colour or other features of the appearance of the attacked person, without knowing their real belonging to a racial, ethnic, national or other group. Therefore, the new draft Criminal Code emphasizes in the definitions of the following crimes:

- Violence against a group of inhabitants and against an individual;
- Defamation of a nation, race, an ethnic or other group;
- Injury;
- Extortion;
- Damaging another person's item; and
- Murder

that this offence may be motivated to actual as well as assumed belonging to a racial, ethnic, national or other group. The enumeration of the groups has also been expanded to include sexual orientation.

424. There have been numerous cases when individuals were discriminated in the sale of goods, rendering of a service or other business activity due to their actual or assumed belonging to a racial, ethnic, national or other group, which must be considered a fundamental restriction of their rights. That is why the new draft Criminal Code introduces a new criminal offence: restricting rights due to belonging to a racial, ethnic, or other group. This new criminal offence should sanction the conducts described above regardless of the fact whether the offender thereby expresses his general attitude, his belonging to a racial or other organization or movement, or whether it is an isolated act.

425. During the monitored period, 2000-2004, the activity of no political party or movement was suspended and no political party or movement were abolished because their activities could be considered to constitute the instigation of racial, national, or religious intolerance.[226] No extremist political party or movement is represented in Parliament.

426. During the monitored period, 2000-2004, the Ministry of the Interior registered 17,623 associations. It refused to register 35 associations, but only in two cases did the preparatory committee of court protection use the option to file an application with the Administrative Court, which is still awaiting its resolution.[227] The Ministry of the Interior decided to dissolve two associations. On 31 March 2000, the Ministry decided to dissolve the civic association *Národní alliance* (The National Alliance). This decision never took legal effect because the National Alliance decided to dissolve itself voluntarily prior to the court reviewing the Ministry's steps. The National Alliance ceased to exist on 15 April 2001. On 5 May 2002, the Ministry of the Interior decided to dissolve the civic association *Republikánská mládež* (The Republican Youth). This decision was subsequently confirmed by the Supreme Administrative Court.

Article 21

The right of assembly

427. During the monitored period, 2000-2004, two changes of the national regulation of the right of assembly took place. The most significant is the change of the Assembly Act (No. 84/1990 Coll.) applicable as of July 2002.[228]

Change in the Assembly Act in 2002

428. The Assembly Act has contained the following changes since 2002:

- A place for the holding of a gathering can be reserved a maximum of six months in advance. The purpose of this is to prevent long-term reservations and sometimes even reservations designed to block the public space, as the non-existence of the maximum limit made it impossible for others to exercise their right of assembly.

- The public authority to which the organizers announce the gathering is obliged to send to them, upon their request, its decision to ban the holding of the gathering or decision about the time when the gathering is to end.

- If the police are intervening against the gathering, all attendees are obliged to uncover their faces in order to not prevent or make impossible their identification.

429. This change, among other things, strengthened the protection of the exercise of the right of assembly, for example by introducing the new misdemeanour of unjustified wilful prevention of the exercise of another person's right to assembly to a significant extent. In general, fines (sanctions) for misdemeanours were increased, and the new misdemeanour of the attendee of a gathering who has his face covered during the intervention of the police against the gathering in a way which makes his identification difficult or impossible. Whereas until the end of

June 2002, there was a single fine amount, of CZK 1,000, from July 2002, fines of CZK 5,000, CZK 7,000, and CZK 10,000 may be imposed, depending on the type of the misdemeanour. This change in the Assembly Act was inspired primarily by the gatherings held in September 2000 as expressions of hostility against the World Bank and the International Monetary Fund during their annual meeting in Prague. None of these provisions has yet been challenged as unconstitutional at the Constitutional Court.

430. Changes in the right of assembly included a change in the Act on Roads (No. 13/1997 Coll.), which contained the rules regulating the regular, special, and prohibited use of roads. Until July 2002, the holding of gatherings constituted a special use of a road, for which the organizer required the consent of the owner or administrator. But the owner or administrator may be a public authority, which could lead to a violation of the announcement principle. The change of the Act on Roads thus got rid of the condition to obtain the owner's or administrator's permission for holding a gathering on a road.

431. Another modification of the right of assembly, effective as of January 2003, was related to the reform of the administrative court system and meant a reinforcement of the court protection of the right of assembly.[229]

Exercise of the right of assembly during the NATO Summit

432. In November 2002, Prague, Czech Republic, hosted the NATO Summit. During the summit, certain announced gatherings could not take place as they were to be held in the so-called security zones[230] which were identified by the police several days before the NATO Summit, i.e. after the gatherings were duly announced.

Organization of cultural, sports and other events

433. Unlike in the case of gatherings organized on roads, other cultural, sports, and other events may be organized on roads only with the consent of their owner or administrator.

434. Every year between 2000-2004 a CzechTek techno-party has been held. Although this constitutes a gathering where the right of assembly is the tool for exercising other rights and freedoms, there is a discussion under way in the Czech Republic as to whether this type of public musical production is to be considered a general gathering, or a so-called cultural event. According to the Act on Municipalities (No. 128/2000 Coll.) a municipality may issue, within its independent competence, a generally applicable regulation prescribing obligations related to the holding, course, and termination of publicly accessible sports and cultural events, including dances and discos, by stipulating binding conditions required to assure public order. The conditions for the holding of a techno-party can thus be regulated by these means. In practice, situations occur when it becomes evident during an event that the event does not have sufficient organizational arrangements in place concerning especially hygiene and health. The formally insufficient organizational arrangements then significantly complicates the remedying of any shortcomings ascertained. If the shortcomings are not remedied, the event can be even terminated and dissolved. The numbers of participants, ranging from several thousand to several tens of thousand, however complicate the factual dissolution of the event.

Article 22

Freedom of association (para. 1)

435. During the monitored period, 2000-2004, no changes in the legal regulation of association in general occurred, nor in association in political parties or movements in particular. As the Czech Republic is aware of the shortcomings in the Czech legal order, the Parliament discussed a new Act on Societies in 2000. But the act was not approved and therefore in the event of an association established by foreigners, their right to establish an association as a part of the right of association must be derived from international treaties which guarantee freedom of association and from the Charter of Fundamental Rights and Freedoms. According to international law and according to Czech international law, which right belongs to any individual, but according to the law regulating the conditions for the operation of organizations with an international element in the Czech Republic (No. 116/1985 Coll.), the establishment of an association where a member of the founding body is a foreigner is subject to a permission procedure. Such an association is established with the issue of a permission by the Ministry of the Interior, whereas an association whose founding body members are exclusively Czech citizens is established by a mere registration with the Ministry of the Interior.

436. The draft Act on Societies which was not enacted was to establish identical conditions for the exercise of the right of association for Czech citizens and for foreigners. Furthermore, it would have enabled foreign societies established according to the laws of another country, with its registered seat abroad, to operate in the Czech Republic under the same conditions as societies established under the laws of the Czech Republic. The draft Act on Societies planned on foreign societies to engage in activities in the Czech Republic through their organizational units, i.e. branches or offices.

437. During the monitored period, 2000-2004, the Ministry of the Interior refused to register 14 associations and issued decisions dissolving 2 associations.[231] In the case of associations where a foreigner was a member of the founding body, the Ministry did not permit the establishment of six associations. The founders did not file an action with the Administrative Court suing the Ministry of the Interior in any of the above-mentioned cases.

Restriction of the freedom of association (paras. 2 and 3)

438. During the monitored period, 2000-2004, no change occurred in the prohibition for soldiers to create and associate in union organizations and political parties or movements according to the Act on Professional Soldiers (No. 221/1999 Coll.). On the contrary, according to the Act on the Service Relationship of the Members of Security Corps[232] (No. 361/2003 Coll.), which will apply as of the beginning of 2006, a candidate for a position in security corps will not be able, unlike at present, to be a member of a political party and in the case of candidates for work in intelligence services even a member of a trade union organization.

Article 23

Family protection (para. 1)

439. During the monitored period of 2000-2004, the official understanding and protection of family as an association of a husband and wife and their children did not change. Legally, a

direct family relationship is recognized as a formal expression of relations between an ancestor and descendant and, also, between a husband and wife. Such understanding corresponds rather to the concept of nuclear family. Indirect family relations play an important role, for example, in making decisions about surrogate family care where parents cannot, are not permitted or not willing to take care of their children. Consanguinity not only between an ancestor and descendant, but also between siblings, constitutes an obstacle to marriage. Whether this is a blood (matter-of-fact) relation or relation in law is not important.

440. Since April 2000, the concept of the public protection of family and, in particular, children has changed. The Children's Social and Legal Protection Act (No. 359/1999 Coll.), regulates the activity of the authorities responsible for social and legal protection of children in awarding custody of children to natural legal persons other than parents and facilitating adoption and foster care; treatment in institutional education and protective education; custody of children requiring special care, and social and legal protection of children in relation with foreign countries.

441. As to legal regulations regarding the reintegration of close (nuclear) families of asylum-seekers, the Asylum Act (No. 325/1999 Coll.) upholds the principle of unity of asylum-seekers' families by enabling asylum to be granted for the purpose of family reintegration. However, it does not take care of the actual family reintegration, for the relatives have to arrive in the Czech Republic first. Only after that, the asylum-seeker status may be conferred upon them. Hence, asylum-seekers' arrival into the country is governed by the Aliens and Immigration Act (No. 326/1999 Coll.) as if they were tourists. Therefore, the procedure to be followed in the reintegration of an asylum-seeker's nuclear family should be modified to take into account the specific reason for his or her relatives' stay in the Czech Republic, that is, the reintegration of a family of an individual provided with international protection by the Czech Republic.

442. A similar issue was identified in respecting relations among members of the nuclear families of foreigners. Between January 2000 and July 2001, the Aliens and Immigration Act (No. 326/1999 Coll.) contained provisions leading to unfavourable conditions for such foreigners and their families who were not permanent residents of the Czech Republic, yet, put simply, stayed in the country on the basis of a long-term visa awarded every year.[233] Once the children reached majority (the age of 18 years), they were no longer able to apply for a new long-term visa as they were officially regarded as adults even if continuing studies and remaining economically dependent on their parents. Until July 2001, when the Aliens and Immigration Act was amended to take this into account, the Foreign Police in resolving such situations had accentuated the principle of unreasonable nuisance to personal and family life.

443. Changes were made in children's surrogate care, namely in placing children in childcare institutions. In connection with the adoption of the Act to regulate care in institutional education and protective education (No. 109/2002 Coll.), the Family Act (No. 94/1963) was also amended to allow the court to give custody of a child to a facility for children requiring immediate help. Such surrogate care is given priority over ordinary institutional care, yet not over surrogate family care. Facilities for children requiring immediate help provide protection and assistance to children that have no care, face a major danger to life or desirable development, suffer bodily or

mental cruelty or abuse, or found themselves in circumstances or settings representing a grave endangerment of their fundamental rights. The protection and assistance given to such a child consists in satisfying the basic needs of life, including accommodation, medical care at a health-care facility, psychological and other necessary care of a similar type.

The right to enter into matrimony and to start a family at a reasonable age (paras. 2 and 3)

444. During the period under review, no changes were made to the age allowed for and freedom to enter into matrimony.[234] Since July 2001,[235] churches have possessed greater responsibility for the registration of marriage. They are now obligated to submit documents on the inception of marriage to the registrars within three business days of the entry thereto, while previously this obligation was defined in a more general manner. Prior to this amendment, in some cases churches did not submit the documents at all and the marriage was considered non-existent, since there was no official registration thereof.

Equal rights and duties of fiancés at wedding, in matrimony and divorce (para. 4)

445. The rights and obligations of women and men, as to their equality at wedding, in matrimony and divorce, were not subject to any changes from 2000 to 2004.

446. The Registration of Births, Marriages and Deaths Act (No. 301/2000 Coll.) clearly defines documents needed for entering into matrimony, depending on the existence of Czech citizenship and permanent residence in the Czech Republic. Only such documents need to be submitted which are necessary to prove compliance with the conditions set forth for entering into marriage. Legal capacity to enter into matrimony of aliens is governed by the law of the country of which they are citizens; therefore, foreigners must produce a certificate of legal capacity to enter into marriage.[236]

447. Contrary to the previous law, the Registration of Births, Marriages and Deaths Act requires the presence of an interpreter at a wedding between fiancés who do not understand the Czech language, are mute or deaf. Unless an interpreter is present, the declaration of entering into marriage shall not be accepted. This provision has been adopted to prevent an alien not having understood the Czech language from challenging the validity of marriage later, on the grounds of not understanding the content of the declaration. Contracting of a marriage needs to be viewed as a major change in the personal lives of individuals and, therefore, it is vital that they unequivocally understand the declaration made in entering into marriage.

448. In the Czech Republic, the practice continues to prevail of awarding the custody of children upon divorce to a mother. This is far more frequent than custody of a father or rotating custody. However, rotating custody requires appropriate conditions such as a school and place of residence of both of the parents within reasonable reach.

Table 32

Decisions on custody of children after divorce

Decision/year under review		2000	2001	2002	2003	2004
Decision to grant custody to	Mother	25 966	28 746	28 943	29 321	28 942
	Father	1 844	2 067	2 098	2 343	2 286
	Both parents	426	585	641	690	764
	Another person	106	168	126	114	129
Change of decision to grant custody to*	Mother	718	788	881	956	958
	Father	1 016	1 102	1 211	1 357	1 411
	Both parents	147	136	140	167	106
	Another person	528	649	829	773	762

* Data in this category do not include changes in custody by the same person; they only show transfers of custody to a different person.

Article 24

Legal status of children in the family and society (para. 1)

449. During the period under review, no amendments were adopted to legal regulations governing the institute of a minor's statutory representative and a so-called guardian *ad litem*, and to the law on the general legal capacity of a minor and other statutory rights and obligations mentioned in the initial report, with the exception of criminal sanctions against minors.[237]

Registration of a child (para. 2)

450. From 2000 to 2004, no changes were made to the system of registration of newly born children. Since 2001, when the new Registration of Births, Marriages and Deaths Act (No. 301/2000 Coll.) came into effect, different information has been entered into the Book of Births. The registration of the professions of parents has been discontinued, while the registration of the parents' birth numbers has newly been introduced. The name (names), surname (including the first given name), date and place of birth, birth number, citizenship and place of permanent residence of each of the parent are not entered in the Book of Births if the mother has applied for a concealed childbirth.[238] Notwithstanding the prevailing habit of giving a child one name only, the new Registration of Births, Marriages and Deaths Act permits giving more names. In the case of a child - Czech citizen, not more than two names may be registered provided that these two names are not identical. In the case of a child - alien, the number of names is not limited. In implementing this change, the Czech Republic responded not only to the requirements of parents, but also to the legal regulations effective in other countries.

The right of a child to citizenship (para. 3)

451. As to the assumption of the citizenship of the Czech Republic by children, amendments came into effect in October 2003 to the legal capacity of minors in administrative proceedings regarding citizenship and the possibility of assuming citizenship by finding was extended to

children over the age of 15 years. Until reaching maturity, every child must by represented in citizenship-related proceedings by a statutory representative, or by a court-appointed guardian or custodian. As stated above, the possibility of assuming the citizenship of the Czech Republic by finding now applies to juveniles between the ages of 15 to 18 years. Prior to amending the Citizenship Act (No. 40/1993 Coll.) in 2003, only minors below the age of 15 years could have assumed Czech citizenship in this way; since the end of October 2003, every individual, not only a child, may assume Czech citizenship.

Article 25

The right to participate in the administration of public affairs directly or through elected representatives

452. The Czech Republic, as a state, continues to give preference to representative democracy, i.e. to the prevailing administration of public affairs through elected representatives at the levels of communities, regions, as well as the State. With the exception of elections to the Senate (the upper chamber of the Parliament), based on the majority principle, elections at all other levels are based on the principle of proportional representation.

453. During the period under review, changes occurred in the Czech Republic as to understanding a referendum as the direct participation of individuals in the administration of public affairs. Notwithstanding an attempt to implement a law on general referendum, only an act to regulate the referendum on the accession of the Czech Republic to the EU was adopted, representing an ad hoc regulation governing a nationwide referendum. As to the local levels, referenda may continue to be organized at the level of municipalities, not at the level of regions.

Re-implementation of two-day elections

454. Some of the elections in 2002 differed from elections held in the previous years, among other things, by giving people the chance of casting their votes in the course of two days. One-day elections took place in 2000. These were elections into the regional councils, held under the new Regional Elections Act (No. 130/2000 Coll.) and elections into the Senate organized in accordance with the amended Parliamentary Elections Act (No. 247/1995 Coll.).[239] All the other elections extended over two days. The renewed practice of two-day elections into all representative bodies mainly contributed to the convenience of voters.

Influence of the flood in 2002 on local elections

455. The periods set forth by the Municipal Elections Act (No. 491/2001 Coll.) for the organization of local elections, were amended in 2002 by a special law on the periods determined for local elections to be held in November 2002 (No. 390/2002 Coll.). By this amendment, periods were extended which were already in progress and during which list of candidates were to be submitted, for some of the local government bodies (so-called registration authorities) were not functioning to a degree allowing them to accept, judge and adopt decisions on the registration of the list of candidates. Potential candidates in municipalities affected by the flood were positive about such extension of the statutory periods. Those who intended to stand in the elections did not lose their right to be elected.

Elections to the Chamber of Deputies - the lower chamber of the Parliament

Attempts to change the system of elections into the Chamber of Deputies between 2000 and 2002

456. During the period from 2000 to 2004, the Parliamentary Elections Act was amended several times, both through new laws and through decisions of the Constitutional Court that subsequently repealed the laws or parts thereof. Because this mainly applies to laws adopted in 2000 and 2001, the parliamentary elections held in 2002 were affected by such changes to a minimum degree.

457. An extensive amendment of the Parliamentary Elections Act, passed in 2000 (No. 204/2000 Coll.), aimed at modifying the system of elections into the Chamber of Deputies in a manner facilitating the formation of a majority government by the victorious political party or movement and limiting the participation of other political entities - potential coalition partners to a minimum. For this purpose, the territory of the Czech Republic should have been divided into electoral regions not corresponding to the regions existing within the system of territorial and administrative subdivision of the State,[240] and a modified d'Hondt divisor should have been used to divide mandates within one scrutiny. Among other things, this amendment introduced one-day elections and the possibility of voting abroad. However, upon a proposal of a group of deputies and the President of the Czech Republic the Constitutional Court annulled all these changes, with the exception of a multiple of 5 per cent as a condition for coalitions' entering the Chamber of Deputies and the possibility of voting abroad.[241]

458. Another amendment (No. 37/2002 Coll.) to the Parliamentary Elections Act ensued from the need to replace the annulled sections of this Act. The Hagenbach-Bischoff`s formula, used throughout the 1990s as a method for converting the number of achieved votes, the standard d'Hondt electoral divisor was selected; electoral deposits were replaced with a contribution to covering the cost of the elections; electoral regions were changed to correspond to the regions as units of territorial and administrative subdivision of the State, and elections into the Chamber of Deputies were again extended to two days.

459. The legal regulations governing the elections to the Senate (the upper chamber of the Parliament) were not changed substantially, in a manner affecting the preparations for and course of the elections, the determination of the results and legal protection thereof. Contrary to the elections to the Chamber of Deputies, voting in the elections to the Senate is permitted only within the territory of the Czech Republic and Czech citizens residing abroad permanently or temporarily cannot participate therein.

Voting in the elections to the Chamber of Deputies outside the Czech Republic

460. For the first time since the formation of an independent State, Czech citizens in 2002 were allowed to participate in the elections even if staying abroad. The amendment to the Parliamentary Elections Act[242] made it possible to organize elections into the Chamber of Deputies outside the Czech Republic, in the Czech Republic's representative offices abroad.

461. A total number of 2,957 voters residing outside the Czech Republic registered for voting in the representative offices. Altogether 3,763 voters appeared in the polling stations abroad.

The right to vote outside the Czech Republic was thus used not only by voters residing abroad permanently, but also by those who used the opportunity to vote at a representative office while staying in a foreign country temporarily.[243] As obvious, a major group of Czech citizens with a permanent place of residence abroad did not exercise their right of casting their votes at a representative office. On the other hand, a higher number of voters than expected appeared at the representative offices to take the vote on the basis of an elector's certificate.

462. Some voters, as well as representative offices, raised objections against alleged bureaucratic impediments. As such, especially the obligation to register only in one specific register of electors was mentioned. However, this is a formal systemic measure aimed at excluding the possibility of multiple voting by one elector and the resultant utmost lawfulness of the elections.

Changes to local (municipal and regional) elections

463. As to municipal elections, a new Municipal Elections Act (No. 491/2001 Coll.) was adopted. It differed from the previous law by stipulating a limit of at least 5 per cent of votes giving candidates eligibility to join local councils. If two lists of candidates do not reach the required 5 per cent of votes or all mandates are not divided, this limit is gradually reduced.

Regional elections

464. At the beginning of 2000, a new territorial and administrative subdivision of the Czech Republic entered into force.[244] Regions as higher-level self-government units have their councils. The elections are governed by the Regional Elections Act (No. 130/2000 Coll.) and generally are guided by the same principles as municipal elections.

Judicial protection of elections

465. Pursuant to the Parliamentary Elections Act (No. 247/1995 Coll.), the Regional Elections Act (No. 130/2000 Coll.) and the Municipal Elections Act (No. 491/2001 Coll.), protection against the course of action taken by the public authorities responsible for the preparations for and course of the elections may be sought at the court. Because activities of public authorities become subject to the judicial scrutiny, since the implementation of the system of administrative justice[245] in 2003 such protection has been provided by the administrative tribunals of regional courts and by the Supreme Administrative Court. Until the end of 2002, this judicial protection had been provided by general competence courts. Hence, this change to the law does not relate to the content of judicial scrutiny, but only to its formal aspects.

466. Namely, a political party, political movement or coalition having registered a list of candidates may file an action with a court against a public authority's decision:

- To seek dismissal of a list of candidates;
- To de-register a candidate from a list;[246] and
- Against the registration, or refusal to register, a list of candidates.

Such action may be filed within two days after the delivery of the contested public authority's decision.

467. In addition to the judicial protection of elections, the Czech law guarantees judicial protection of the course and results thereof.

Judicial review of steps taken by authorities responsible for the pre-election phase of elections to the Chamber of Deputies

468. In connection with the elections into the Chamber of Deputies in June 2002, petitions were filed with the courts under the Parliamentary Elections Act for a decision to register a list of candidates and a decision to cancel the registration of a list of candidates. The courts lodged filed late, following the said two-day period.[247]

469. The political party named "Action for the dissolution of the Senate and siphoning of the assets of pension funds" (hereinafter "ADS") did not attach to its list of candidates in any of the electoral regions a certificate of contribution to the coverage of the elections-related costs.[248] Hence, the competent public bodies (district registration authorities) decided to reject the lists of candidates. ADS filed an action for a decision to register the list of candidates, in which it claimed that the obligation to pay a contribution to the coverage of election-related cost was unconstitutional and contradict to the decision of the Constitutional Court to cancel electoral deposits (No. 64/2001 Coll.). Individual courts took varying positions. Some of them consented to the actions and decided to register the list of candidates of ADS in a respective electoral region; others dismissed the actions being of the opinion that the public body's (district registration authority's) decision did not represent breach of law. The remaining courts discontinued the proceedings because of the action having been filed late. Where the courts dismissed the actions or discontinued the proceedings, ADS lodged a complaint with the Constitutional Court, including a motion for repealing the duty to pay a contribution to electoral costs under the Parliamentary Elections Act. The Constitutional Court rejected the complaint based on the opinion that the actions filed with the regional courts were lodged after the required period. By such negligence, ADS disabled the review of the respective decisions and the Constitutional Court could not even analyse whether the obligation to contribute to the cost of elections was in compliance, beside others, with international human rights treaties.

Judicial review of actions taken by authorities responsible for the pre-election phase of elections into the Senate[249]

470. At the turn of October and November 2003, dual by-elections into the Senate were held after two senators had become judges at the Constitutional Court. Of eight applications for registration in the electoral region of Brno-město, one did not contain all essential elements pursuant to the Parliamentary Elections Act, since the respective independent candidate did not present a petition signed at least by 1,000 competent voters from the same electoral region. The candidate did not remedy the defects even after a call made by the registration authority. Therefore, his/her application for registration was dismissed. The candidate lodged an action at the court, requesting that the court impose a duty on the registration authority to register the candidate's application. The court rejected the action on the grounds of the candidate's not having submitted the aforementioned petition. As a result, the application for registration was declined by the court.

471. Regular elections to the Senate were held at the turn of October and November 2004. In connection with these elections, the court declined two actions for the protection of registration because of delayed submission, since they were delivered to the court after the lapse of the two-day period permitted for seeking judicial protection.

472. Subsequently, the Supreme Administrative Court adjudicated an alleged conflict between several provisions of the Parliamentary Elections Act (No. 247/1995 Coll.) and Personal Data Protection Act (No. 101/2000 Coll.). As the petitioner claimed, equal treatment of candidates was not ensured in elections to the Senate because independent candidates were permitted to stand for a seat in the Senate only if having submitted, as a mandatory element of the application for registration, a petition in support of his/her candidature, signed at least by 1,000 electors. Among other things, such electors must state in the petition their birth numbers. This was claimed to be in conflict with the Personal Data Protection Act, for every individual has the right to the protection of his/her personal data. What is more, a political party's candidate is not obligated to submit such petition. The Supreme Administrative Court adjudicated the action unjustified because the petitioner did not allege breach of the Parliamentary Elections Act, or any of the provisions thereof, that would represent reason for the invalidity of elections. The petitioner only claimed that the reason for the invalidity of elections rested in the inconsistent level of right of individual candidates to be elected. Therefore, the court issued a negative resolution.[250]

Judicial review of action taken by authorities responsible for the pre-election phase of municipal and regional elections[251]

473. In connection with the regional elections in November 2004, one petition was lodged to review the decision of the Regional Authority of the Region of Karlovy Vary to dismiss a list of candidates submitted by the US-DEU political party. Another petition was filed by the Silesian-Moravian Trade Union Service (Slezskomoravská odborová služba) Opava II in the Moravian and Silesian Region.

474. The US-DEU political party filed a petition for the review of the decision of the Regional Authority of the Region of Karlovy Vary to dismiss a list of candidates of US-DEU. A representative of US-DEU wrongly delivered the list of candidates of the party to an institution in the neighbourhood. As a consequence, the list of candidates was not submitted within a statutory period and was declined by the Regional Authority. US-DEU's petition for a judicial review of the decision to decline the list of candidates was rejected by the Court as premature. After that, US-DEU lodged a complaint against the Regional Court's decision with the Constitutional Court that referred the case back to the Regional Court for a new decision as, in the Constitutional Court's opinion, the petition for a judicial review should not have been declined for formal reasons. The Regional Court then heard the case and refused the petition. In substantiating its resolution, the Regional Court said that the Regional Elections Act (No. 130/2000 Coll.) clearly stipulated the date and place of delivery for a list of candidates and if the list of candidates was not submitted within such required and to the regional authority of local competence, it was to be regarded as not duly submitted. Regardless of any subjective reasons for missing the deadline, the obligation of the registration authority under the law was to dismiss the list of candidates, as stated by the Regional Court.

Judicial scrutiny over the lawfulness of the course and results of elections into the Chamber of Deputies

475. As to the elections to the Chamber of Deputies, actions shall not be filed for unlawful voting and unlawful elections into the Chamber of Deputies. Only an action for unlawful election of a candidate is permitted.[252] Such action may be filed by every Czech citizen registered in the permanent register of electors in the electoral ward where the candidate has been elected and by every political entity whose list of candidates has been registered in the same electoral region.[253]

Judicial scrutiny over the lawfulness of the course and results of elections into the Senate

476. In seeking judicial scrutiny over the lawfulness of the course and results of elections into the Senate, an action for unlawful voting and action for unlawful elections may be lodged besides an action for unlawful election of a candidate. However, political entities may lodge such actions if standing in the same electoral region. This is because of the electoral system based on the majority principle.[254]

477. In connection with the elections into the Senate at the turn of October and November 2002, the Ministry of the Interior did not receive any court decision regarding the invalidity of voting or invalidity of elections. At the turn of October and November 2003, dual by-elections into the Senate were held after two senators had become judges at the Constitutional Court. There are no records of the Supreme Administrative Court having adjudicated the elections or voting invalid.

478. In connection with the regular elections into the Senate held at the turn of October and November 2004, the Constitutional Court received, in total, five petitions to declare the elections unlawful, some combined with a motion to declare the election of a candidate or candidates invalid. The Supreme Administrative Court found one of the petitions legitimate, the four others were declined.

479. The petition to declare the elections into the Senate in the electoral region of Mělník unlawful, which was combined with the petition for unlawful election of candidates, was filed with the Supreme Administrative Court especially by representatives of the political movement of the Independent (Nezávislí). The petitioners claimed that the political party Voters Self-Defence (Sebeobrana voličů) submitted in the electoral region of Mělník an application for registration which, as of the date of delivery, did not contain the name of its candidate and did not pay a contribution to the cost of elections in the amount of CZK 20,000. The Voters Self-Defence political party corrected these defects only in this electoral region and managed to do so within the period awarded for the remedy thereof. Also in other electoral regions in the Region of Central Bohemia, this political party delivered only blank applications for registration and did not pay the contribution to electoral costs and subsequently it abided by the refusal to register such applications. Therefore, the petitioners were of the opinion that from the very beginning the Voters Self-Defence political party had intended to stand only in one electoral region and its delay in the decision where to do so had been driven by an effort to obtain information about other candidates and, hence, a better opportunity of selecting a region to register its only candidate in. By such conduct, the Voters Self-Defence political party, in the

opinion of the petitioners, disrespected the requirements regarding the essential elements of an application for registration. The Supreme Administrative Court declined the petition because the petitioner did not challenge the registration through a petition for a judicial review thereof. The Supreme Administrative Court added that with regard to the principle according to which in case of doubt laws should be interpreted for the benefit of compliance therewith, an assumption should be conceded that upon its delivery an application for registration maybe blank.

480. In a petition to declare unlawful the elections in the municipality of Ostroměř, the petitioner highlighted the necessity of making voters aware of the venue and time of the second round of the elections into the Senate. The petitioner stated that voters had been so informed neither by a notice on the official board, nor by an announcement in the local broadcasting. The mayor of Ostroměř said that voters were informed in both these manners. The Supreme Administrative Court declined this petition for the invalidity of elections because the Parliamentary Elections Act regulates the duty of familiarizing voters of the venue and time of elections only in a general way and does not contain any more specific requirements with respect to the second round of the elections into the Senate. Since, at the same time, the law requires that the mayor inform voters no later than 15 days before the elections and the second round takes place on the sixth day after the termination of the first round, it would be impossible to abide by such duty of information, and specifically the date required therefor, before the second round of elections into the Senate.

481. The last petition lodged with the Supreme Administrative Court was a petition to declare the elections into the Senate unlawful in the electoral region of Ústí nad Labem. The petitioner was the Communist Party of Bohemia and Moravia (KSČM). The party based its petition in claiming that in the course of the elections in at least one social facility - old people's home - in the electoral region of Ústí nad Labem, members of the precinct election committee gave to the voters only one ballot while withholding the others or kept an envelope with a ballot telling the voter they would cast it for him or her later. As the gravest breach of the Parliamentary Elections Act the petitioner mentioned the intentional opening of a temporary polling station in an old people's home by members of the local election committee. This temporary polling station was used by the majority of the residents of the old people's home, not only by those not capable of appearing in the permanent polling station for health reasons. According to the petitioner, the principle of secrecy of elections was thus breached. The petitioner was of the opinion that the Parliamentary Elections Act was breached in a manner that might affect the results of the elections and suggested that the court declare the second round of the elections into the Senate void.

482. The Supreme Administrative Court ordered the case to be heard, since the statements given in the petition were based on information provided by some of the residents of the old people's home. The course of the elections was determined by evidence, especially by testimonies given by persons participating in the elections, i.e. some of the members of the election ward committee and the staff of the old people's home. The Supreme Administrative Court ascertained that the Parliamentary Elections Act had been breached by not respecting the principle of secrecy of voting and by the election ward committees not insisting that voters take both ballots. Such breach of law, however, did not lead to the failure of the petitioner's candidate in the elections, and by its low intensity, this breach of the Parliamentary Elections Act could not influence the results. The Court found that the liberty to exercise the right to vote had

been complied with, for the residents of the old people's home had not been forced to participate in the elections and, therefore, it had been their free decision whether they would or would not participate in the voting. In addition, nobody had forced those residents of the old people's home who had decided to participate in the elections to cast their vote in the room in the old people's home where the portable ballot box had been placed. They could have exercised their right to vote in a nearby polling station in an elementary school and some really did so.[255] In particular, the Court ascertained as substantial the fact that every voter could have selected a ballot of the candidate in whose favour he or she had intended to vote. Although in the second round some of the voters had taken only one ballot, in all cases these had been ballots of the candidates to whom the voters had wanted to give support, and these ballots had subsequently been counted in the scrutiny. The Supreme Administrative Court concluded that there was no connection between the breach of the Parliamentary Elections Act and the election of a relevant candidate, and dismissed the petition.

Judicial scrutiny of the lawfulness of the course and results of municipal and regional elections

483. Also the Municipal and Regional Elections Act defines means of judicial protection against the manner in which voting is executed, against the course of elections or against an elected candidate. A petition for unlawful voting, unlawful elections or unlawful election of a candidate may be filed by any person registered in the register of electors in the electoral region where the contested voting or elections took place or where the candidate was elected.

484. In connection with the elections to the municipal councils in November 2002, two decisions on the invalidity of voting were issued: in the first case, the Court issued the decision on the grounds of defects in determining the results of voting; in this case, the right of a member of the election ward committee to inspect ballots and the obligation of the chairman of the election committee to monitor the scrutiny were breached. This breach influenced the number of votes in favour of individual candidates and the number of mandates given to individual parties in the elections. In the second case, an election ward committee impeded voters from exercising their right to vote by rejecting their application for casting votes in a portable ballot box. Thus, the election committee perpetrated not only a gross breach of the municipal elections law, but also prevented competent voters from exercising the legally-guaranteed right to elect representatives for the local council. The Court concluded that such major interference with the rights of voters constituted grounds for declaring the voting unlawful.

485. Another four decisions on the invalidity of elections were issued in connection with the municipal elections in 2002:

- In the first case, an election ward committee breached the municipal elections law by supplementing the number of the votes cast in the elections. Thus, the principle of direct elections and the liberty of elections were breached in a manner having the potential of influencing the results of the municipal elections.

- In the second case, persons performing in the municipal elections activities of members of an election ward committee did not take the oath as required by law. As a result, the committee did not exist legally, and the Court ascertained that the prescribed electoral procedure had been breached grossly and that such breach could have affected the results of the municipal elections.

- In the third case, an election ward committee counted votes in two rooms and the members were divided into pairs. However, an election ward committee is to count votes as one bench sitting in one room, in order to provide for monitoring. The Court resolved that in this case the law had been breached in a manner that could have affected the results of the elections.

- Another election ward committee breached the municipal elections law in a manner affecting the results of the municipal elections. In the scrutiny, it did not include in the total number of valid votes such votes that had been cast on ballots where the complete list of candidates of an association of independent candidates was marked without any further specifications.

486. In consideration of all negative decisions of regional courts, as delivered to the Ministry of the Interior, we cannot but say that petitions for unlawful voting, unlawful elections or unlawful election of a candidate were mostly rejected because the courts did not ascertain any breach of law or the breach was not of a nature having the potential to influence the results of voting, the results of elections or election of a candidate.

Elections to the European Parliament

487. At the beginning of 2003, the Czech Republic adopted the European Parliament Elections Act (No. 62/2003 Coll.) the main purpose of which is to regulate the special features of elections into this representative body, different from elections into the Chamber of Deputies of the Parliament. These features primarily include conditions governing the right to elect and the right to be elected on the part of foreigners - citizens of a member country of the EU. The franchise is guaranteed to every EU citizen who has officially been permitted to reside in the Czech Republic no later than 45 days prior to the date of elections and has been registered in the register of residents. This period has been determined in connection with the organization of the elections, namely with the registration into the register of electors and its scrutiny intended to prevent multiple exercise especially of the right to vote.

488. Elections to the European Parliament took place in June 2004. The different features of these elections resulted in knowledge that, if taken into account in the future, might increase the attractiveness of elections. The registers of electors were closed long before the date of elections, as a result of which they contained, among others, more voters who died between the registration and the elections. Registers of voters that are to be delivered by health-care facilities no later than 20 days before the date of elections did not take into account whether on the date of elections the patient would still be hospitalized.

489. In connection with the elections into the European Parliament, identically to the elections to the Chamber of Deputies, it is possible to file an action only for the unlawful election of a candidate, not for the invalidity of voting or elections.

Referendum on the accession of the Czech Republic to the EU

490. To provide for the referendum on the accession of the Czech Republic to the EU, an ad hoc Constitutional Law on Referendum (No. 515/2002 Coll.) and Referendum Execution Act

(No. 114/2003 Coll.) were passed. By these laws, the conditions for exercising the right of voting in a referendum and details of drafting and announcing its result were regulated. The referendum took place in June 2003. The referendum, as well as its results, were announced by the President of the Czech Republic. In total, 2,474 Czech citizens residing abroad registered for the referendum at representative offices of the Czech Republic.[256]

491. 4,457,206 voters participated in the referendum. 3,446,758 electors voted in favour of the Czech Republic's accession to the EU; 1,010,448 voted against it. Hence, the accession was approved by the referendum. The Referendum Execution Act did not stipulate any minimum limit for the number of participating voters upon which the referendum would become valid. Therefore, only the ratio between the numbers of valid votes cast in favour of the individual answers was decisive.

Judicial protection of referendum - proceedings with respect to the decision not to announce a referendum and proceedings with respect to the lawfulness of the course of action in a referendum, proceedings with respect to the maintenance of a permanent register of competent electors

492. The Referendum Execution Act entrusts the judicial protection of referendum through the review of the President's decision not to announce a referendum and the review of the lawfulness of the course of action in a referendum to the Constitutional Court.[257] Judicial protection in cases regarding the maintenance of a permanent register of competent electors is identical to judicial protection of elections. Hence, the Code of Administrative Procedure (No. 150/2002 Coll.) is to be followed.

493. In connection with the referendum on the Czech Republic's accession to the EU, the Constitutional Court received altogether 32 actions for the unlawfulness of the course of action in the referendum. Of this number, the Constitutional Court did not deal with 13 actions at all, since in regard of the content thereof these actions could not be considered actions to initiate proceedings. The remaining actions were dismissed, mostly because the petitioner did not remedy defects within a required period, the actions were lodged after a statutory period, they were lodged by a person not competent to do so, or the actions were not within the jurisdiction of the Constitutional Court.

494. Some of the actions were filed by opponents against the EU membership, who challenged the non-objective nature of the referendum during which the Czech TV and Czech Radio were influencing voters by publishing untrue partial and preliminary results. Furthermore, such opponents challenged the composition of referendum committees and claimed that the Referendum Execution Act had not been adopted legitimately and only a minority of Czech citizens had expressed their will to join the EU. Other actions for the invalidity of the referendum referred, for example, to a ballot not containing the imprint of the seal of the Ministry of the Interior, but only its replica, and to the fact that the EU Treaty had been available only of a Czech version. However, all petitions for judicial review were adjudicated unjustified by the Constitutional Court.

The right to elect and be elected

495. Generally, the franchise is understood as a citizenship-related right. The right to vote, including the right of participation in a referendum, pertains to all Czech citizens. In municipal and regional elections, such Czech citizens are entitled to vote who have registered for permanent residence in the venue of the elections.[258] Since 1 May 2004, i.e. since the Czech Republic became a member country of the EU, EU citizens have also had the right of voting in municipal elections (although not in regional elections) provided they have registered for permanent residence in the venue of elections. Furthermore, EU citizens enjoy the right of voting in the elections to the European Parliament held in the Czech Republic.

496. EU citizens should obtain the right to vote in municipal elections if residing in a member country. However, in addition to the condition of existence of an international treaty the Municipal Elections Act (No. 491/2000 Coll.) contains a condition of permanent residence. While a Czech citizen may change the place of permanent residence immediately, without any duty of staying in the place over a specified period before he or she can be registered, a citizen of another EU member country may register for permanent residence only after staying in the Czech Republic for three years.

Judicial protection against de-registration of a candidate

Elections to the Chamber of Deputies and the European Parliament

497. Prior to the elections to the European Parliament in June 2004, the Supreme Administrative Court[259] received four actions against the decision of the Ministry of the Interior to de-register a candidate, which together related to six candidates. The Ministry of the Interior based its decision on the fact that to the list of candidates had not been attached a certified document proving citizenship, as required by the European Parliamentary Elections Act (No. 62/2003 Coll.). Instead of such document, only two non-certified copies of identity cards or certificates of Czech citizenship had been attached to the list of candidates.

498. The Supreme Administrative Court dismissed three of the actions because they had been filed after the lapse of a two-day period set forth by the European Parliament Elections.

499. One of the actions against the decision to de-register three candidates on the list of candidates of the coalition For the Interests of Moravia in the United Europe (koalice Za zájmy Moravy ve sjednocené Evropě) was declined because the Supreme Administrative Court concluded that the Ministry of the Interior had complied with the law by having first called the coalition to remedy the imperfections in the list of candidates, and taking the decision on de-registration only after some of these defects had not been removed, irrespective of the call. In the opinion of the Supreme Administrative Court, the Ministry of the Interior had fully familiarized the coalition with the options of proving citizenship by the respective candidates, and the failure to use one of such options had ensued from the lack of willingness and negligence on the part of the coalition, namely its candidates, not on the part of the Ministry of the Interior.

Elections to the Senate

500. The relevant information is included in the text regarding the judicial protection of elections to the Senate in the pre-election phase.[260]

Municipal and regional elections

501. There are no records of seeking judicial protection in connection with municipal and regional elections.

Judicial protection by a review of a candidate's election

Elections into the Chamber of Deputies and the European Parliament

502. In connection with the elections to the Chamber of Deputies in June 2002, the Supreme Court[261] received 25 actions for unlawful election of a candidate. Of this number, eight actions were filed late and were, therefore, dismissed by the Court without reviewing the grounds thereto. In two cases, the proceedings were discontinued because of formal defects in the actions. As to the remaining actions for unlawful election of a candidate, the Court did review the merits thereof, yet resolved to decline all of them, mostly because it did not ascertain a breach of the Parliamentary Elections Act (No. 247/1995 Coll.) or found that the result of the election could not have been influenced by such breach. Several actions were rejected because the petitioner did not specify the candidate or candidates whose election the petitioner required to be declared unlawful and whose election, in the petitioner's opinion, was related to the breach of the Parliamentary Elections Act claimed by the petitioner. In some cases, the petitioner was not the person entitled by the Parliamentary Elections Act to claim a judicial review of a candidate's election. One petitioner alleged unconstitutionality of a statutory limit of 7 per cent for preferential votes (a mandate may preferentially be given to a candidate who achieves 7 per cent of the total number of valid votes cast in favour of the respective political party or movement within an electoral region). However, the Court was not competent to judge whether the contested legal provisions are unconstitutional as such rulings are exclusively within the jurisdiction of the Constitutional Court.

503. Following the elections to the European Parliament in June 2004, the Supreme Administrative Court received one action for unlawful election of a candidate and two actions for unlawful elections, both treated by the Court as actions for unlawful election of all candidates in the elections.

504. Of these three actions, the one seeking invalidity of a candidate's election was judged by the Court with respect to its merits. The petitioners stated that the results of the elections into the European Parliament as announced on the web page www.volby.cz showed that no preferential votes had been given to candidates in the petitioners' electoral ward. This was contrary to reality because the petitioners had given preferential votes to certain candidates. On the basis of this, the petitioners raised suspicion of unlawful manipulation and endangerment of the legitimacy of the elections as a whole. The Court concluded that such lapse had really occurred in processing the results of the elections by the precinct election committee. In the protocol, the committee had stated correctly that the respective political entity had received three valid votes, yet it had

not included in the protocol information that the candidates had been given preferential votes. In substantiating the dismissal of the action, the Supreme Administrative Court explained that this had represented only a marginal breach of the electoral law having effects only on statistics and records. Not mentioning the preferential votes in the protocol could not have influenced the lawfulness of the election of any of candidates having actually been elected.

505. The two actions for unlawful elections, i.e. the actions for unlawful election of all elected candidates, were rejected by the Supreme Administrative Court upon finding one of them late and the other premature - the petitioners did not comply with the period of 10 days from the announcement of the results by the National Election Committee.

Elections into the Senate

506. In 2000, the Supreme Court did not issue any judgements regarding unlawful election of a candidate into the Senate. There are no records of seeking judicial protection in connection with the elections into the Senate in 2002. As to the by-elections into the Senate in 2003, the Supreme Administrative Court did not take any decision with respect to unlawful election of a candidate.

507. Following the by-elections to the Senate in 2004, a single petition was filed with the Supreme Administrative Court for unlawful election of a candidate in the electoral region of Znojmo. The petitioner claimed that the elected candidate had incorrectly been indicated in the ballot as a member of the KDU-ČSL political party despite of having quitted it. Voters in both rounds of the elections had been misled by such information, which, as a consequence, might have affected substantially the results of voting and, also, the election of this particular candidate. The Supreme Administrative Court resolved that the information about the candidate's membership in the political party had not led to breach of the parliamentary elections law and, hence, rejected the action for unlawful election of a candidate.

508. In connection with the regular elections to the Senate in 2004, the Supreme Administrative Court received an action for unlawful election of a candidate or candidates, filed in combination with a petition for unlawful elections.

509. In adjudicating this action, related to a candidate elected in the electoral region of Prague 11, the Supreme Administrative Court considered the course and management of the pre-election campaign. The respective candidate, who lodged the action himself, claimed breach of the Parliamentary Elections Act through an unfair and dishonest pre-election campaign. The candidate stated that within the campaign, untrue information about him had repeatedly been published in the local and regional press. He was confident that the press and confrontational information therein had been published in order to harm his candidature into the Senate within the entire electoral region of Prague 11. In this case, the Supreme Administrative Court decided that the Parliamentary Elections Act had been violated by such conduct and found a relation between the described pre-election campaign and the candidate's having or not having been elected. Therefore, the Court declared the elections into the Senate in the electoral region of Prague 11 void.

510. On the basis of this ruling of the Supreme Administrative Court, the President of the Czech Republic announced new elections to the Senate in the electoral region of Prague 11, to be held in February 2005. However, the candidate elected in the original elections lodged a petition with the Constitutional Court to repeal the ruling issued by the Supreme Administrative Court. The Constitutional Court decided that the originally elected candidate had been elected and became Senator lawfully.[262] The Constitutional Court added that no objective or potential casual link had been found between the untrue information published in the press and its proliferation among voters. In addition, the Constitutional Court stated that compared to other countries the Czech law governing the electoral procedure, electoral infractions and pre-election campaign was incomplete. It further said that law-making authorities would have to consider whether the electoral culture as shown by the electorate, candidates and public officials was of a level rendering regulation of matters of this kind redundant, or whether conduct of these groups in the elections would have to be rectified by strictly defined rules leading to legal certainty of all parties in the electoral process.

Municipal and regional elections

511. There are no records of seeking judicial protection in connection with municipal and regional elections.

Entering the public sector

512. Conditions for entering the public sector in the area of legislation stem from the conditions set for the inclusion of candidates in the lists of candidates in municipal and regional elections, in elections to the Chamber of Deputies of the Czech Parliament and into the European Parliament, and for the registration of a candidate in the elections into the Senate.

513. In the case of municipal and regional elections, Czech citizens and citizens of the EU member countries[263] must be registered as permanent residents of the municipality or region where the elections are held. Nevertheless, for elections into the European Parliament it is sufficient that EU citizens only obtain registration as residents; that is, they do not have to register for permanent residence.

514. The right to be elected may be exercised only through lists of candidates of political parties and movement or their coalitions. Hence, a list of candidates shall not be submitted by individual candidates. This is possible only in the elections to the Senate, the only elections based on the majority system. A list of candidates shall always comprise the following information with respect to a candidate: the first and last name, age, profession, political party or information that the candidate is independent, and registered permanent place of residence. In elections to the Senate, a certificate of citizenship and confirmation of paying the contribution to the costs of elections must be attached to the application for registration. If a candidate stands as an independent, he or she shall attach to the application a petition in support of his or her candidature. Such petition must be signed by at least 1,000 competent voters from the respective electoral region. Whether a candidate will be put on the list of candidates and in which region is decided by a political party or movement or by a coalition thereof submitting the list of candidates. Thus, conditions for entering the sector of legislation ensue from the internal priorities of the political entities standing in the elections.

515. With the exception of judges and public prosecutors, the law does not comprise any specific conditions with respect to education and professional background in the executive and judicial sectors. However, only persons with completed university education may apply for a leadership position in numerous institutions. Specific requirements have been defined with respect to officials in municipal and regional authorities. These may be not only Czech citizens, but also all foreigners registered in the Czech Republic for permanent residence. Only Czech citizens may be employed by armed forces and corps.

A note on recommendation No. 24 regarding the so-called Screening Act[264]

516. A so-called Public Service Act (No. 218/2002 Coll.) should enter into force in 2007, to regulate employment of individuals at the central level of public administration. In enacting the law, the Parliament deleted the section that was to repeal the so-called Screening Act. Nevertheless, the application of the Screening Act will continue to be limited to positions defined by the law; it will not be applied globally.

Article 26

Ban on discrimination

517. The Czech Republic understands discrimination as illegal conduct occurring in specific legal relations for various reasons. In connection with the accession into the EU, the Czech Republic is preparing a so-called anti-discrimination law, supposed to define discrimination more clearly, to describe individual types of discrimination and options of protection against discrimination.

Anti-discrimination bill

518. The obligation to ensure equal treatment and protection against discrimination, as stipulated in the anti-discrimination bill, applies to the following legal relations:

- Employment in the broadest sense of the word; i.e. the right of employment and access to employment, profession, business undertaking, sole trading and other independent gainful activity, the right to work, service and other activities performed of the basis of employment agreement, including remuneration;
- Membership in organizations (such as membership and participation in trade unions or employer organizations, membership and activity in professional chambers and associations) and benefits provided by such organizations to their members;
- Social security and social benefits;
- Health care;
- Education;
- Access to goods and services available to the public, including housing.

519. The bill prohibits discrimination not only for reasons specified by the Community law, but also for reasons stemming from international treaties. Namely, it prohibits discrimination on the grounds of race or ethnic origin, gender, sexuality, age, ill-health, religion or belief, or because of being non-denominational, because of language, political or other opinions, nationality, membership or activity in a political party or movement, in trade unions or other associations, because of social origin, possession, ancestry, personal status or responsibility for a family. Gender-based discrimination should also include discrimination because of pregnancy and motherhood and discrimination because of own sexual identification. The ban on discrimination due to own sexual identification should eliminate adverse treatment of individuals identifying themselves with the opposite sex. This should apply in all situations regardless of whether the individual has changed his or her sex, is getting prepared for changing his or her sex, is in the process of changing his or her sex (a relatively long process), or does not intend to change his or her sex in future. Instances of discrimination should also include unequal treatment on the grounds of a so-called "reputed reason". In practice, it is not crucial whether an individual subject to discrimination is, for example, of a certain race, sexuality or age; of decisive importance is the fact that the discriminating party believes somebody to be of such race, sexuality or age. This reputed reason principle has been in effect in the Czech Republic since 2002 and it governs sanctions for certain criminal offences.[265]

520. The anti-discrimination bill defines terms such as direct and indirect discrimination, nuisance, sexual harassment, persecution, etc. Instructing and instigation to discriminate is regarded as discrimination, too. As obvious, not all unequal treatment may be viewed as discrimination; therefore, the law under preparation defines exemptions from the principle of equal treatment. Legal provisions governing these exemptions are based on two differing concepts according to whether the respective areas and reasons for discrimination do or do not result from the Community law. Where such areas and reasons for discrimination ensue from the Community law, the exemptions are expressly defined in the law and cannot be extended. In other cases, the law permits justifying unequal treatment by a lawful purpose and use of reasonable means. Such more general understanding of exemptions from the principle of equal treatment should be identical to the Committee's practice in deciding whether unequal treatment means discrimination. The lawfulness of the purpose and whether reasonable means have been used should always be judged by a court.

521. As to affirmative actions, the bill expressly mentions them as an option, not as a statutory requirement. It gives examples within the areas of employment and profession to which affirmative actions may apply. Listing of examples has been used because all types of affirmative actions cannot be predicted precisely. They depend on the activities of those responsible for ensuring equal treatment. If an affirmative action continues to exist even if the status of individuals has become equal, it can be challenged through the courts.

522. Furthermore, the bill gives a right in action to legal entities - predominantly to non-governmental organizations. The purpose is to create a possibility of sanctioning discriminative practice of a large extent, where discrimination involves a large number of individuals, the breach of law is obvious, but difficult or impossible to prove with respect to an individual because individual victims are not known. This does not constitute representation of victims of discrimination in proceedings before the court. As expected, these activities should primarily be performed by non-governmental organizations established for the purpose of

protection against discrimination. The protection of a victim is based on the current regulations regarding the protection of personal rights. Thus, victims of discrimination will have a possibility to seek at the court abandonment of discrimination, removal of the consequences of discrimination and reasonable satisfaction, or financial compensation for non-proprietary loss. On the Community law is directly based also the obligation of member countries to form or determine an institution to deal with equal treatment and protection against discrimination.[266]

523. The agenda associated with equal treatment and protection against discrimination will be entrusted to the ombudsman. According to the bill, he or she should contribute to the enforcement of equal treatment of all individuals and to this end, he or she should provide legal assistance in the matters of protection against discrimination, issue recommendations and opinions, make research and provide information to the public. Pursuant to the bill, the ombudsman is to provide independent support to victims of discrimination. Such support includes an element of assistance (e.g. assistance in drafting legal actions, drafting motions for determining a representative by the court, or drafting complaints to be filed with various administrative and inspection authorities such as Labour Office, Czech Trade Inspection Authority and others) and an informative element - providing information about the possibilities of legal assistance through an attorney-at-law or non-governmental organization. The ombudsman will not be permitted to represent victims of discrimination in court proceedings. He or she will only be able to provide them with advice as to what instruments they may use and who they may ask for help. A specific type of assistance which the ombudsman will be able to provide is mediation. According to the bill, such mediation may lead, among other things, to filing a motion for an out-of-court settlement. Of great importance will be the ombudsman's competence to issue recommendations and opinions. Such competence should evolve into an efficient tool for influencing common practice in the area of protection against discrimination. In addition, the ombudsman will carry out research in the field of equal treatment.

Information to fulfil recommendations Nos. 7,[267] 8[268] and 10[269]

524. Information on new institutions to protect human rights in matters of discrimination are stated in the previous section on the anti-discrimination bill.

525. Information on the state of minority rights and the enforcement of these rights, above all for Roma in the areas mentioned in recommendations Nos. 8 and 10, are comprehensively covered in the fifth and seventh periodic report on the fulfilment of the Convention on the Elimination of All Forms of Racial Discrimination, which describes the situation in the Czech Republic in the monitored period of 2000-2004. These reports also contain information on recommendation No. 9, on which the Czech Republic provided information at the request of the Committee in 2002.[270]

Article 27

Rights of national minorities[271]

Act on the rights of members of national minorities

526. In 2001, the Czech Republic adopted the Act on the rights of members of national minorities (No. 273/2001 Coll.). The Act comprehensively regulates the right of members of

national minorities in the Czech Republic, including in relation to the rights guaranteed by the Framework Convention on the Protection of National Minorities.[272] The Act on the rights of members of national minorities emphasizes the right to education in the language of the minority, the right to hearings before public authorities, including courts, in the language of national minorities and the right to the development of minority culture.

527. The Act on the rights of members of national minorities introduced the definition of the term national minority and member of a national minority. The basis of both definitions is the principle that the decisive factor in defining a group of people as a national minority, and an individual as a member of this minority, is their willingness to be considered a national minority, or member of this minority. Their willingness may be entirely informal but it must be definite and unambiguous. A member of a national minority can only be a Czech citizen who registers himself as belonging to the national minority. After expressing his membership of a national minority, the Act on the rights of members of national minorities does not demand any form; all that is required is the wish of the Czech citizen to be considered a member of the minority. He must, however, express this informal wish clearly and unambiguously.

528. The Act on the rights of members of national minorities expressly states that public authorities cannot keep any records of members of national minorities. Only anonymous data obtained as part of statistical research is permitted, on condition that data which may be used to identify an individual as a member of a national minority is destroyed after its statistical processing. This restriction on statistical research and its application, where this concerns data on membership of a national minority, does not apply to other entities, e.g. scientific institutions or agencies involved in research into public opinion, etc.

529. Members of national minorities can take part in resolving matters that concern them through the agency of special bodies - committees for national minorities, which must be established in local administrative bodies if the proportion of members of national minorities reaches a certain percentage of the population.

Census in 2001

530. The population census was held on 1 March 2001 for the first time since 1991. Among many other things, the census determined both the membership of a national minority and people's language according to the native tongue.

531. On the census sheet, everyone could state their national membership at their own discretion and without restriction. Everyone could therefore decide on the nationality that they ascribed to. Individuals could register themselves as belonging to more than one nationality or to none at all. The nationality of children under 15 was the choice of their parents. When stating their mother tongue, individuals were to put down the language that they spoke as a child with their mother, or the people who brought them up.

532. According to the results of the census of people, houses and apartments of 1 March 2001, a total of 980,283 people (9.4 per cent) in the Czech Republic registered themselves as belonging to a nationality other than Czech. These included people who described themselves as having Moravian or Silesian nationality, of which there were 391,352 (3.8 per cent). The definitive

census results record the number of people who belong to a nationality other than Czech, Moravian or Silesian as 588,931, i.e. 5.6 per cent. This data covers not only Czech citizens - members of national minorities - but also foreigners with permission to reside in the Czech Republic.

Table 33

National structure of the population according to the census in 2001

Nationality		Population total		Men		Women	
		Absolute	In %	Absolute	In %	Absolute	In %
Population total		10 230 060	100.0	4 982 071	100.0	5 247 989	100.0
Nationality	Czech	9 249 777	90.4	4 475 817	89.8	4 773 960	91.0
	Moravian	380 474	3.7	203 624	4.1	176 850	3.4
	Silesian	10 878	0.1	6 578	0.1	4 300	0.1
	Slovak	193 190	1.9	94 744	1.9	98 446	1.9
	Polish	51 968	0.5	21 571	0.4	30 397	0.6
	German	39 106	0.4	18 391	0.4	20 715	0.4
	Roma	11 746	0.1	6 149	0.1	5 597	0.1
	Hungarian	14 672	0.1	7 711	0.2	6 961	0.1
	Ukrainian	22 112	0.2	9 943	0.2	12 169	0.2
	Russian	12 369	0.1	4 634	0.1	7 735	0.1
	Ruthenian	1 106	0.0	529	0.0	577	0.0
	Bulgarian	4 363	0.0	2 711	0.1	1 652	0.0
	Romanian	1 238	0.0	667	0.0	571	0.0
	Greek	3 219	0.0	1 671	0.0	1 548	0.0
	Vietnamese	17 462	0.2	10 775	0.2	6 687	0.1
	Albanian	690	0.0	500	0.0	190	0.0
	Croatian	1 585	0.0	886	0.0	699	0.0
	Serbian	1 801	0.0	1 138	0.0	663	0.0
	Other	39 477	0.4	23 588	0.5	15 889	0.3
	Not specified	172 827	1.7	90 444	1.8	82 383	1.6

Table 34

Comparison of census data for membership of a nationality in 1991 and 2001

Population structure/census year		1991	2001	Increase / fall
Population total		10 302 215	10 292 933	- 0.1%
Nationality	Czech	8 363 768	9 249 777	+ 10.8 %
	Moravian	1 362 313	380 474	- 72.6 %
	Silesian	44 446	10 878	- 74.7 %
	Slovak	314 877	193 190	- 41.6 %
	German	48 556	39 106	- 21.1 %
	Polish	59 383	51 968	- 14.2 %
	Roma	32 903	11 746	- 64.4 %
	Other and not specified	73 732	212 304	+ 364.4 %

533. An analysis of the results of the 2001 census shows that the fall in the number of people claiming nationality other than Czech can be interpreted as a sign of declining identification with individual national minorities. It can be postulated that there is a wider range of factors influencing the general fall in stating a nation:

- Merging of the terms nationality and citizenship;
- Homogenization of society in the Czech Republic following the break up of the Czechoslovak Federation;
- Sign of disinclination, or fear of registering as a member of a nationality other than Czech; and
- Process of integration and growing assimilation of members of national minorities, etc.

534. The apparent difference between the 2001 census results and the real situation concerning the size of a minority is clearest among the Roma community. According to qualified estimates, there are about 200,000 Roma in the Czech Republic, although in the census only 11,746 people declared themselves as belonging to the Roma minority. The majority of Roma declared themselves as having Czech nationality and also stated that they use the Czech language. On the basis of data on mother tongues, we may estimate that the number of Roma using it during the 2001 census was around 72,000 people.

Table 35

Population structure according to mother tongue in the 2001 census

Proportion of population/mother tongue	Total		Men		Women	
	Absolute	In %	Absolute	In %	Absolute	In %
Czech	9 707 397	94.9	4 729 948	94.9	4 977 449	94.8
Slovak	208 723	2.0	97 439	2.0	111 284	2.1
Roma	23 211	0.2	11 896	0.2	11 315	0.2
Polish	50 738	0.5	20 199	0.4	30 539	0.6
German	41 328	0.4	17 020	0.3	24 308	0.5
English	3 791	0.0	2 410	0.0	1 381	0.0
Russian	18 746	0.2	7 097	0.1	11 649	0.2
Other	99 258	1.0	53 720	1.1	45 538	0.9
Not specified	76 868	0.7	42 342	0.8	34 526	0.7
Total	10 230 060	100.0	4 982 071	100.0	5 247 989	100.0

Table 36

Combination of two mother tongues among selected minorities according to the 2001 census

Proportion of population/mother tongue	Total		Men		Women	
	Absolute	In %	Absolute	In %	Absolute	In %
Czech and Slovak	14 109	0.1	6 966	0.1	7 143	0.1
Czech and Roma	12 970	0.1	6 558	0.1	6 412	0.1
Czech and Polish	2 552	0.0	1 217	0.0	1 335	0.0
Czech and German	11 061	0.1	5 562	0.1	5 499	0.1
Czech and English	733	0.0	358	0.0	375	0.0
Czech and Russian	670	0.0	288	0.0	382	0.0
Czech and other	4 074	0.0	2 077	0.0	1 997	0.0
Other combinations	3 240	0.0	1 616	0.0	1 624	0.0
Total	49 409	0.5	24 642	0.5	24 767	0.5

535. The geographical stratification of national minorities did not change in comparison with 1991. According to the 2001 census, the various minorities are mostly located in the regions set out below.

Table 37

Minorities and regions: 2001 census

Region	Total number of population	Nationality							
		Czech	Moravian	Silesian	Slovak	Polish	German	Roma	Other and non-specified
Prague	1 169 106	1 088 814	2 567	161	19 275	1 486	1 791	653	54 359
Central Bohemia	1 122 473	1 074 360	1 536	89	15 287	2 144	1 110	1 416	26 531
South Bohemia	625 267	594 992	1 318	40	9 025	459	1 423	613	17 397
Pilsen	550 688	524 396	880	48	7 773	327	2 040	599	14 625
Karlovy vary	304 343	266 054	439	25	14 079	357	8 925	753	13 711
Ústi	820 219	755 603	1 080	65	22 214	1 665	9 478	1 905	28 209
Liberec	428 184	399 917	573	41	8 743	1 924	3 722	615	12 649
Hradec králové	550 724	523 783	736	44	8 518	1 844	2 601	722	12 476
Pardubice	508 281	489 142	3 132	37	5 932	677	603	477	8 281
Vysočina	519 211	475 954	26 145	42	3 732	258	319	258	12 503
South Moravia	1 127 718	881 046	198 657	230	16 029	757	900	631	29 468
Olomouc	639 369	561 063	49 431	202	11 233	726	1 721	868	14 125
Zlín	595 010	508 037	65 048	101	7 713	436	218	439	13 018
Moravia-Silesia	1 269 467	1 106 616	28 932	9 753	43 637	38 908	4 255	1 797	35 569
Total	10 230 060	9 249 777	380 474	10 878	193 190	51 968	39 106	11 746	292 921

536. The results of the 2001 census compared with those of 1991 do not record declarations of membership of Jewish nationality. In 1991, 218 people declared membership of Jewish nationality, while in 2001 this data only appears in the category of religious denomination. In 2001, a total of 1,515 people declared membership of the Federation of Jewish Communities in the Czech Republic. According to qualified estimates, approximately 3,500 Jews currently live in the Czech lands.

Notes

[1] CCPR/C/SR.1931-SR.1933 and CCPR/CO/72/CZE.

[2] CCPR/C/66/GUI/Rev.2 and HRI/GEN/2/Rev.2.

[3] Second periodic report on the elimination of all forms of discrimination against women (April 2000, CEDAW/C/CZE/2); second periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (June 2000, CAT/C/38/Add.1); third periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (October 2002, CAT/C/60/Add.1); fifth periodic report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (December 2002, CERD/C/149); third periodic report on the elimination of all forms of discrimination against women (September 2004).

[4] "While the Covenant has a status superior to domestic legislation, not all rights stipulated in the Covenant have been incorporated in the Charter of Fundamental Rights and Freedoms, which leads to confusion as to the full protection of all Covenant rights. It is also not clear what the relationship between the Covenant and the Charter and other parts of the constitutional order is (art. 2)" (CCPR/CO/72/CZE, para. 5).

[5] An international treaty is promulgated on official publication in the *Collection of International Treaties*. Since 1 January 2000, the method applied to the official publication of ratified international treaties and agreements to which the Czech Republic has acceded, as well as the method used for the publication of legal provisions, has been regulated by Act No. 309/1999 on the Collection of Laws and the Collection of International Treaties, as amended. Up to 31 December 1999, the official publication of ratified international treaties and legislation was regulated by Act No. 545/1992 on the Collection of Laws.

[6] All the parties mentioned may submit proposals in accordance with the Constitutional Court Act (Act No. 182/1993), the amendment to which (Act No. 48/2002) followed up on the change to the Constitution (Constitutional Act No. 395/2001).

[7] See the text of the report concerning article 25.

[8] The Constitutional Act on changes to the State border with the Republic of Austria, Constitutional Act No. 633/2004 on changes to the State border with the Federal Republic of Germany.

[9] Information on residential statuses is disclosed in the text of the report concerning article 12 (1) and (3).

[10] See, for example, the right to vote of foreigners who are nationals of other EU member States in elections to the European Parliament and the right to work in the public realm - article 25.

[11] See, for example, the right to be the convener of assemblies (art. 21) and to make an active contribution to the establishment of an association (art. 22).

[12] The ruling of the Constitutional Court (finding) of 18 June 2002 was published in the Collection of Laws under No. 349/2002.

[13] The Constitutional Court referred to the case law of the European Court of Human Rights, which develops the right to a fair trial so that "… *for the satisfaction of the qualification of independence the court must be able to base its decisions on its own free opinion of the facts and their legal aspect without having any obligation to the parties or public authorities and without the decision being made subject to review by another body which is not independent to the same degree*".

[14] The information in this part concerns only new aspects of the administrative judiciary that differ from general civil judicial proceedings. Information about other (including joint) aspects can be found in the text on article 14 (1) - concerning the equality of parties to the proceedings, public judicial proceedings.

[15] The ruling (finding) of the Constitutional Court was published in the Collection of Laws under No. 276/2001. Even before, the Constitutional Court had expressed the view (e.g. in Finding No. 1/1997 of 27 November 1996, File No. Pl. ÚS 28/95) that in Czech law "*the right to a comprehensive review of administrative authorities' decisions by an independent and impartial tribunal is not enshrined with any clarity*".

[16] As is evident from a ruling of the Supreme Court (No. Ncn 262/2004) of 1 November 2004, the Supreme Court forwarded the submission to the Supreme Administrative Court, which informed the sender of the jurisdiction of courts in the administrative judiciary and asked for additional material to be provided. The sender failed to heed this request, and instead only sent a letter to the President of the Supreme Administrative Court seeking a decision in the case. The President reiterated that, as the President of the Supreme Administrative Court, he is not entitled to issue rulings regarding reviews of administrative decisions.

[17] The Czech Republic provided remarks on Observation No. 6 within a year of the discussion of the initial report, as required by the Committee.

[18] During the process of passing the law in Parliament, the individual's opportunity of submitting a petition for proceedings to be reopened before the Constitutional Court was restricted. The President of the Republic, whose approval of the bill, granted by his signature, is required for the law to enter into force, opposed this change to the Constitutional Court Act, inter alia because "*all persons whose human rights or fundamental freedoms have been infringed should have this right, irrespective of the type of proceedings in which this happened*". However, the lower chamber of Parliament (the Chamber of Deputies) reversed the President's opposition and thus the Constitutional Court Act is applied in this highly restricted form.

[19] See the following sub-chapter.

[20] See, for example, the Court's ruling in the cases of *Zvolský and Zvolská v. the Czech Republic*, and *Běleš et al. v. the Czech Republic*. The Court expressed the view that the possibility of concurrently lodging an appeal and a constitutional complaint has no basis in law

and it was not difficult for the complainant to find this out. This way of handling the problem does not meet the requirement of legal certainty because there is nothing to prevent the Constitutional Court from making a decision on a constitutional complaint, and therefore two different rulings could exist in the same case. The Court also brought attention to two other complaints filed against the Czech Republic indicating that the concurrent lodging of an appeal and a constitutional complaint need not prevent the rejection of a constitutional complaint.

[21] The ruling (finding) of the Constitutional Court was published in the Collection of Laws under No. 153/2004.

[22] Information in this part of the report is not directly connected to the status of the accused/defendant in criminal proceedings - this information is available in the text concerning article 14.

[23] Information about the equality of the parties in criminal proceedings is contained in the text on article 14 (1) - the principle of the equality of parties in criminal proceedings.

[24] The ruling (finding) of the Constitutional Court of 31 January 2001 was published in the Collection of Laws under No. 77/2001.

[25] The amendment to the Rules of Criminal Procedure valid as of 1 January 2002 (Act No. 265/2001) contains a new provision under section 44 (2), although this refers to the authorized representative of injured parties in cases where there is an extraordinarily high number of such parties which would slow down the criminal proceedings, not to the court's possibility of making decisions on the participation of injured parties in criminal proceedings.

[26] The governor is one of the regional bodies representing the region in external affairs; he is elected by the regional assembly from its members.

[27] See the text of the initial report concerning article 4, points 107 to 110.

[28] The fourth state of crisis in the scale of the general threat is the state of war, i.e. a military emergency situation. The state of war is regulated in the Act on the Defence of the Czech Republic (Act No. 222/1999).

[29] The governor/mayor must inform the Government of the declaration of a state of danger, as well as those regions which could be affected by the events leading to the declaration of the state of danger and the Ministry of the Interior, which is the centre of the Integrated Rescue System in the Czech Republic and which organizes the operation of the Central Task Force - the Government's working body for emergency situations.

[30] In terms of the scope of intervention in rights and freedoms and the extent of obligations imposed, the Government's powers are broader than the powers of a regional governor in a state of danger. Governors/mayors cannot impose work obligations, only work assistance. Work obligations can be imposed in the regions solely on the basis of a governmental order if a state of emergency is declared. More information can be found in the text on article 8 (3) (c).

[31] The City of Prague, the Středočesko Region, the Jihočesko Region, the Plzeňsko Region and the Karlovarsko Region.

[32] A declaration of a state of emergency by the Prime Minister was approved under Government Decision No. 777 of 13 August 2002 (http://racek.vlada.cz/usneseni/) (available in Czech only).

[33] At the time this state of crisis was declared, the transfer of the organization of public administration from municipalities and districts to municipalities and regions had not been completed, and therefore the state of crisis was declared by the chairperson of the district authority as the manager of the competent authority of state administration. Following the transfer to the model of municipalities and regions, this right rests with the governor.

[34] This condition does not apply to women who are nationals of an EU member State, because the Czech Republic must provide them with the same care as Czech nationals.

[35] 14. The Committee is concerned about reports of domestic violence and regrets that no statistics were provided by the State party. While welcoming public information campaigns and training of the police, the Committee is concerned about the absence of specific protection in law and in practice (arts. 3, 9 and 26).

The State party should adopt the necessary policy and legal framework to combat domestic violence; specifically, it should provide a framework for the protection of a spouse who is subjected to violence or threats of violence.

[36] Act No. 91/2004 amending the Criminal Code (Act No. 140/1961).

[37] The perpetration of this crime on a next of kin is taken as a defining feature of the crime and cannot be considered an aggravating circumstance.

[38] The Committee is concerned that complaints against the police are handled by an internal police inspectorate, while criminal investigations are handled by the Ministry of the Interior, which has overall responsibility for the police. This system lacks objectivity and credibility and would seem to facilitate impunity for police officers involved in human rights violations (arts. 2, 7 and 9).

The State party should establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by the police.

The Czech Republic provided the requested information within one year of the discussion of the initial report, as required by the Committee.

[39] The Rules of Criminal Procedure (Act No. 141/1961), as amended by Act No. 265/2001.

[40] Complaints handled by the ombudsman include police activities during investigations into misdemeanours, the activities of the Foreign and Border Police, including police inactivity in connection with proceedings or investigations in progress and in connection with the refusal to carry out required police duties or interventions.

41 The police authority of the Prison Service can conclude investigations into suspected crimes committed by members of the Prison Service in the following ways:

- The case is closed by means of a resolution if no crime has been perpetrated and the case cannot be settled by other means;

- If the case at hand is not a crime but a misdemeanour, the police authority will forward it to the director of the relevant prison for disciplinary action;

- The case is temporarily discontinued (section 159b of the Rules of Criminal Procedure);

- The case is passed on to the police for a decision on whether to commence a criminal prosecution (section 160(1) of the Rules of Criminal Procedure);

- In some cases, the police authority is entitled to make a decision itself on whether to commence a criminal prosecution (section 160 of the Rules of Criminal Procedure) and then forward the case to the police authorized to conduct an investigation (section 162 of the Rules of Criminal Procedure);

- In cooperation with the competent public prosecutor, the police authority is responsible for the case until the judicial hearing (summary pretrial proceedings).

42 The amendment to the Ombudsman Act (Act No. 349/1999) should also satisfy the requirements of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which obligates States parties to set up a national mechanism of independent regular checks of places where persons are detained.

43 15. The Committee is deeply concerned about the persistent allegations of police harassment, particularly of the Roma minority and aliens, which the delegation described as resulting from lack of sensitivity rather than harassment (arts. 2, 7, 9 and 26).

The State party should take firm measures to eradicate all forms of police harassment of aliens and vulnerable minorities.

44 This is the basic conceptual document of the Ministry of the Interior in this field. The Ministry of the Interior is preparing an update of this document to cover the next two years, given the working title of "*Strategy for Police Work in Relation to Minorities*". The aim of the Strategy is to facilitate the police's successful adaptation to the conditions of growing social diversity, and to provide police officers with the necessary social skills so that they can carry out their work efficiently in relation to minorities and maintain a quality approach to minorities.

45 The position of liaison officer for minorities was created in all police regions at the beginning of 2005.

46 The Ministry of the Interior and the police will also intensify the recruitment of members of minorities to the police force. They will also focus on the rigorous application of anti-discrimination procedures in police work, and in particular of a system to check up on the conduct of police officers to identify any manifestations of xenophobia or racism.

47 The Committee is deeply concerned about reports of trafficking of women, with the State party being a country of origin and transit as well as a recipient country (arts. 3 and 8). The State party should take resolute measures to combat this practice, which constitutes a violation of several Covenant rights, including article 3 and the right under article 8 to be free from slavery and servitude.

The State party should also strengthen programmes aimed at providing assistance to women in difficult circumstances, particularly those coming from other countries who are brought into its territory for the purpose of prostitution. Strong measures should be taken to prevent this form of trafficking and to impose sanctions on those who exploit women in this way. Protection should be extended to women who are the victims of this kind of trafficking so that they may have a place of refuge and an opportunity to give evidence against the person responsible in criminal or civil proceedings. The Committee wishes to be informed of the measures taken and their result.

48 Mainly Ukraine, Moldova, Russia, Bulgaria and Romania.

49 The model has so far been applied to six victims. This project includes the preparation of training in prevention, trafficking in human beings and investigations into these crimes. The training is designed for law enforcement agencies and non-governmental organizations specializing in the implementation of a model to support and protect victims of trafficking in human beings in the Czech Republic, and for police officers (primarily the criminal, foreign and patrol police). The final phase of the project should include the establishment of cooperation between law enforcement agencies and non-governmental organizations in the countries of origin, transit and destination. On completion, there is expected to be a rise in the number of non-governmental organizations providing victim support in the model.

50 The Programme coordinator is the Ministry of the Interior, which set up an interdisciplinary working party for the coordination of the support and protection of victims of trafficking in human beings in the second half of 2005 and is responsible for the national coordination mechanism for the support and protection of human trafficking victims. The interdisciplinary working party members represent ministries responsible for issues related to trafficking in human beings, and cooperating non-governmental and international organizations.

51 In 2006, the Programme will be evaluated based on identified motivating factors that influence the decision-making of victims on entering the Programme, and programme success indicators taking account of the social reintegration of victims and the perpetrator prosecution success rate.

52 Information about states of crisis, the conditions for declaring and discontinuing such states, and the possibilities of restricting rights and imposing specific duties can be found in the text of the report concerning article 4.

53 At the same time, soldiers submitted a proposal to cancel the way their service pay is determined under the Military Service Act (Act No. 220/1999) due to inconsistency with legal provisions that are superior in rank. The courts found no reason to suspend proceedings (i.e. they concluded that the act did not contravene legislation of a higher order). Soldiers lodged a constitutional complaint with the Constitutional Court during hearings before general courts. The Constitutional Court refused this complaint as inadmissible because the soldiers had not contested a decision by a public authority (e.g. a court ruling) but a piece of legislation. Another reason for the rejection was the claim for relief under the complaint, where the complainants directly sought the granting of a right to the payment of an amount equivalent to the minimum wage.

54 Since July 2004, when the Confinement Act (Act No. 169/1999) was amended, the obligation to cover the cost of incarceration has been waived not only for inmates who are unable to work on grounds of ill health, but also for inmates:

- Who have not been assigned work, through no fault of their own, and have no other source of income;
- Who are not yet 18 years old;
- Over the duration of any hospitalization;
- Over the period they are assigned to education or therapeutic programmes where the teaching or therapy time is at least 21 hours a week;
- Over a period when imprisonment is suspended;
- Over a period when they take part in trials as a witness or claimant;
- Over a period of extradition abroad;
- If they have escaped from prison.

All prisoners placed in the employment register, i.e. all prisoners who are fit to work, had to cover the cost of their incarceration before this amendment to the Confinement Act.

55 The disciplinary punishment of imprisonment could be imposed solely on soldiers taking part in basic military service. This was ended on 31 December 2004, when the army was professionalized and there was a significant change in defence duties - Czech citizens no longer carry out basic military service.

[56] This time limit does not apply to persons who are to be imprisoned or collected to carry out procedural acts from custody or punishment - see the text concerning paragraph 2.

[57] Criminal restriction of freedom by the police - see the text concerning paragraph 2.

[58] Act No. 265/2001, which amended a number of laws regulating the procedures of law enforcement authorities (for more information see the text on article 14, especially paragraph 1).

[59] A body for the social-law protection of children is a state authority which is intended to protect the warranted interests of the child, to take general care of a child's upbringing and, in the event of a disruption in family functions, to restore these functions. This agenda is within the remit of municipal authorities with extended competence.

[60] In cases where restriction in the movement of an aggressive person requires the placement of that person in a police cell, this would formally be a case of detention.

[61] A restriction in the freedom of movement of aggressive persons and their summoning to the police station to provide an explanation is governed by the Police Act; however, this law does not regulate further conditions related to these types of restricted freedom - for more information see the text on article 10(1).

[62] Until the end of 1999, the detention of foreigners took place solely in accordance with the Police Act (Act No. 283/1991).

[63] The "Information for Foreigners" was prepared in English, French, German, Russian, Spanish, Chinese, Georgian, Albanian, Ukrainian, Vietnamese, Armenian, Tamil and Arabic.

[64] A solution was provided by the amendment to the Foreigners Act valid as of October 2005, according to which the verdict on detention in the strict regime is part of the written decision on detention, including the reasons for this approach. If reasons for placement in a strict regime occur during detention, the Ministry of the Interior issues a separate, reasoned decision, which is delivered to the foreigner. The decision enters into force on delivery, and the foreigner is entitled to submit a petition for a judicial review of the decision, as is the case with a detention decision. Foreigners may be placed in the section with the strict regime for a maximum of 30 days if they are aggressive, require increased supervision for serious reasons, or seriously and repeatedly breach their obligations.

[65] Act No. 57/2005, valid as of 4 February 2005.

[66] Directive 2003/9/EC laying down minimum standards for the reception of asylum-seekers and Directive 2003/86/EC on the right to family reunification are incorporated into the amendment.

[67] If proceedings are terminated with final effect because an EU member State other than the Czech Republic is competent to handle the asylum request, the asylum-seeker has the status of a foreigner. The asylum request is not meritoriously assessed pursuant to this decision, and therefore the foreigner in question continues to have the attributes of an asylum-seeker.

[68] This concept was drawn up at the proposal of one of the Government's advisory bodies - the Government Council for Human Rights.

[69] The reasons for receiving and holding in institutional health care are described in the initial report concerning article 9 (1), points 156-159.

[70] Information about legal capacity can be found in the text on article 16.

[71] The superiors, granted relevant powers under a service regulation - the Basic Rules of the Armed Forces of the Czech Republic (Zakl-1) - made decisions on the imposition of the disciplinary punishment of imprisonment. Based on authorization (section 2 (2)) under the Military Service Act (Act No. 220/1999), the President of the Republic, as the chief commander of the armed forces in Zakl-1, stipulated that the power to impose the disciplinary punishment of imprisonment for up to 5 days would rest with the company leader, and that the power to impose the disciplinary punishment of imprisonment for up to 10 or 14 days would rest with superiors of higher rank.

[72] Information on detention in police cells and the conditions in these cells can be found in the text concerning paragraph 1.

[73] The Committee is concerned that the period of up to 48 hours before being brought before a court is excessive and that access to a lawyer is not available during that period to a suspect who cannot afford one (art. 9).

The State party should ensure that detained persons are brought promptly before a court and that access to a lawyer is available from the moment of deprivation of liberty.

[74] English, German, and Russian is being prepared.

[75] The label of "region" for one of the levels in the hierarchical structure of the police force is the same as the label for one of the levels of self-government - region. This is merely a coincidence - in terms of the scope of the geographical breakdown into regions, the territories are not identical.

[76] Act No. 265/2001, which amended a number of laws regulating the procedures of law enforcement authorities.

[77] The non-penal form of the deprivation of liberty is detention - see the text on paragraph 1. Special types of detention - expulsion and extradition detention - exist in Czech law. Because these are institutions which end the stay of foreigners in the Czech Republic, the information on both types of detention is provided in the text concerning article 13.

[78] The amendment to the Rules of Criminal Procedure (Act No. 265/2001) resulted solely in a change in terminology, where the accused is labelled as the person against whom the police authority, not the investigator, commences a criminal investigation.

[79] See the text of the initial report concerning article 9 (2) and (3), point 162.

[80] However, these restrictions are not applied if the accused escapes or hides, repeatedly refuses to abide by summonses, and efforts to bring him in or otherwise ensure his participation in criminal proceedings; if his identity is not known and available means are insufficient to identify him; if he has already made an impression on witnesses or the co-accused, or otherwise frustrated attempts to clarify the circumstances important for the criminal investigation; or if he has continued the crime for which he is being investigated (section 68 (3) of the Rules of Criminal Procedure), see the text concerning paragraph 3.

[81] Decision (finding) of the Constitutional Court I. ÚS 573/02 of 23 March 2004.

[82] See the information on the amendment to the Constitution from 2001, as described in the introduction.

[83] The Rules of Criminal Procedure contain a negative definition of the need for public hearings before a court, stating that the court acts publicly only in the trial and then wherever expressly stated by the Rules of Criminal Procedure. In cases of decisions to keep persons in detention, the Czech criminal courts thus incorrectly concluded that, as regards decisions on keeping persons in detention, if the Rules of Criminal Procedure do not state that the court is to act publicly, then the court is to make decisions automatically in a private hearing. At the same time, according to the Constitutional Court Czech courts disregard the nature of the decision-making, i.e. they should view decision-making on whether to keep a person in detention as a decision in the case, i.e. in a public hearing.

[84] The Committee is concerned about the scope and length of pretrial detention, the average length of which is inordinately high. The system, as it is applied, would seem to raise issues of compatibility with article 9, paragraph 3, of the Covenant. The figures provided by the State party on the number of cases in which the prosecution's request for detention is accepted by the courts casts doubts on the effectiveness of the system of review (art. 9).

The State party should ensure that its law and practice are in strict compliance with the requirements of article 9 of the Covenant; the State party is requested to provide further information on the implementation of the new Code of Criminal Procedure in its next periodic report.

[85] Given their specific nature and the brevity of the legislation, the reasons and duration of restrictions in the freedom of movement of aggressive persons and their summoning for the purpose of providing an explanation are detailed in the text in paragraph 1.

[86] The procedure of the police authorities is described in the initial report concerning article 9 (2) and (3), points 165 to 179.

[87] See the information contained in the text on article 9 of the initial report, point 180.

[88] Finding of the Constitutional Court No. IV. ÚS 157/03 of 24 September 2003.

[89] See the text in paragraph 4.

[90] The circumstances here are the fact that the difficulty of the case or other serious reasons prevent the criminal investigation from being completed within three months, and the fact that releasing the accused could result in the frustration or significant encumbrance of the purpose of the criminal investigation. On the grounds of procedural economy, it is naturally also possible for a court to make a simultaneous decision on the continuation of the reasons for detention (sect. 72 (3)), although this must be clear not only from the statement of grounds, but also from the actual verdict of the court ruling.

[91] Finding of the Constitutional Court II. ÚS 198/04 of 20 May 2004, previously see, for example, Finding of the Constitutional Court II. ÚS 317/04 of 31 August 2004.

[92] The given figures include decision-making in cases which the Constitutional Court has received, irrespective of whether they have been completed. Therefore the figures do not include information about cases which the Constitutional Court received up to the end of 1999 but which it made decisions on in the 2000-2004 period.

[93] See the information contained in the initial report, in the text on article 9 (5), points 198 to 201.

[94] See decision (finding) of the Constitutional Court of 30 April 2002, published under No. 234/2002.

[95] This time limit does not apply to persons who are to be imprisoned or collected to carry out procedural acts from custody or punishment.

[96] These are internal management acts, not legal regulations.

[97] The amendment was made via Act No. 222/2003, which amended the Foreigners Act.

[98] The issue of care for children without accompanying legal guardians who seek asylum in the Czech Republic, and the detention of unaccompanied children in detention facilities for foreigners are described in the text concerning article 9 (1).

[99] The cost of drugs covered out of public health insurance is designed in such a way that in each group of medical and pharmaceutical products there is at least one drug which is fully covered by insurance. If this drug is not suitable in an individual case, the patient, irrespective of his legal status, is obliged to contribute to the cost of the drug. However, he may apply to the health insurance company where he is insured to cover the full cost of the drug because the drug fully covered by insurance is not suitable for his requirements. However, this decision rests fully with the insurance company, which draws on information from the doctor treating the patient and, in particular, on the opinion of its review physician and its financial situation. Therefore the health insurance companies seldom comply with these requests. Because, for the purposes of covering the cost of the health care of asylum-seekers, a legal fiction is created in the same scope as for persons who pay public health insurance, this approach was de facto impossible.

100 The Standards have been made available to non-governmental organizations since the end of 2005 in order to arrange for public controls. Based on the described measures that have been adopted, all rooms used for accommodation purposes are fitted with electric sockets, apart from the asylum centre at Kostelec nad Orlicí. Here, structural and technical changes are required, and therefore this standard will be met sometime in 2006.

101 In June 2003, one of the Government's advisory bodies, the Government Council for Human Rights, recommended that the Minister for Defence harmonize the conditions of soldiers in prisons with the generally accepted conditions for detained persons so that soldiers could benefit from the standards acknowledged for persons who have been deprived of their liberty or had their liberty restricted by the courts.

102 As an interim measure, on 2 October 2003 the Chief of Staff modified the conditions in keeping with the recommendations of the Government's advisory body, and the President of the Republic then amended the Prison Rules on 24 February 2004.

103 Both sets of rules were issued by the Ministry of Justice, which is authorized to do so under the Confinement Act and the Remand Act.

104 This is the capacity recommended by the European Committee for the Prevention of Torture (CPT).

105 Since July 2004, the amended Rules of Confinement have also enabled prisoners to be placed in prison cells for multiple prisoners, in which each has an accommodation area of less than 4 m^2. This exception is possible only if the total number of prisoners in prisons of the same basic type nationwide exceeds this set minimum accommodation area.

106 A special regime was introduced pursuant to Regulation of the Director-General of the Prison Service No. 44/2002 on the placement of the accused and convicted into a regime of measures to secure imprisonment for highly dangerous persons from the sphere of organized crime of 25 September 2002, and Methodological Letter No. 18/2002 of the Director of the Detention and Punishment Department of the General Headquarters of the Czech Prison Service, unifying the method for the detention and imprisonment of highly dangerous persons from the sphere of organized crime.

107 The competence of public prosecutors is set in such a manner that intervention is possible only in relation to prisoners, not in relation to the General Headquarters of the Czech Prison Service.

108 The change also concerns an adjustment to social pocket money, punishment costs and compensation for damage caused by a convicted person to State property managed by the Prison Service, and the disciplinary punishment of receipt of a package imposed on young persons.

109 There was a significant mass action on 13 July 2004 at Vinařice prison, where 729 sentenced prisoners refused food. They stated that the reasons for the conduct were their opposition to the amendment Confinement Act and the lack of work opportunities. The situation was handled by

the Prison Service of the Czech Republic in the form of a raid - a demonstration of force, a raid on the accommodation areas of the sentenced prisoners and a general inspection of the prison. For preventive safety reasons, 25 identified initiators were also transferred to other prisons.

110 A suitable complement to these positively rated measures of the methodological letter would be the creation of an "intervention team", composed of psychologists, pastors and other experts, which would be available to these employees and would help them bear and come to terms with the consequences of mentally demanding situations.

111 The police recorded the residence of all foreigners until April 2004, when an amendment was passed to the Act on Population Records. Unlike Czech citizens, however, the residence of foreigners in the Czech Republic is still subject to police permission, and does not need just to be reported, as under the Act on Aliens and Immigration (No. 326/1999 Coll.) foreigners are still obliged to report a change in residence within three business days.

112 In simple terms, all these individuals are indicated as the citizens of other EU member States.

113 For example that they will not be a burden on the social system of the State where they register for residence because they already have sufficient funds for their living needs.

114 In many public insurance systems, automatic participation is based not on Czech citizenship but on permanent residence in the Czech Republic. Not even Czech citizens have to participate in these systems if they are long-term residents abroad and have deregistered in the Czech Republic.

115 Some examples from practice, chiefly the relationship with property rights, are stated in the sixth and seventh periodic reports of the Czech Republic on the fulfilment of the Convention on the Elimination of All Forms of Racial Discrimination, which the Czech Republic submits for the period falling within the monitored period 2000-2004.

116 Refers to the most common form of travel document; in addition there are also service and diplomatic passports. When travelling to EU member States, Czech citizens can also use their identity card.

117 There are 205 of these in the Czech Republic, making it a relatively accessible network.

118 See text of the report on article 4 - Extent of limitation of rights and freedoms and stipulation of obligations.

119 See text of the report on article 9, paragraph 1.

120 Information on conditions for the detention of foreigners are given in the text in article 9, paragraph 1; information on conditions in these facilities is given in the text of the report for article 10. Deportation procedure is in the text of the report for article 13.

121 See the text to the report on article 2, paragraphs 2 and 3 - New administrative justice.

[122] Council Order No. 343/2003 referred to as Dublin II.

[123] Constitutional Court ruling No. II. ÚS 142/03 of 2 October 2003.

[124] Ref. No.: Tpjn 310/2003 of 17 April 2003.

[125] Ref. No.: Tpjn 303/2003 of 5 November 2003.

[126] A travel pass is a document that the Foreign Police issues to foreigners whose residence in the Czech Republic is formally terminated.

[127] Constitutional Court ruling of 24 October 2000, ref. No. I. ÚS 480/98.

[128] For general characterization of the administrative courts procedure, including applicable remedies, see the text of article 2.

[129] A party must apply for waiver of court fees and the application is decided on by the court senate chairperson in the form of a resolution.

[130] Publication of a case in the media has a very burdensome impact on a partially liable juvenile and his or her relatives. Having served their sentence, punished offenders are in a substantially worse position in developing their career or finding a legal job, it is more difficult for them to become a part of a collective or society and thus they are even more pushed to the edge of the society where the only possible solution is criminal career.

[131] Pursuant to the Penal Code (Act No. 140/1961 Coll.), these are intentional offences for which the law stipulates the sentence with the upper limit of eight years and crimes for the commitment of which the Penal Code stipulates the possibility to release the convicts on probation not after having served one half of their sentence, but only after having served two thirds.

[132] The Committee appreciates the amendment of the Code of Criminal Procedure which cancels sentences of imprisonment without suspension by a punishment order, but remains concerned about the fact that this manner of punishing offenders causes serious problems under article 14, mainly with respect to the right to defence.

Contracting parties should ensure that the rights of persons sentenced by a punishment order be fully respected.

[133] The Czech Republic expects the new codification of criminal procedure to introduce the possibility of the court to decide on the basis of a plea declaration and the accused party's proposal for the issuance of a sentencing judgement in which the accused may also propose a sentence, protection measure or obligation to compensate damage for himself. This regulation is based on similar foreign regulations (e.g. Polish Criminal Procedure Code or the draft Slovak Criminal Procedure Code or the non-statutory judicature of courts in Germany) and it should govern the simplified procedure in cases when the accused admit their guilt. However, this is not a negotiation - so-called plea bargaining, but only declaration of plea and subsequent impartial acting of a court with the consent of the other parties. The court is principally not

bound by this proposal, is not obliged to accept it and may diverge from it. In such a case, the accused should have the right to adequate remedies, including withdrawal of his/her declaration of plea and achievement of standard trial in which the plea declaration cannot be taken into account.

134 The Committee is concerned that the legal assistance system does not guarantee legal assistance to be provided in all cases stipulated in article 14, paragraph 3 (d) of the Covenant.

A Contracting Party should review its legal assistance system to ensure that legal assistance be provided to all persons against whom criminal proceedings are held, where it is required for the sake of justice.

135 E.g. in proceedings when the accused is in custody or in proceedings on a complaint on a breach of laws filed against an individual.

136 Starting from July 2002, when the Act on Protection of Classified Information (Act No. 148/1998 Coll.) was amended, attorneys acting as defence counsels in criminal proceedings were required to have a certificate issued by the National Security Authority confirming their authorization to be provided with classified information, i.e. they were required to pass security checks. In addition to the right to defence and free choice of the defence counsel, this new regulation also affected the freedom of choice and exercise of the profession of attorneys for whom non-issuance of the certificate meant a limitation of their professional career.

137 Constitutional Court ruling No. 98/2004 Coll., dated 28 January 2004.

138 Act No. 283/2004 Coll.

139 Information on relative criminal liability of children with partial criminal liability is set out in the text pertaining to article 16.

140 See the text pertaining to paragraph 1 - Public character of trial and publication of court judgements.

141 The principle is the expression of the seriousness of the offence by a number of days, with the daily rate being determined on the basis of thorough evaluation of the juvenile's financial situation. The system of financial sanctions determination in the form of daily rates must be viewed as a manner of calculating the total amount of the sanction, the payment terms of which are set out in the judgement depending on the juvenile's income and resources.

142 In order to enable the court's review of the implementation of the imposed supervision, the law requires the probation official to execute a report at least every six months in which he informs the court on the course of the supervision over the juvenile, on performance of educational obligations and educational restrictions, and on the juvenile's personal, family and social situation (life situation). However, the court may request the reports to be submitted in

shorter or longer intervals. The rule should tend to shorten the intervals rather than extending them, so that the chair of the senate has sufficient information on the implementation of the ordered supervision by the probation official.

[143] The probation programme, after it is discussed with the accreditation commission, must be approved by the Ministry of Justice and registered in the list of probation programmes kept by the Ministry of Justice.

[144] In view of efficiency of probation programmes, it is necessary to ensure that these programmes be ordered to persons for whom they are suitable, taking into consideration the interests of the society and the needs of the given juvenile, and who are willing to participate in such programmes. This is the only way to make probation programmes effective. The sense of probation programmes is to influence the juvenile in such a way that he avoids conduct contrary to law in the future. Such programmes usually include creation of a suitable social environment and settlement of mutual relations between the offender and the damaged party. If the offence resulted in any damage, it is also usually ordered to the juvenile to compensate such damage in a manner corresponding to his powers.

[145] Constitutional Court ruling No. 424/2001 Coll., dated 31 October 2001.

[146] The Government has presented a proposal to Parliament for approval and ratification on two occasions (at the beginning of 2000 and in the second half of 2001). In both cases, the Chamber of Deputies withheld approval. The Government has concentrated on enlightening Parliament, on the various possibilities that could lead to ratification of the Statute of the International Criminal Court, and on an assessment of the pros and cons of these variants. In the reporting period of 2000-2004, Members of Parliament and Senators were given the opportunity of holding discussions with international experts and with judges from the International Criminal Court at seminars prepared for them primarily by the Ministry of Justice and the Ministry of Foreign Affairs in cooperation with the offices of both Chambers of Parliament.

[147] Both chambers of the Parliament of the Czech Republic must approve the ratification of an international treaty by the President of the Republic.

[148] See the text of the report concerning article 16 in the initial report, points 302 and 303.

[149] “Legal capacity” means the individual’s ability to enter into legal relations through his own actions and, in these relations, to have rights, obligations, liability for the discharge of responsibilities, and the opportunity to seek protection of rights.

[150] See, for example, the information on proceedings concerning citizenship contained in the text of the report concerning article 24 (3).

[151] Information on the Act on the Judiciary in Cases Involving Young People is disclosed in more detail in the text on article 14 (4).

[152] This concept of the criminal liability of children follows up on the 1931 Act on Criminal Justice in Relation to Young Persons, which is similarly based on conditional responsibility.

This responsibility depends on the child's intellectual and moral development at the time of the crime. In this concept, a partially criminally liable child cannot be punished if, at the time of the act, he was unable to recognize the danger his conduct posed or was unable to control his actions due to apparent and significant immaturity ("backwardness"). Therefore, for a child to be held partially criminally liable in relation to his level of development, he must be aware that he is "doing something wrong" that is in gross violation of social norms in the society in which he lives, or he must be capable of controlling his conduct in an appropriate manner. As a rule, it is not difficult to assess cases where serious crimes (e.g. murder, rape, robbery) or conventional crimes (theft, fraud, blackmail) have been perpetrated, where a partially criminally liable child must generally be aware that he has broken the law. More difficult assessments involve actions (e.g. minor cases of unauthorized use of another person's property, illegal restraint, disorderly conduct, etc.) which exceed the bounds laid down by the Criminal Code but which need not always be cases where the partially criminally liable child, given his mental maturity, is aware that his conduct has transgressed these bounds.

153 The Institute of Criminology and Social Prevention drew up an analysis focusing on crime among young people, which showed that child crime is not following a pronounced upward trajectory and that experts were in favour of more comprehensive solutions. The general opinion thus remains that a reduction in the age limit for criminal liability per se will not solve the problem.

154 In one case where a general court did not side with the Office, there was a subsequent amendment to the Act inspired by a legal view delivered by the Office.

155 For example, in 2003-2004, letters sent by foreign companies appeared in the mailboxes of Czech households containing an announcement that the addressee had won a draw and would receive a substantial cash prize if they telephoned the number in the enclosed leaflet to confirm their win by a set date. This was a number charged at a premium rate. In these cases the tariff was usually CZK 60 per minute. The telephone call lasted for at least 10 minutes, and most of this time consisted of a recorded message. However, the addressee had not won a prize. In particular, the psychological elements of this shady type of business should be highlighted - the addressee is convinced that fortune has finally smiled on him and therefore he must not pass up this opportunity. The text in the leaflet is designed to stress the time factor, and the addressee is urged to act fast in order not to let this chance slip by.

156 Starting in April 2004, the Office recorded a significant rise in the number of complaints concerning the use of personal ID numbers. However, this wave has since receded.

157 Sometimes unlawful copies of personal documents are made, which increases the risk of the above-mentioned identity theft.

158 On a general level, it ranges from the simple disclosure of the names of the visitor and the person visited, without the requirement for the visitor to provide identification, to the presentation of an identity card or other identity document, from which the visitor's given name and surname and the identification number of the document, as well as information about the visitor's date of birth, personal ID number and permanent address, are entered in the visitor

book. This information is frequently used on repeat visits, where the visitor usually states his surname which is then looked up in the records. A validation question is confirmation of the visitor's first name, date of birth or other information entered in the records.

159 All building operators must prevent unauthorized or accidental access to personal data, changes thereto, the destruction or loss thereof, unauthorized transfer and processing thereof, or other misuse. This obligation must also be respected in the subsequent handling of visitor books, irrespective of the form in which they are kept.

160 This matter is described in detail in Office Bulletin No. 2/2002, *Souhlasy klientù vyžadované bankami, registr klientských informací a novela zákona o bankách* ("Client permission required by banks, the client information register, and an amendment to the Banks Act"), also available at http://www.uoou.cz/dokumenty.php3 (Czech version only).

161 The legislation on banks' activities, including their authorization in relation to their clients, is represented by the Banks Act (Act No. 21/1992).

162 Act No. 126/2002 amending the Banks Act (Act No. 21/1992). Act No. 126/2002 was subsequently de facto repealed by Act No. 439/2004 (formally this was an amendment to the changed Banks Act, whereby the described rules were deleted from the Banks Act).

163 Council of Europe Convention CETS No. 108 (published in the Collection of International Treaties under No. 115/2001). The Convention enables any person to obtain confirmation from an information administrator of whether and what personal data relating to him are kept (art. 8 (b)). It also prohibits the use of personal data in a manner incompatible with the specified and legitimate purposes for which they are collected (art. 5 (b)) and permits the processing of sensitive data only if domestic law provides appropriate safeguards (art. 6). The Convention ties exceptions to the simultaneous fulfilment of two conditions: the exception must be based on the law and must constitute a necessary measure in a democratic society in the interests of protecting State security, public safety, the warranted interests of the data entity, the suppression of criminal offences, or the monetary interests of the State. The amendment to the Banks Act was justified by the interest in reducing the volume of bad loans in the banking sector. However, this has no direct conditional relationship with the State's monetary policy, which is considered an interest of the State. Services provided by banks as private business entities, which need a banking licence granted by the Czech National Bank for their activities, are not a monetary interest of the State either.

164 The Commission's Opinion on the compatibility of the amendment to the Banks Act with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data is published on the Office's website: http://www.uoou.cz/leg_ek.php3.

165 See Office Bulletin No. 3/2002, also http://www.uoou.cz/dokumenty.php3 (Czech version only).

[166] A register is operated by Czech Credit Bureau, a.s. Roughly half the banks operating in the Czech Republic have access to the register, which works on a commercial basis. The CCB register now runs a register of bank loans and a register of non-bank loans, where it also keeps records of clients who keep up with the loan repayments. The register continues to expand.

[167] The text of the emergency measure issued by the Ministry of Health can be accessed on the Ministry's website: http://www.mzcr.cz/data/c716/lib/SARS opatreni.doc (Czech version only).

[168] Specimen of landing card available in the files of the Secretariat.

[169] Based on information from the Ministry of Transport, in 604,364 persons from abroad in May 2003 and 722,062 in June 2003 travelled via Prague- Ruzyně Airport. The emergency measure imposed by the Ministry of Health lasted for 43 days - from 19 May to 30 June 2003.

[170] Meetings of the Commission's expert group on SARS, held four times throughout 2003, decided that a uniform format of landing cards would be introduced if required.

[171] Act No. 422/2004 amending Act No. 20/1966 on human health care, as amended; Act No. 301/2000 on registries, given names and surnames, as amended; and Act No. 48/1997 on public health insurance, as amended.

[172] The difference between an anonymous birth and the concealment of the woman who has given birth to a child is that in the case of an anonymous birth the person of the mother is not de facto known and the child is a foundling.

[173] See article 7 (1) of the Convention on the Rights of the Child (No. 104/1991): "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."

[174] E.g. under the case-law of the European Court of Human Rights, there is no invasion of the right to privacy (art. 8), which includes information about the identity of next of kin, if it is ensured that the child or parent will be able to find out about each other if the other party agrees (see the Judgment on Complaint No. 42326/98, *Odiévre v. France*).

[175] The procedure for health-care facilities with regard to the provision of health care related to a concealed birth is regulated in the *Journal of the Ministry of Health* (published in January 2005), where the method to cover the cost of this care from public health insurance is also laid down.

[176] In the conclusion to the opinion, it was stated that, in terms of legislation, there is no difference between monitoring corridors, a dining hall, etc., on the one hand, and bedrooms, other rooms and washrooms, on the other.

[177] The Ministry had originally drawn on an opinion delivered by the Institute of State and Law, Academy of Sciences of the Czech Republic, of 21 January 2003, which stated that the installation of such technology was not in contravention of the principle of the protection of private life. Under this opinion, institutions for the upbringing of children are public educational

establishments, like schools, prisons and barracks, and are not places of dwelling for children. That is why the regime of the inviolability of the home and protection of privacy was reported not to apply to them. From this, the Institute of State and Law inferred that the conduct of others can be monitored by audiovisual means with one exception - the bugging of telephone calls. In its opinion, it states inter alia that: "*From the aspect of the law, there is no difference in whether monitoring concerns a passenger on an escalator in the metro or a child at an institute for upbringing. In neither case does the monitoring per se interfere with a person's place of abode or privacy …*" This opinion of the Institute of State and Law was received by some representatives of the civic and professional public with considerable surprise.

178 Opinion of the General Attorney's Office No. 10/2003 of 25 July 2003 on the unification of the interpretation of laws and other legal regulations concerning the legality of placing audiovisual media in educational facilities.

179 In this situation, the ombudsman does not inspect the correctness of the treatment but the correctness of the approach adopted by public administration authorities, i.e. whether they have proceeded in accordance with legal regulations and, by extension, whether the rules they apply are expedient, e.g. the existence of a generally excessive restriction of rights and interference in rights.

180 This methodological letter was repealed in August 2005.

181 It is unusual for next of kin, by definition, not to have the right to be informed about the state of health or causes of death, even though this right is not positively regulated in the Human Health Care Act or other legal provisions. Survivors are usually provided with truthful information about the causes of a patient's death; in cases where there are doubts about the correctness of treatment, the survivors complain that information is withheld from them, with the excuse that the State is protecting the moral rights of the patient.

182 A next of kin need not be just a relative (with consideration for the line and degree of relativity), but also other persons who would justifiably feel the injury suffered by one of them as their own. They usually share a household and meet the criterion of de facto private and family life.

183 Section 206 of the Criminal Code defines libel as the communication of untruthful information that could cause a considerable threat to the reputation of an individual, in particular by injuring him in his employment, disturbing his family relations or causing him other serious injury.

184 In keeping with international law, freedom of religious conviction is viewed as the right of all persons under the jurisdiction of the Czech Republic. As a general rule, the State is able to provide the effective guarantee of this right to persons on its territory. That is one of the reasons why the Czech Republic derives the right to register a church from the rights of persons residing in the Czech Republic. Citizens of the Czech Republic must be resident in the country, foreigners who are nationals of EU member States must be registered to stay in the

Czech Republic, and other foreigners must have been granted a permanent residence permit. Information on residential statuses is disclosed in the text of the report concerning article 12 (1).

[185] For the sake of simplification, "military service" here includes the performance of defence duties, i.e. basic and replacement military service and military exercises.

[186] Information about the types of emergency situations is provided in the initial report, in the text concerning article 4, points 101 to 110, and in the text of this report concerning article 4.

[187] Information on this theme is disclosed in the text of the report concerning article 8 (3).

[188] "The Committee takes note of changes in the religious registration requirements, but remains concerned about the potentially different treatment the law continues to accord to different religions on the basis of registration and non-registration."

[189] This was confirmed by the Constitutional Court in the decision mentioned below in the report, based on the argument that if registration were to mean the establishment of a church rather than the acquisition of legal personality as a legal person, this would be an infringement of the principle of the church's independence of the State.

[190] Decision No. 4/2003 of 27 November 2003.

[191] Article 16 (2) of the Charter of Fundamental Rights and Freedoms; see also the text of the initial report concerning article 18, point 312.

[192] This is a new way of determining the minimum number of persons forming the basis for a request for the exercise of special rights to be granted. This requirement is de facto identical to the previous law, which mentioned that 10,000 church members were required.

[193] On its website (http://www.mkcr.cz) the Ministry of Culture regularly updates its overview of registered churches which have been granted special rights, and the scope of these rights (in Czech only).

[194] This is authorization to exercise special rights under the Churches Act. Put simply, the statutory bodies of churches then issue authorization to individual representatives of the church. Authorization to teach religion in State schools has been granted to the following churches and religious communities: the Apostolic Church, the Czechoslovak Hussite Church, the Roma Catholic Church, the Evangelical Church of the Czech Brethren, Christian Fellowships, the Lutheran Evangelical Church of the Augsburg Confession in the Czech Republic, the Religious Society of Jehovah's Witnesses, and the Silesian Evangelical Church of the Augsburg Confession.

[195] See the text concerning article 17 (2) and article 20 (2).

[196] Judgement of the Supreme Court 7 Tdo 726/2004 of 1 September 2004.

[197] Resolution of the Supreme Court 5 Tdo 83/2003 of 5 February 2003.

[198] The public service provided by radio and television broadcasters is regulated by the Czech Television Act (Act No. 483/1991) and the Czech Radio Act (Act No. 484/1991) so that it offers impartial, verified, generally balanced and comprehensive information for the free formation of opinions, produces and disseminates channels, and provides a balanced range of programmes for all groups of the population so that these channels and programmes reflect the diversity of opinions and political, religious, philosophical and art movements, with the aim of reinforcing mutual understanding and tolerance and promoting the coherence of a plurality society.

[199] Parliament debated an amendment to this law in January 2001 in a state of legislative emergency (the accelerated adoption of laws by Parliament). Specifically at issue here was the main task of the public service and the method used to propose candidate members for the Czech Television Council. Under the adopted amendment to the Czech Television Act, organizations and associations representing cultural, regional, social, trade union, employer, religion, educational, scientific, environmental and minority interests present nominees for the Czech Television Council to the Chamber of Deputies. The Czech Television Act did not contain any such specification prior to the amendment.

[200] Although the right to reply and subsequent disclosure should be part of the right to privacy (art. 17) and personal dignity, because of the specific link to the indirect limitability of freedom of expression, the information is provided in relation to the fulfilment of the right to freedom of expression and opinion.

[201] Section 166 of the Criminal Code; abetting is perpetrated by any person who knowingly helps the perpetrator of a crime to evade prosecution, punishment or a protective measure or the implementation thereof.

[202] Section 167 of the Criminal Code; failure to impede an offence is a crime perpetrated by any person who learns, in a trustworthy manner, that another person is preparing or committing any of the expressly named crimes and fails to impede the perpetration or completion of any such crime.

[203] Section 168 of the Criminal Code; failure to report an offence is a crime perpetrated by any person who learns, in a trustworthy manner, that another person has committed any of the named crimes and fails to report this crime without undue delay.

[204] Decision III. ÚS 433/2000 of 2 November 2000.

[205] ÈTK may engage in business with information; the situation between ÈTK and the party offering or requesting information is a buyer/seller situation, where the information is the goods for the provision of which the buyer pays the seller.

[206] Decision IV. ÚS 606/03 of 19 April 2004.

[207] The Constitutional Court discussed whether a restriction is “laid down by law”, whether it pursues one or more “legitimate objectives” and whether the restrictions are “necessary in a democratic society” in order to achieve the legitimate objective or objectives.

208 This opinion was subsequently confirmed by a ruling of the Supreme Administrative Court.

209 The Constitutional Court defined the term "public institution" as follows: *"The defining factors of the term 'public institution managing public funds' may be defined a contrario to the terms 'state authority', 'regional government authority' and 'public-law corporation'. Of the set of public-law bodies, a public institute, public undertaking, public funds and public foundations should be considered as such. Their common denominators are their public purpose, their funding by the State, the creation of their bodies by the State, and State supervision of their activities.*" (Decision III. ÚS 686/02).

210 The Act on Free Access to Information discusses in general the separate laws which protect personal data. Under the rule of *lex specialis derogat lex generalis*, it is not possible to demand the right to information in all cases where another law protects an individual's personal data and his right to privacy.

211 Aside from the Administrative Code (No. 71/1967 Coll., which will be replaced as of 1 January 2006 by another administrative code - No. 500/2004 Coll.), which regulates procedures in administrative proceedings before administrative bodies, these include the Civil Procedure Code (No. 99/1963 Coll. - regulating civil court procedure), the Code of Criminal Procedure (No. 141/1961 Coll. - regulating criminal procedure), the Code of Administrative Procedure (No. 150/2002 Coll. - regulating processes in court protection against the steps taken by administrative bodies in administrative proceedings) and the Act on the Constitutional Court (No. 182/1993 Coll. - regulating the specific aspect of procedure before the Constitutional Court).

212 Zoning bodies can be State or self-governing authorities which do not decide on the rights and obligations of individuals in this specific decision-making process - the approval of zoning documentation, but about the manner use of land.

213 Constitutional Court decision file No. III. ÚS 156/02.

214 From the decision of the Municipal Court in Prague, of 30 November 2001, file No. 33 Ca 50/2001.

215 Business secret means "*any and all business-related facts of production or technical nature related to the company, which have a factual or potential material or immaterial value, are not normally available in the given commercial circles, are to be kept confidential according to the will of the entrepreneur and the entrepreneur assures their confidentiality in the relevant manner*" (section 17 of the Commercial Code).

216 From the decision of the Regional Court in Hradec Králové, of 25 May 2001, file No. 31 Ca 189/2000.

217 The primary impulse for the change of the Act on Free Access to Information was the enactment of the European Parliament and Council Directive No. 2003/98/EC, of 17 November 2003, on the repeated use of public sector information. The directive introduced

harmonization in the sphere of the use of information possessed by public bodies for purposes other than those for which it was originally gathered and used. To implement the directive, the institute of the provision of information which is subject to intellectual property held by the obliged entity on the basis of a licencing or sub-licencing agreement should be introduced into the Act on Free Access to Information.

218 See the text of the Introduction to this Report.

219 In connection to the Statute of the International Criminal Tribunal (art. 28), the new draft criminal code regulates the criminal responsibility of a military or other superior for the actions which correspond to criminal offences according to international law (codified in articles 5-8). The new Criminal Code should thus introduce the criminal liability of the superior which consists in the wilful failure to prevent, failure to interfere with or the failure to punish the conduct of one's subordinates. Criminal liability and the culpability of a military or other superior should then be judged according to the provisions on the criminal liability and culpability of the subordinate offender.

220 Although the Committee noted the dissatisfaction of a party to the treaty concerning racial violence and its declaration about the restricting of such crimes and increased criminal sanctions related thereto, it remains unsettled by the violence and harassment used by certain groups towards the Romany minority and the inability of the Police and the courts to investigate, prosecute, and punish criminal offences based on intolerance (arts. 2, 20, 26).

The party to the Treaty should adopt any and all measures necessary to combat racial intolerance, to provide effective protection to the Romanies and other minorities, and to ensure that cases of racial violence and instigation of racial intolerance are duly investigated and prosecuted.

221 Criminal offences are defined in the Criminal Code (No. 140/1961 Coll.).

222 A complex description of the struggle against racism in the period between 2000-2004 is provided in the Fifth to the Seventh Periodic Report of the Czech Republic on the Fulfilment of Undertakings from the Convention on Doing Away with All Forms of Racial Discrimination.

223 Confession also includes the fact that a specific individual does not have any confession. The applicable Criminal Code includes among these reasons also political conviction.

224 See the text of the introductory report on article 20, points 328 and 329.

225 For a comparison, the above-mentioned criminal offences with an extremist subtext in 1996-1999 constituted 0.03 per cent (1996), 0.04 per cent (1997), 0.03 per cent (1998), 0.07 per cent (1999) of the total number of criminal offences ascertained.

226 Information about political parties and movements whose activities were suspended or which were abolished for reasons other than instigation of racial, national, or religious intolerance is provided in the text of article 22.

[227] One of the cases mentioned was the attempt to register the civic association TWRA - Third World Relief Agency, which is identified as the so-called Saudi branch of Al-Qaida. The Administrative Court (Municipal Court in Prague) rejected the application in April 2004 and the preparatory committee prepared a cassation complaint to be presented to the Supreme Administrative Court.

[228] The change was made by Act No. 259/2002 Coll.

[229] Information about the use of court protection is not available; also see text of article 2, paragraphs 2 and 3 - New Administrative Court System.

[230] See text of article 4 - other cases of restriction of rights.

[231] The specific situation of associations instigating racial, national, and religious intolerance is described in the text of article 20, paragraph 2.

[232] The act will apply to police officers, the employees of intelligence services, employees of the prison service and members of the justice guards, members of the fire rescue corps and employees of the customs administration authority.

[233] Types of residence statuses are described in detail in the report regarding article 12, paragraph 1.

[234] See information in the initial report regarding article 23, paragraph 23, subsection 351.

[235] The Family Act (No. 94/1963 Coll.), which regulates entry into marriage in general terms, was amended by the new Registration of Births, Marriages and Deaths Act (No. 301/2000 Coll.) with effect from 1 July 2001.

[236] To enter into matrimony, the following documents must be produced:

- Birth certificate (a birth-proving document issued by the registrar);
- Certificate of citizenship;
- Copy of an entry in the register of residents proving the place of permanent residence/not to be submitted by an alien;
- Copy of an entry in the register of residents regarding personal status/aliens are to submit a certificate of personal status and place of residence if such documents are issued by the respective country;
- Final and conclusive decree of divorce or death certificate of a former spouse if the fiancé was married.

With the exception of the birth certificate, a Czech citizen is not obliged to present such documents if the required information is stated in his or her identity card or the registrar may

verify such information in the electronic register of residents or identity cards. If a Czech citizen has his or her place of permanent residence abroad, he or she shall submit the aforementioned documents issued by the country where the Czech citizen permanently resides. In addition to the aforesaid documents, a foreigner is obliged to present an identity document and a certificate of legal capacity to contract marriage. Not later than on the date of wedding, a foreigner shall produce a permit of residence in the Czech Republic issued by the Foreign Police. Because in many countries, marriage cannot be entered into through a representative, a foreigner is to prove that marriage contracted in this manner will be acknowledged as valid in his or her home country.

237 See information stated in the text regarding article 14, paragraph 5.

238 For information on concealed childbirth, see the text regarding article 17, paragraph 1.

239 The amendment was implemented by Act No. 204/2002 Coll.

240 At that time, the country was divided into 8 territorial and territorial units, their current number is 14. The amendment d presumed 35 electoral regions, while their current number and territories are equal to the regions as units of the country's territorial and administrative subdivision.

241 The decision of the Constitutional Court of 24 January 2001 was published under No. 64/2001 Coll.

242 The amendment was implemented by Act No. 204/2002 Coll. A subsequent amendment to the Parliamentary Elections Act (Act No. 171/2002 Coll.) modified the timing of voting outside the Czech Republic with regard to releasing the partial results of voting which may be commenced only after the polling stations in the Czech Republic are closed. Pursuant to this amendment, in countries where a certain hour commences more than 4 hours later than in the Czech Republic the elections take place on Thursdays and Fridays, that is, one day before the Czech Republic.

243 The number of Czech citizens permanently residing abroad and, therefore, not being registered as Czech residents cannot be determined.

244 See the report regarding article 1, paragraph 1 - Public administration reform.

245 See the text regarding article 2.

246 If a candidate is de-registered, he or she may also file an action.

247 The Ministry of Justice does not maintain detailed records of petitions for a court review of election-related decisions. In 2002, the courts adjudicated 106 disputes under the Parliamentary Elections Act. Therefore, more specific characterization of review petitions cannot be given.

248 The duty to pay a contribution to the cost of elections was introduced in replacement of an election-related deposit. The deposit was cancelled by decision No. 64/2001 Coll. of the Constitutional Court. The electoral deposit of CZK 40,000 per each electoral region had to be paid by every political entity participating in the Parliamentary elections. The contribution to the coverage of electoral costs in the amount of CZK 15,000 is to be paid by every political entity per each electoral region where it participates in the elections. While the amount per every region has been reduced, the number of electoral regions has been increased from 8 up to 14 to be in line with the territorial and administrative subdivision of the country. Thus, prior to the cancellation of electoral deposit a political entity participating in the elections in all regions was to pay CZK 320,000. At present, it pays CZK 210,000.

249 There are no records of taking advantage of judicial protection of elections into the Senate in 2000 and 2002 and judicial protection of by-elections into the Senate in 2004.

250 To provide a complete justification, the Supreme Administrative Court added that due to the nature of the case it had not exercised its right to suspend the proceedings and refer the case to the Constitutional Court if concluding that the law which the Supreme Administrative Court is to apply in resolving the case is in contradiction with the constitutional order. It further stated that a similar condition - at least 1,000 to a petition is included in the law on association in political parties and movements. Together with the signature, an individual must state in the petition his/her first and last name, birth number and place of residence.

251 There are no records of further instances of seeking judicial protection of municipal and regional elections held from 2000 to 2004.

252 The right to file an action for unlawful election of a candidate in the elections to the Chamber of Deputies is described in the text regarding article 25 (b) - the right to elect and be elected.

253 Information about this mode of judicial protection is given in the text regarding article 25 (b), on the judicial protection of the right to be elected.

254 If this right is exercised by a political entity, local relevance stems from the division of the country into electoral regions. For elections into the Senate, the country is divided into 81 electoral regions.

255 In this connection, the Supreme Administrative Court added that many of the voters who instead of the official polling station had used the temporary polling station in the old people's home had done so not because of major health or other reasons, yet because this had been more convenient for them. This opinion was also supported by testimonies of witnesses. In the opinion of the Supreme Administrative Court, because of permitting this, the election ward committee could not be regarded in breach of the electoral law. Such conduct should rather be viewed as an above-standard service and effort to help voters. This is even more true if taking into account that in practice an election ward committee cannot review whether a voter's health condition allows him or her to appear in an official polling station. By making a wrong conclusion regarding the health of a voter and refusing unlawfully to permit that he or she uses a

portable ballot box, an election ward committee might expose itself to a justified objection of having breached the liberty of elections by preventing from voting a person willing to cast a vote.

256 These voters were provided with information about the referendum by the representative offices, through paid advertisements in foreign periodicals and announcements in magazines issued in foreign countries by associations of compatriots, by placing information about the date of referendum and conditions for the exercise of franchise on the Internet and notice boards of the representative offices, honorary consulates and Czech centres, and by distributing leaflets and other written informative materials by post or through personal meetings. As well, the Ministry of the Foreign Affairs put information on the referendum on its web page and provided for the publication of an announcement of the referendum in České listy, the newsletter for Czech compatriots abroad.

257 Judicial protection in cases regarding the maintenance of a permanent register of competent electors is identical to the judicial protection provided to elections. Hence, the Code of Administrative Procedure (No. 150/2002 Coll.) is to be followed, identically to all other elections in the Czech Republic.

258 The right to vote in municipal and regional elections does not ensue from mere residence in the respective locality. The Czech citizen must formally be registered for permanent residence therein.

259 Identically to the elections into both chambers of the Parliament, the Supreme Administrative Court has been responsible for this type of judicial protection since the beginning of 2003 when the Czech Republic implemented the administrative judicial system - see the text regarding article 2.

260 See the text regarding article 25 (a).

261 Until the end of 2003 actions for unlawful election of a candidate had been within the jurisdiction of the Supreme Court. Upon the introduction of the administrative judicial system in 2003, this competence was transferred to the Supreme Administrative Court.

262 See the ruling of the Constitutional Court, file No. Pl. ÚS 73/04, dated 26 January 2005. This ruling rendered void the decision of the Supreme Administrative Court of 3 December 2004 the resolution No. 19 of the Mandate and Immunities Committee of the Senate which states that this Committee was not able to verify the mandate representing electoral region No. 11 in Prague because of the Supreme Administrative Court having concluded that the elections in this electoral regional were invalid; the resolution adopted by the Senate at the 1st meeting held on 15 December 2004 by which the Senate took into account section II of the report of the Mandate and Immunities Committee on the result of verification of the election of a Senator, and the decision of the President of the Czech Republic, No. 653/2004 Coll., to announce new elections into the Senate.

263 EU citizens may elect and be elected only in municipal elections.

264 The Committee has concerns resulting from the fact that the Screening Act is applied unless considering the specific circumstances to which every individual was subject. This produces serious problems in connection with article 25 of the Covenant.

The party must ensure that the Screening Act is not applied blindly and is not used as a mechanism disabling equal opportunities of entering into public service.

265 See the text regarding article 20, paragraph 2.

266 Also a recommendation of the European Commission against Racism and Intolerance (ECRI) recommends the creation of a special entity to combat racism, xenophobia, anti-Semitism and intolerance at the national level.

267 The Committee is dissatisfied with the lack of independent mechanisms for monitoring the actual implementation of rights. Although the Committee welcomes the setting up of the Ombudsman's office for investigating individual complaints, it takes into consideration that the ombudsman's powers are limited to recommendations concerning the public sector. The Government Commissioner for Human Rights is a government official and the Government Council for Human Rights an advisory body; they therefore do not have a mandate to investigate personal complaints concerning breaches of human rights (art. 2).

The contracting party should adopt a measure to set up effective independent monitoring mechanisms for the implementation of rights guaranteed by the Covenant, particularly in the field of discrimination.

268 The Committee is deeply dissatisfied with the discrimination of minorities, particularly Roma. Although the delegation acknowledged the problem, the Committee did not get detailed information on discrimination in employment, education, health care, accommodation, prisons, social programmes or in the private sector, as well as in participation in public life. Measures taken by the contracting party to improve the social and economic conditions of Roma do not seem to be an adequate solution to the situation and discrimination de facto continues (arts. 26, 27).

In order to fulfil articles 2 and 26 of the Covenant, the contracting party should adopt all necessary measures to eliminate discrimination of members of minorities, particularly Roma, and expand the actual enforcement of rights guaranteed for Roma by the Pact; the Committee should be provided with all details on adopted measures and their practical consequences.

269 The Committee recorded various recent legislative changes to prevent discrimination in employment; it is however dissatisfied by the inadequate monitoring of the application of these laws. The Committee is also dissatisfied by the high level of unemployment of Roma, which is around 70 per cent, while the general level of unemployment in the country is 10 per cent. The Committee is also dissatisfied by the absence of laws forbidding discrimination in other areas, such as education and the health system, accommodation and provision of goods and services (arts. 2, 3, 26).

The contracting party should adopt measures to ensure the effectiveness of the existing anti-discrimination law. It should also adopt other laws in areas not covered by existing laws in order to ensure full compliance with articles 2, 3 and 26 of the Covenant. The contracting party should also make greater efforts to prepare Roma for suitable professions and in creating jobs for Roma.

270 According to regulation 70, paragraph 5 of the Committee statutes, the contracting party should within 12 months provide information on the implementation of Committee comments regarding the introduction of effective procedures for the implementation of opinions adopted by the Committee (para. 6), regarding special schools (para. 9) … .

271 The issue of national minorities in the Czech Republic is comprehensively dealt with in the report on the fulfilment of the Framework Convention on the Protection of National Minorities, which the Czech Republic submitted to the inspection body of the treaty in 2004. The report is available on the Council of Europe's web pages http://www.coe.int - Human rights - National minorities - framework convention (monitoring) - Monitoring mechanism - State reports and UNMIK Kosovo Report - Second cycle (ACFC/SR/II (2004) 007 Annex).

272 The Czech Republic became a contracting party to this international treaty under the treaty base of the Council of Europe in 1998.
