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SHADOW REPORT TO THE COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION FOR THE CZECH REPUBLIC

This report aims to provide the Committee on the Elimination of All Forms of Racial Discrimination, with specific information complementary to the Czech government's 6th and 7th Periodical Report on Performance of the Obligations Arising from the Convention on the Elimination of All Forms of Racial Discrimination

5 February 2007

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with the support of the International Federation for Human Rights (FIDH)

1. **The League of Human Rights** is a Czech non-governmental organization, striving for systemic changes to achieve human rights compliance by state authorities. LIGA provides free legal aid to victims of gross human rights violations; in particular to children, patients, the disabled, and victims of racial discrimination, police misconduct, coercive sterilisation and domestic violence. The League’s mission is to create a future in which the Czech State actively protects the human rights of its citizens, and respects both the spirit and the letter of the international human rights conventions to which it is signatory. The principal methods of the League’s human rights work comprise advocacy, strategic litigation and education. The League of Human Rights is a correspondent member of the International Federation for Human Rights (FIDH). More information is available at <http://www.llp.cz>.

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I. Introduction

- 1.1 The present report for the Committee on the Elimination of Racial Discrimination (CERD) is an analytical summary on the failures of the Czech Republic to comply with its obligations arising from the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The report focuses on issues involving the Romani minority, who are susceptible to discrimination in almost all areas of life due to deeply-rooted, negative sentiments from the majority Czech population.
- 1.2 According to a recent opinion poll conducted in the beginning of January 2007, 76% of people consider persons of Romani origin as “very unsympathetic.” This is by far the worst figure for any ethnic group, compared with citizens of the Balkan countries, and citizens from states of the former Soviet Union, where 45% of people consider members of these two groups as “unsympathetic.” Unfortunately, the image of Roma is not very well portrayed by some of the media as well, which only perpetuates certain prejudices. For example, the overwhelming majority of articles mentioning Roma in the highest-selling daily tabloid from the Czech Republic, *Blesk*, described them as: “people who steal, do not pay rent, are violent, or refuse to work.” These existing prejudices are the primary causes of many problems presented in this report.
- 1.3 Unfortunately, these prevailing negative sentiments against Roma in the Czech society are also apparent in sections of the Czech Government’s 6th and 7th Periodical Report, on Performance of the Obligations Arising from the Convention on the Elimination of All Forms of Racial Discrimination (hereafter “Governmental report” or “Report”). For example, in para. 12, the Report talks about monitoring the migration of Roma from Slovakia to the Czech Republic. The aim of it is to, “prevent this happening in an uncontrolled fashion.” The meaning is ambiguous because Slovak citizens, regardless of their ethnic origin or other distinctions, have the right to settle in the Czech Republic, according to EU rules on the freedom of movement within the Union. The remark suggests that Roma are something undesirable on Czech territory. Consequently, Government representatives should specify the purpose of the monitoring mentioned in para. 12 of the Report, and how they consider the activity of “preventing the migration of Roma in uncontrolled fashion,” to be compatible with its obligations under article 2 of the ICERD.
- 1.4 On the positive side, in 2005, a person of Romani origin won the television contest, Superstar, where the audience chooses the best singer among various competitors. The television programme has been very popular in the Czech Republic, and it also provides hope that deeply-rooted prejudices in the Czech Republic can be eradicated in the future. Progress can be initiated by promoting a positive campaign which exemplifies successful and sympathetic persons of Romani origin..

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- 1.5 Since the beginning of this century, there has been a government campaign titled, “United Against Racism.” One of the aims of the campaign is to reduce prejudices held by the majority community towards ethnic minorities, as well as promote the integration of minorities. The campaign’s resources were directed towards projects such as the creation of postage stamps, displaying posters at public transport stops, and announcements in the press. The campaign also included information courses for public servants and judges. However, the campaign has been rather low-key overall, and there has been minimal publicity and visibility. Moreover, given the figures gathered from public opinion polls, general racial prejudices are not a mainstream problem in the Czech society, rather it are the prejudices against certain communities, especially Roma, which are the main problem. Therefore, what is needed is a campaign focused on fighting prejudices against the Roma.

Recommendation:

- **To conduct a national campaign with the objective to combat prejudices against the Roma**
- **To encourage awareness among professionals, including the media, of their responsibility not to disseminate prejudices.**

- 1.6 Jakub Steiner of the prestigious CERGE Institute of Economics published a paper on the Economics of Social Exclusion, which describes the problems most Roma's encounter.¹ Using neoclassical economic models and economic theories of the family, Steiner describes how the social exclusion of Roma is a closed, causal circuit with no clear beginning: there is poverty which leads to nets of solidarity (large families), which results in ineffective behaviour, leading to discrimination against Roma, which again leads to poverty. In large, Roma families, there are not major incentives for individuals to work or study due to shared responsibilities amongst family members. The labour falls upon the individual, but every member of the family benefits from the work. The following paper mentions some of the reasons Roma live in large families, such as poor enforcement of the law within the Roma community. A primary issue of importance discussed ahead in the report, is the fact that Roma do not trust the police and consequently, they rarely approach police with their problems. The paper proposes several different solutions in order to break the cycle such as: the simplification of social benefits; improvements on the relationship between Roma and the police by employing Roma police officers, vigorously combating racism within the police force; encouraging Roma to pursue secondary education by means of scholarships; not establishing Roma ghettos and eradicating the current ones.

¹ Published in: Marek Jakoubek, Tomáš Hirt ed.: Romové: Kulturologické etudy. Plzeň, 2004.

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II. Article 2

Legal Framework

- 2.1 Discrimination, including racial discrimination, is prohibited by many laws. It is presented in the Government Report (paras. 20-23), however, the provisions are dispersed throughout various laws, and they often do not cover all areas related to discrimination. Subsequently, the Government prepared a new, comprehensive Bill on Equal Treatment and Protection against Discrimination (Anti-discrimination Bill; see para. 24 of the Government Report).
- 2.2 Unfortunately, the Bill was rejected by the parliament’s Chamber of Deputies in the spring of 2006, and as a result, no such legislation was passed and no similar bill is being considered. However, had the new Act been passed, it would have fully implemented all EU anti-discrimination directives into the Czech legal system, in particular Directives 2000/43/EC, 2000/78/EC and 76/207 EEC as amended by the Directive 2002/73/EC. It should have applied to all matters covered by the Directives, including labour, access to employment, access to goods and services, health care, education etc. The Act should have broadened the definitions of direct and indirect discrimination, harassment and victimization. Furthermore, it should have provided legal remedies, including just satisfaction for victims of discrimination. It should have also extend the powers of the Ombudsman, in order to serve as a body for the promotion of equal treatment, and all provisions concerning anti-discrimination in various laws should have been substituted by the provisions of the new Anti-Discrimination Act.
- 2.3 As a result of the failure to pass the Anti-Discrimination Bill, certain problems have arisen with similar legislation. One example is the new Labour Code passed in 2006, which entered into force on 1 January 2007. The Code regulates the relationship between employers and employees, therefore it is particularly important for combating discrimination in the workplace (Note: the Code does not cover access to employment, since it is considered time before a labour contract is concluded, therefore this is covered by the Employment Act – see para. 23c of the Government Report). The new Labour Code includes a general prohibition of discrimination, it then refers to a special act for further details. This Act, however, which was supposed to be the Anti-Discrimination Act, does not exist. As a result, there is a weakening in the protection against discrimination in labour-law relations.

Recommendation:

- To enact comprehensive, anti-discrimination legislation that ensures effective protection for the victims of racial discrimination in all relevant areas.

Racial prejudices among law-enforcement officials

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- 2.4 According to a sociological survey conducted in 2004, and reported in the Government Strategy for the Work of the Police of the Czech Republic in Relation to Minorities for 2006 – 2007,² there is a visible antipathy within the police force against persons of different ethnic origin, and in particular against the Roma. In the opinion of most police officers, the Roma account for a significant percentage of criminal activity, both in their specific place of residency and in the surrounding region. In addition, when victims of crimes are minorities, the incidents are often considered insignificant or an isolated phenomenon. Alarming, nearly one-third of police officers consider this type of criminal activity an instrument to deter members of the minority from committing crimes. They are also skeptical to employ members of minorities in the police force.
- 2.5 The negative sentiments also have a reverse effect.. There is significant distrust between minority groups and the police, especially for the Roma. The main reasons given for their dissatisfaction included the police's frequent and unjustified identity checks, distrust expressed towards them by the police, and the patronising behaviour of police officers. This distrust results in a significant number of under-reported cases of discrimination with the police. Consequently, the Roma are even more vulnerable to all kinds of discrimination because of the virtual impunity of perpetrators. In order to change this unsatisfactory relationship between minorities and police, a genuine partnership between the police and all sections of society, particularly the Roma, must be established. There are many tasks that must be fulfilled before this aim can be achieved.
- 2.6 A National Strategy for the Work of the Police in Relation to Ethnic Groups and Minorities was adopted in 2003. It proposes several mechanisms in order to improve the relationship between the police and minorities. These include liaison officers for minorities working under regional police authorities, and pilot projects for Romani assistants to the police. The Romani assistants, which now operate in several regions of the Czech Republic, have proved to be quite successful. They should be extended to other areas. Nevertheless, other mechanisms to improve the relationship should also be enacted. One positive example which proved to be effective in many countries, is the encouragement of the reporting of racist incidents by way of setting up 24-hour hotline, or a centre outside of the police (for example within local governments), and to follow-up with effective investigations of these complaints.
- 2.7 Another highly desirable and effective measure is to employ members of different ethnic groups within the police. This is indeed envisaged by the mentioned National Strategy for the Work of the Police in Relation to Ethnic Groups and Minorities. Nevertheless it has not been very effective so far as the government admits: “The recruitment of members of minorities to the Police is still neglected. The number of police officers that consider themselves to belong to a minority group is not being recorded, and therefore it is not possible to consult specific data. The programmatic recruitment of members of minorities to the police concerns only a minimum number of police units, and thus the police force remains relatively homogenous. Thus far, the Ministry of Interior has not developed an affective mechanism to promote the

² http://www.mvcr.cz/dokument/2006/mensiny_2006_7.pdf

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recruitment of minorities.”³ As a result, police officers of different ethnic origin are virtually non-existent, and this particularly applies to members of police who patrol the streets.

- 2.8 It must be acknowledged that many racial prejudices within the police can be formed naturally, and because of the very nature of police work, police officers primarily encounter pathologic behaviour. The psychological aspect of the problem was described by David Wickham: “For example, when one officer says that a particular gypsy is violent or uncooperative, this saga grows in potency until eventually all officers believe that all gypsies have such characteristics. Or when officers say that a particular ethnic group is anti-authority, the group may become rejected and less able to cope with authority, withdrawing further into the supportive cohesiveness of their peer group. This results in more officers believing that gypsy folk are anti-authority, and the negative sentiment continues to increase. In this regard, some officers are perhaps unintentionally guilty of holding negative attitudes and perceptions of ethnic minorities; what they regard as an objective opinion or perception may in fact be based upon subjective insights. With any sizeable ethnic community, it is reasonable to expect to find a small number of delinquents, but one would not have expected such delinquents to be perceived by some officers as the norm for the entire ethnic group, which, on much of the evidence of EO training courses, tends to be the case.”⁴ Therefore, a special educational programme for police officers in order to avert the formation and/or entrenchment of racial prejudices should be established and regularly conducted.

Recommendations:

- To improve the relationship between the police and members of minorities by way of strengthening the existing mechanisms and establishing new ones.**
- To strengthen efforts in recruiting members of minorities to the police. Clear targets should be set on how many members to recruit in a given time in the near future.**
- Eradicate racial prejudices among the police through education, and by ensuring that no persons with xenophobic beliefs enter the police force by way of testing the xenophobic value orientation of all current police officers.**
- Thoroughly investigate any signs of xenophobia of police officers, and if such allegations are proven, it should automatically result in a dismissal of such persons from the police.**

³ Strategie pro práci Policie České republiky ve vztahu k menšinám pro období 2006 – 2007, p. 11, http://www.mvcr.cz/dokument/2006/mensiny_2006_7.pdf.

⁴ David Wickham, ‘Understanding Institutional Racism’, *Police Magazine*, March 1999.

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- 2.9 Unfortunately, sometimes the racial prejudices among police officers result in violent acts. Two case studies illustrate the problem.

The Jičín Case:

*In May 2003, three off-duty police officers forcibly entered the flat of a Romani family in a town called Jičín. The police officers physically and verbally assaulted two Romani women and one boy. During this assault, various racist insults were allegedly uttered such as “black gobs, black mother*****”, “Gypsies, it would be best to shoot you all”, etc. However, the prosecutor who investigated the case treated it as a simple crime of forced entry into a dwelling, and despite numerous appeals from a League of Human Rights lawyer who represented the victims, the attorney refused to investigate the case from a racial dimension.. Consequently, two of the identified attackers were found guilty in court for the crime of forced entry into a dwelling.*

Of course it cannot be said with certainty that the primary motive for the crime was racial. The problem, however, is that the relevant authorities refused to consider racial discrimination as possibility, even though the circumstances of the case pointed into this direction.

The League of Human Rights lawyers have sued the convicted policemen for moral damages before a civil court, and they have also tried to open the question of racial motive before this court again.

The “Joyride” Case:

In April 2004, two English-speaking foreigners had a quarrel with a bartender in a Prague bar over the expensive receipt for their drinks. The bartender called the municipal police who quickly arrived on the scene, but as the two men could not speak Czech, the police listened only to the bartender. Afterwards, the two men were brought by car to the Holesovice State Police Station on Frantiska Krizika Street in Prague 7, where they waited for an hour while the police tried to decide what to do with them. After the state police saw that there was nothing they could do in this case, the original municipal policemen took them away from the police station and told them to enter their car again.

The police continued to drive around the foreigners in circles for approximately 15 minutes in silence. They turned down an alley and headed toward the river, where the car came to an abrupt stop in the middle of nowhere. The police dragged the two men out of the car, and started kicking them and beating them with a club.

The next day both men were treated at the hospital where they were bandaged, and they obtained medical reports. They went back to the Holesovice police station, this time in the company of a reporter and translator to file a complaint. However, they had to wait hours before anyone was free to speak to them and take their testimony.

The case was investigated by the police, concluding that there was not enough evidence to indicate

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that a crime had taken place. The medical reports presented by the victims were not taken into consideration, and their injuries were not explained. Afterwards, they sought legal aid from a League of Human Rights lawyer, and a complaint against this decision was filed. It was upheld by the state attorney (prosecutor) and finally after several months, charges were brought against the three police officers. In November 2006, the police officers were found guilty by a court for misusing the powers of a public officer.

- 2.10 These two case studies illustrate the grave consequences of persistent racial prejudices within the police force, and also more general problems with police in dealing with members of other ethnic origin and foreigners. .
- 2.11 Moreover, the Jičín case brings into light a systematic problem in the Czech criminal justice system: the reluctance of the police to consider the racial aspects of violent crimes. This has been an issue of recent concern with the European Court of Human Rights. In the well known case of *Nachova v. Bulgaria*, the Court found the State of Bulgaria to be in violation of the prohibition on discrimination due to the fact that the Bulgarian authorities failed “to take all possible steps to investigate whether or not discrimination may have played a role” in the killing of two unarmed and non-violent Romani deserters from the army. The Grand Chamber stressed the obligation of state parties to ensure that “when investigating violent incidents, ..., State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.” The Czech authorities have so far been failing to meet this obligation which arises from the ICERD stating that it is necessary that the state, “protect persons against violence or bodily harm, whether inflicted by government officials or by any individual group or institution (art. 5 (b)),” or “the obligation to secure effective remedies and to ensure that justice is fully and promptly done in cases concerning violations of fundamental rights and freedoms (see CERD, General Recommendation No. 27, para. 7 and 12).”

No independent body to investigate complaints on police

- 2.12 The case studies also illustrate another point of concern that has implications for investigating racially-motivated crimes of law-enforcement officials. According to Section 2, para. 4 of the Czech Police Act, criminal offences alleged to have been committed by members of the Police are initially investigated by the Inspectorate of the Interior Minister, which is a body supervised by the Ministry of the Interior. According to Section 3 para. 1 of the Police Act, the Police are also supervised by the Ministry of the Interior. The Inspectorate itself is entitled to investigate any crimes alleged to have been committed by police officers. The Inspectorate cannot be deemed “impartial,” because it reports to the same ministry as the Police and there is a close professional link between these two bodies. The members of the Inspectorate are officially termed, “police officers,” as are members of the Police. They are recruited exclusively from among the members of the Police force, and they maintain the rank assigned to them within the Police when working for the Inspectorate.

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- 2.13 Cases of criminal offences alleged to have been committed by members of the municipal police are investigated by ordinary units of state police. Although there is no official institutional link between these two bodies, there are often strong feelings of sympathy between the state police and municipal police which has a negative impact on the impartiality of investigations.
- 2.14 In the last Concluding Observations of the CERD on the Czech Republic on 18 August 2003, the Committee stated: “11. The Committee is disturbed by reports of alleged racially motivated ill-treatment of the Roma, the inadequate protection of their rights and the discrimination against them on the part of state bodies responsible for upholding the law, especially the police. It has furthermore been noted that cases of alleged ill treatment on the part of state bodies responsible for upholding the law are not always investigated immediately and impartially. The Committee is aware of the existence of numerous initiatives in the area of training and education of police officers; nevertheless it emphasizes that speedy, impartial investigations are of the first order of significance when confronting discriminatory positions and practices.

The Committee recommends that the participating state intensify its effort to end such discriminatory practices. It further recommends that the investigation of complaints about police work be conducted and overseen by a body independent of both the police and the Interior Ministry. The Committee requests that the participating state present statistical data in its next periodical report on the number and nature of racial discrimination complaints received, the number of proceedings initiated and the kinds of sentences issued.”

- 2.15 Similar recommendations to set up an independent body to oversee the police and conduct independent and impartial investigations of alleged crimes by members of the police were also issued by other United Nations committees. See the Committee against Torture (CAT) in its concluding observations on the Czech Republic on 14 May 2001 (A/56/44, paras.106-114) and 3 June 2004 (CAT/C/CR/32/2), the Human Rights Committee in its concluding observations on the Czech Republic on 27 August 2001 (CCPR/CO/72/CZE) and the Committee on the Rights of the Child in its concluding observations on the Czech Republic on 18 March 2003 (CRC/C/15/Add.201).
- 2.16 However, as the Government Report states (para. 201) that no independent body has been established to investigate all types of offences by members of the police. This also applies to alleged crimes as described above. The Government remarks that at least in these cases there is a supervision of state attorney (para. 200 of the Government Report). However, the state attorney becomes active only once the investigation is conducted and closed by the Inspectorate. It is then up to the state attorney to bring charges against the suspects if the Inspectorate makes the recommendation. The Inspectorate can also decide not to bring charges and then the victim can appeal to a state attorney. It is true that a state attorney can exercise its supervision on an investigation at any time, but this rarely happens in practice. In

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any case, the actual investigative acts are conducted by the Inspectorate.

- 2.17 The Government Council for Human Rights, an advisory body to the Government, recommended to the Government on the basis of a comprehensive analysis from the League and with cooperation of League lawyers, to establish an independent body to investigate all complaints of misconduct of members of both state police and municipal police in spring 2006. Unfortunately, the Government didn't approve this proposal at its session in October, providing an obscure explanation that the state has been working on this issue regardless of this particular proposal.

Recommendations:

- To thoroughly, independently, effectively and promptly investigate all violent incidents against persons of different ethnic origin and Roma especially, to ascertain whether or not discrimination may have played a role in the events,

- To establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by both the state police and municipal police.

III. Article 4

Activities of extremist groups

- 4.1 Regular gatherings (parties, concerts, demonstrations) are being held by numerous far-right and Neo-Nazi groups. Invitations to these events are often sent out over the telephone or by SMS (text) messages. The police rarely take any actions even though criminal acts are often being committed.
- 4.2 For example, in November 2006, two significant neo-Nazi gatherings took place. The first one was held at General Franco's co-memorial march in Hlučín on 11 November. The second was the Neo-Nazi music concert in Dražice on 18 November (see the box). Police did not intervene in neither of these incidents and they were criticized for their inactivity by the media and non-governmental sector. On 11 November, approximately one hundred National Co-operativism's (unregistered right-wing movement) supporters marched throughout the Silesian town of Hlučín to commemorate Spain's dictator Francisco Franco. No incidents were reported during the march. Police sources claim that Franco's anniversary was only a pretence to commemorating the anniversary of "Crystal Night."

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Neo-Nazi concert in Dražice

On 18 November 2006, a concert of right-wing music groups took place in the town of Dražice (Tábor region). Six music groups naming their style "Hatecore Metal" arrived (Teardown – USA, Race Riot – Germany, Path of Resistance – Germany, Before the War – Slovakia, Fear Rains Down – USA, Germany). The groups had participated previously at events organised by the neo-Nazi organisation Blood and Honour and American Ku-Klux-Klan. The Tolerance and Civic Movement organisation and Senator Jaromír Štětina criticized the fact that the police did not intervene. The Tolerance and Civic Movement further complained on inactivity of the police to the Minister of Interior. In the complaint they claimed:

The concert was allowed to take place without any interruption by the police. The police did not arrest the owner of a Neo-Nazi distribution company who was present at the concert even though they had the information in advance. The company is allegedly responsible for distributing CDs with texts propagating racial superiority and hatred, Nazi insignia etc. The police also allowed the organisers to collect admission fees, which is contrary to Czech laws (because it is a form of entrepreneur activity that is regulated). The fees usually go towards support of the illegal activities of these Neo-Nazi groups.

No action has been taken so far concerning this complaint. However, Neo-Nazi concert on the 17 December in České Budějovice was ended by a police action. According to the Tolerance and Civic Movement, this was the first Neo-Nazi concert that ended in this manner in that particular region in three years.

Racially motivated violence

4. Cases of racially motivated violence persist. Unfortunately, the cases are not always vigorously pursued by the relevant authorities. Sometimes the Police play down the gravity of the violence. There are cases the Police refuse to pursue if no substantial bodily harm was caused, despite the fact that any use of violence on a person because of his or her race, ethnicity or nationality is a crime (Section 196/2 of the Criminal Code). Additionally, other public bodies besides the Police can be reluctant to appropriately act in cases of racially-motivated violence. A case from Jeseník illustrates the unease with which some public officials pursue cases of racial violence (see also above the Jičín case).

The Jeseník case

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In June 2003, three youngsters claiming to be policemen forced their entry into a Romani flat in the town of Jeseník. After they entered, they attacked a woman who was pregnant at the time, by throwing a cobblestone into her head. As a result of the incident, the woman is now blind in one eye. Her husband was cut by knife in his face and chest.

The district court in Jeseník confirmed that the attack was racially motivated and that it was “pre-mediated and malicious.” However, the court gave the three men relatively mild suspended sentences of three years of imprisonment. The sentences were criticised by the victims, several Roma organisations and several government officials. The district state attorney however, refused to file an appeal even when ordered by a superior regional state attorney.

As a result, the regional state attorney had to order a transfer of the case to a state attorney in the neighbouring district of Bruntál. The new state attorney filed the appeal. The appeal court quashed the decision of the district court, and the case was re-tried in Jeseník by a different judge because the original refused to handle the case. It took over a year and half for the new trial to be completed.. On 4 November 2005, the three men were sentenced to 3, 4 and a half and 3 and a half years of imprisonment, respectively. The accused appealed, and the Regional Court slightly lowered their sentences.

Recommendations:

- **To actively investigate and prosecute all criminal acts conducted at Neo-Nazi gatherings**
- **Punish all persons participating in organizations or activities which promote and incite racial discrimination.**
- **All relevant authorities should vigorously and effectively investigate and prosecute all racially motivated violence.**

IV. Article 5

- 5.1 In reporting the fulfilment of obligations of the Czech Republic under article 5 of the ICERD, a particular feature states that there is not any official statistical data for an area relevant to race and ethnicity. The collection of such data is prohibited by law.⁵ Accordingly, any statistical data available are estimates, and their accuracy and reliability may vary.

⁵ Zákon č. 273/2001 Sb. o právech příslušníků národnostních menšin, zakazuje získávat a shromažďovat jakékoli údaje o etnických menšinách a etnickém původu.

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The Right to Work

- 5.2 According to most estimates, the level of unemployment among Roma is about 70%, compared to 8% of the current official unemployment rate in the Czech Republic. According to data collected by the European Roma Rights Center (ERRC) in 2005, “Roma are 8 times more likely to be unemployed than non-Roma; 61% of working-age Roma are unemployed, and of those number, 35% have experienced long-term unemployment; 78% of working age Roma have experienced continuous unemployment for one year or more; and a shocking 1 in 3 have suffered continuous unemployment for five years or more.”
- 5.3 Compared to the majority of the population, only a small percentage of Roma have experienced long-term employment. However, even in the event that individuals of Roma ethnicity are employed, as a rule they are employed to perform work of an unqualified or manual nature, regardless of the level of education attained by the given individual.
- 5.4 The reasons for such a low-level of unemployment among Roma are numerous. Typical reasons provided include a low-level of education, lack of necessary qualifications, lack of work habits, or a negative approach to work, as well as lingering discrimination on the labour market against Roma applicants. Job applicants frequently face manifestations of prejudice on the part of employers. According to the NGO, Counselling Centre for Citizenship, Civil and Human Rights, which conducted research on discrimination in access to employment in March 2003 to January 2004, this last reason is also acknowledged by State Employment Offices. The Offices report that they see a persistent reluctance on part of employers to employ ethnic Roma. One well-known case where an employer refused to employ a Roma woman with the explicit justification, “because she is Roma” is reported in the Government Report (para. 99).

No jobs for Roma:

A drugstore in a town of Cheb, which is a part of a multi-national chain, advertised a vacancy in the store’s window. When a Roma woman came to apply for the vacancy, the store manager informed her that the job had already been filled. When a non-Romani employee of the civic association, Poradna pro občanství (Counselling Centre for Citizenship, Civil and Human Rights) then entered the store and pretended interest in the same job, the store manager did not turn her away and proceeded to interview her for the position.

The Romani woman filed a lawsuit against the company. The court acknowledged that the woman was discriminated against on the basis of her ethnic origin, and they ordered the store manager to pay her a compensation of CZK 25,000 (EUR 870), and to send the plaintiff a written apology by registered post.

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Recommendation:

- To devise and implement more effective strategies in combating racial discrimination in employment and all discriminatory practices in the labour market.

The Right to Education

5.5 The fact that Romani children were frequently sent to special schools for mentally disabled children was a source of a widespread criticism from various NGOs and international bodies. The League of Human Rights with its partners in the 2006 Shadow Report, presented to the Committee on the Elimination of all Forms of Discrimination against Women, wrote the following: the European Roma Rights Centre (ERRC) conducted research on the situation of Roma in the Czech school system during the school year 1998-1999, and documented extreme levels of racial segregation in Czech schools. Intensive research was carried out in the Czech city of Ostrava. This revealed the following facts for the 1998-1999 school year:

- More than half of the student body of so-called "remedial special schools" for the mentally disabled were Romani;
- More than half of the population of Romani children of the age of mandatory school attendance in Ostrava were being schooled in remedial special schools;
- Any given Roma child was more than 27 times more likely than a non-Roman child to be schooled in a remedial special school.
- Those Romani children not attending remedial schools were frequently in large urban ghetto schools with bad reputations;
- Over 16,000 non-Romani children in the city went to school every day without meeting a single Romani classmate – meaning they attended entirely segregated, all white schools.

Field research in a number of municipalities elsewhere in the Czech Republic revealed little or no significant difference between the situation in Ostrava and that of other urban or semi-urban areas. Follow-up research in 2003 and 2005 in the Czech Republic undertaken by the ERRC, the League of Human Rights, and the Association of Roma in Moravia, indicated no significant change in levels of placement of Romani children in separate, substandard classes or schools of various types.

5.6 This situation was supposed to have changed with the new School Act that was passed in 2004, and which entered into force on 1 January 2005. The Act should have eradicated and resolved the persisting discrimination and segregation of Romani children in the Czech schooling system. The Act officially removed the special schools from the system. However, special schools (*zvláštní, pomocná škola*), were solely re-named as ordinary basic schools

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(základní škola). The new Act also contains an anti-discrimination provision which is only declaratory.

5.7 The League of Human Rights welcomes the removal of the negative connotation, which was typically associated with the “special schools”. Nevertheless, the new Act failed in its promise to eradicate the segregation in Czech schools. The segregation of Romani pupils in basic schools still persists.

5.8 On the basis of recent researches of the League of Human Rights educational experts in 2006, four types of “abnormal” basic schools or classes in which Romani children are segregated from pupils from the majority population can be recognised. The existence of these schools and classes is in accordance with the new Act.

- Former special schools were simply re-named. Romani pupils in these schools constitute above 60% and often above 90% of pupils. The curriculum in these schools is designed for mentally handicapped children and it contains only a fraction of what is taught in mainstream schools. The children are acknowledged as mentally handicapped. Consequently nothing has changed here (staff, curriculum, spirit...).
- Basic schools are attended mainly by Romani children because the vicinity of the school is inhabited mostly by Romani families (commonly called “gypsy schools”). If the number of Romani pupils in this kind of basic school reaches approximately 40%, the Romani parents start to send their children to this school and parents of the majority population start to send their children to other basic schools. These children are not acknowledged as mentally handicapped.
- Special, separated classes for pupils that are officially acknowledged as mentally handicapped are created in normal, basic schools. Many of these pupils are Roma. The curriculum is designed for mentally handicapped pupils. These pupils are identified as , “group integrated.”
-

Roma children = Mentally handicapped children?

There is a small, basic school in a small town, Ivanovice na Hané, in the Southern Moravia region. All the Romani children from Ivanovice and the neighbouring villages were officially acknowledged as mentally handicapped, and they attend two segregated special classes for mentally handicapped pupils in a normal basic school in the town.

- Separated classes in normal basic schools are attended only by Romani pupils, which were not acknowledged as mentally handicapped. The curriculum is standard. The reason for the segregation of Romani children could be the demand of Romani parents themselves, or because of the demand of the parents from the majority population, who do not want their children to attend the same classes as Romani children.

This classification shows two persistent problems in the Czech educational system: **racial**

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segregation and substandard education for Romani children.

- 5.9 The League of Human Rights already wrote with its partners in its 2006 Shadow Report to the Committee on the Elimination of all Forms of Discrimination against Women the following: A particularly pernicious role in the placement of Romani children in separate, substandard, and fundamentally degrading classrooms is played by the person of the educational psychologist. Although by law a parent's consent is required in order to secure the placement of a child in any given school, in practice, a combination of (i) the school director of the substandard school; (ii) the school director of the placing school; and (iii) educational psychologists deploying tests which are not made public, exert intense pressure on Romani parents – often themselves systematically undereducated and therefore illiterate -- to accept placement of their children in separate, substandard classes. As a result of regular reports of bullying by non-Romani children, and in some cases also by teachers in mainstream schools (an issue which has not been addressed by any government policy or action), many Romani parents capitulate to such pressure.
- 5.10 Another reason for such a high proportion of Romani children in classes for the mentally handicapped is that there are no culture-free tests available for the diagnosis of pupils with potential special needs. Many Romani children are diagnosed as mentally handicapped because of the cultural bias in currently used tests (Wechsler III, Kern – Jirásek, S-B 4th revision, Raven etc.).
- 5.11 There are no effective procedures in place either to challenge such placement, or to review the placement of children in separate, substandard classes or schools. As a result, the educational attainment of Romani children is markedly lower than their non-Romani counterparts, and most leave school fundamentally ill-equipped for adult life in contemporary society, having experienced systemic degradation at the hands of the state school system for the better part of their first two decades of life. As a result of the substandard education, these children will again have a difficulty finding employment, they will become socially excluded, have problems with housing, their children will attend special classes, etc., again perpetuating the cycle of oppression. Proper education for Romani children is the essential condition for breaking this cycle, and fighting social exclusion and racial discrimination. This also includes a special programme for affirmative action, aimed at encouraging Roma to pursue secondary education as contained in the study mentioned above in para. 1.6.
- 5.12 One way in which the government tries to combat this phenomenon is by establishing preparatory classes for children with a socio-cultural handicap. There were 137 of these classes in 2004 with a total of 1779 children, the majority of them Romani. Many Romani families are not aware of this possible opportunity, and in a number of instances they have not yet been informed on the value of enrolling their children in such classes. This demonstrates the inefficiency of Education Counselling Centres, and terrain social work with Roma families. Approximately 1/3 of the preliminary schools were established in special schools. Due to the fact that special schools are often situated in areas with a high number of Roma,

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Romani families on a number of occasions have sent their children to the preparatory classes in special schools. For the reasons noted above, Romani parents frequently consent to the enrolment of their children directly from these preparatory classes into remedial special schools or classes.

- 5.13 The new School Act has introduced a new category for the socially disadvantaged pupil. This could potentially help many Romani students to better integrate in the mainstream educational process, by giving them a right to special educational care. Despite the positive aspect of this new approach, the financing system of schools does not provide extra financial resources for these children. On the other hand, a school gets extra financial resources for pupils labelled as health disadvantaged, which includes mentally handicapped. This motivates the school directors to strive to label Romani pupils as mentally handicapped rather than socially disadvantaged, which would be much more appropriate in many cases. Also, even though socially disadvantaged children should no longer be placed in schools or classes with substandard curriculum, the Act does not place any obligation on anyone to find these children and transfer them.
- 5.14 A revised (4th) Strategy of Roma Integration, which was adopted by the Czech Government by Resolution No. 532 from 4 May 2005, mentions the importance of positive actions in combating long-term social handicaps. The strategy refuses the system of quotas for Roma in certain occupations or education and favours targeted assistance services. The primary sources for assistance are expected to increase the number of Roma children that attend kindergarten, introduce preparatory classes, and increase the number of assistant teachers in kindergartens and basic schools that are attended by Roma children. The assistant should help the children to accommodate in the school and to facilitate the communication of teachers with these pupils and their parents. However, in 2004, the number of pedagogical assistants decreased to 332 from 366 in year 2003. Moreover, no concrete measures are mentioned in regard to secondary and tertiary education of Roma children.
- 5.15 The new Act complicates the status of foreigners in the education system in numerous ways. Under this act, foreigners residing in the Czech Republic on a legal basis are guaranteed access to primary, secondary and higher education under the same conditions as Czech citizens. However, this does not apply to other activities regularly organised by schools (additional art education, additional language classes, other special-interest classes), pre-school education (only Czech citizens are exempt from paying the fees for the last year of kindergarten) and school services (e.g. counselling, accommodation, canteen facilities and after-school care facilities). For these activities foreigners, including those with permanent residence must pay higher fees. This results in inequality, with foreign parents being forced to either pay much more than Czech citizens or to resign, for financial reasons, from being able to enable their children to enjoy some of the above-mentioned school services. This is despite the fact that the provision of such services as a pre-school education for the children of foreigners is a very important component of their integration into the society. Such practice might also constitute indirect discrimination on the grounds prohibited by the ICERD.

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Recommendations:

- **As a matter of urgency, use all appropriate means to ensure that Romani children receive the same standard of education as other pupils, including providing information to Romani parents on the advantages of their children receiving full-value education.**
- **Eradicate the racial segregation in the school system**
- **To use culture-free tests for diagnosing pupils with potential special needs**
- **To take affirmative actions to encourage Roma children to pursue secondary education**
- **Provide extra financial resources to schools for socially disadvantaged pupils**
- **Revise its policy regarding the high costs of some educational services for foreigners, to find out how this may or may not hinder integration of children of different ethnic origins.**

Coercive and Unlawful Sterilisations of Romani Women

- 5.16 The particularly serious issue of coercive and unlawful sterilisations of Roma women was extensively reported by the League of Human Rights and its partners in a 2006 Shadow Report to the Committee on the Elimination of all Forms of Discrimination against Women. Updated parts of the Report are reproduced here:
- 5.17 From the 1970s until 1990, the Czechoslovak Government sterilised Romani women programmatically, as part of policies aimed at reducing the “high, unhealthy” birth rate of Romani women. This policy was described by a Czechoslovak dissident in initiative Charter 77, and documented extensively in the late 1980s by dissidents Zbyněk Andrš and Ruben Pellar. Helsinki Watch (now Human Rights Watch) addressed the issue as part of a comprehensive report published in 1992 on the situation of Roma in Czechoslovakia, concluding that the practice had ended in mid-1990. A number of cases of coercive sterilisations taking place up to 1990 in the former Czechoslovakia have also been recently documented by the ERRC. Criminal complaints filed with Czech and Slovak prosecutors on behalf of sterilised Romani women in each republic in 1992. The Czech prosecutor at that time evidently concluded that there had been wrongdoing, but no persons were ever criminally prosecuted and no victims received compensation or even public recognition of the harms

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they had suffered.⁶ No Romani woman coercively sterilised by the Czechoslovak authorities has ever received justice for the harms to which they were systematically subjected under Communism..

- 5.18 During 2003 and 2004, the ERRC, the League of Human Rights and partner organizations in the Czech Republic undertook a number of field missions to the Czech Republic to determine whether practices of coercive sterilisation have continued after 1990, and if they were ongoing to the present. The conclusions of this research indicated that there was significant cause for concern, and that until as recently as 2001 and possibly as recently as 2004, Romani women in the Czech Republic have been subjected to coercive sterilisations, and that Romani women are at risk in the Czech Republic of being subjected to sterilisation without their fully- informed consent.
- 5.19 In cases for which the matter is as serious and has such potentially irreversible consequences as sterilisation, the condition of fully informed consent is met only when the patient has been adequately and appropriately informed of the procedure and its alternatives as well as the consequences and risks associated with it, and when the patient has subsequently consented to the procedure of her own free will beyond any acts of coercion or misinformation. In addition, all relevant information must be provided sufficiently in advance of the procedure such that individuals have time to consider all implications in full, and such that ample opportunity is provided for the individual to change her mind.⁷

⁶ See Public Defender of Rights, “Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures”, 23 December 2005, pp. 28-35 (Hereinafter “Ombudsman Report”; page references refer to the official English-language translation available at <http://www.ohchr.org/english/bodies/cerd/docs/ngos/Public-defender-rights.pdf>).

⁷The World Health Organisation in its publication, *Considerations for Formulating Reproductive Health Laws*, states that, “one of the key principles in the provision of reproductive health services is free and informed decision-making. This is expressed as ‘informed consent’ although informed decision-making or informed choice would be better terms. The legal duty is to present information that is material to the choice that the patient has to make, in a form that the patient can understand and recall. The purpose is to equip the patient to exercise independent choice.”

The European Convention on Human Rights and Biomedicine (ECHR) states in Article 5 that “An intervention in the health field may only be carried out after the person has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time.” The explanatory report to this Convention states that “this information must be sufficiently clear and suitably worded for the person who is to undergo the intervention. The person must be put in a position, through the use of terms he or she can understand, to weigh up the necessity or usefulness of the aim and methods of the intervention against its risks and the discomfort or pain it will cause”.

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- 5.20 During the course of research in 2003 and 2004, researchers found that Romani women have indeed been coercively sterilised in recent years in the Czech Republic. The cases documented include:
- Cases in which consent had not been provided in either oral or written form prior to the operation;
 - Cases in which consent was secured during delivery or shortly before delivery, during advanced stages of labour, i.e., in circumstances in which the mother is in great pain and/or under intense stress;
 - Cases in which consent appears to have been provided (i) based on a mistaken understanding of terminology used, (ii) after the provision of apparently manipulative information and/or (iii) absent explanations of consequences and/or possible side effects of sterilisation, or adequate information on alternative methods of contraception;
 - Cases in which officials put pressure on Romani women to undergo sterilisation, including the use of financial incentives, or threats to withhold social benefits;
- In a number of the cases documented in 2003 and 2004, explicit racial motive appeared to have played a role during doctor-patient consultations.
- 5.21 In June 2004, the League and the ERRC met with the Public Defender of Rights (Ombudsman), and his staff to discuss the investigation of the cases. During the summer months of 2004, lawyers and researchers of four cooperating organizations gathered evidence for complaints to the Ombudsman. The first ten of these were filed in September 2004.
- 5.22 Although it was not intended to publicise these complaints, the information leaked, and beginning in mid-September 2004, Czech media gave extensive coverage to the matter. With a few exceptions, this coverage was cautiously sympathetic to the victims. A number of women gave interviews to television and the press, with their faces blacked out and names concealed. As a result of this media attention, a number of other victims came forward and filed complaints on their own with the Ombudsman.
- 5.23 Eighty-seven victims of coercive sterilisation – all except one of the victims were women, and the overwhelming majority of them Romani – submitted complaints to the Ombudsman in the period to September 2005. Many complaints came from Moravia – especially northern Moravia – although the overall geographic dispersion of the complaints, which are from throughout the Czech Republic, confirmed researchers' initial hypothesis that coercive sterilisation is a systemic issue in the Czech health care and Czech social assistance systems.
- 5.24 In early 2005, approximately 25 Romani women who coercively sterilised by Czech medical officials, established a victim-advocacy group called, “The Group of Women Harmed by Sterilisation,” in order to press authorities for justice. This development, which the victims themselves have organised, has come to the public’s attention, and consequently provided tremendous momentum for change. The organisation has been one of many important causes for action on behalf of Romani women..

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The Investigation and Report of the Ombudsman

- 5.25 On the basis of these complaints, throughout 2005 the Ombudsman opened an investigation into these practices. During the investigation, the Ombudsman sought and reached an agreement with the Ministry of Health, whereby the Ministry established a review panel made of experts. On the basis of a request by the Ombudsman, the review panel sought the relevant medical files from the hospitals concerned, and they answered questions the Ombudsman would provide on any given case. The review panel was responsible for examining whether the interventions had been performed according to good medical practice, and additionally, whether the legal qualifications for performing them were satisfactory..
- 5.26 Due to the extended period of time taken for the review panel's inquiry, the Ombudsman decided to conclude his investigation after reviewing 50 cases. The Ombudsman drew up a report on these cases, under section 18, par. 1 of the Ombudsman Act, reproaching the Ministry for an inadequate inquiry, and for drawing unreliable conclusions based on the facts provided..
- 5.27 The Ombudsman's Report published in December 2005 concludes, **“The Public Defender of Rights believes that the problem of sexual sterilisation carried out in the Czech Republic, either with improper motivation or illegally, exists, and Czech society has to come to terms with this.”**
- 5.28 The Ombudsman's Report further concludes that in the cases under examination, shortcomings are identifiable in the legality of the sterilised persons' consent. The report finds that in the vast majority of reviewed cases, legal and procedural safeguards were not observed. In discussions with the Ombudsman's staff, it has been noted that while under Communism, the main policy and law were followed (meaning that Czech social workers dutifully implemented policies encouraging the sterilisation of Romani women), and after the official end of policies which fostered a climate conducive to coercive sterilisation in 1991, a number of doctors have apparently acted fully outside the law to continue the practice. At a press conference at the launching of the Ombudsman's Report, **Deputy Ombudsman Anna Šabatová spoke of this phenomenon as “fully deformed praxis in the Czech medical community”.**
- 5.29 Approximately 1/3 of the Ombudsman's Report (pp. 25-59) concerns “Sterilisation and the Romani Community,” and reaches the conclusion of racial targeting. Case summaries included in the report highlight events in which medical files reveal that social workers and doctors recommended caesarean section births. This was done in order to manufacture “indicators,” through which sterilisation would appear legitimate and necessary.

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- 5.30 The text of the report also includes detailed summaries of Czechoslovak state policies toward the Roma in the 1970s and 1980s, in which social workers were enlisted in the task of controlling the Romani birth-rate – regarded as too high by policy-makers – and creating a culture of invasive control over Romani families which endures through today. The report also includes a separate section on the history of eugenics in Czechoslovakia, which the authors evidently regard as a key element for the policies and practices detailed in the report.
- 5.31 However, despite the examination of extensive evidence, which proves that certain forces conspired in order to compel Romani women to forfeit their ability to give birth through extreme, invasive, coercive sterilisation practices, and furthermore that these were racially motivated considerations, the Ombudsman stopped short of concluding that these issues were racially discriminatory. Apparently, this conclusion remains too controversial, as Czech society is unable to acknowledge that racism against Roma is a vivid reality in the Czech Republic today.
- 5.32 The Ombudsman also dismisses the possibility that the crime of genocide may have been perpetrated, believing that although facts in certain areas give rise to relevant concerns, the conclusion may be premature. For example, in the housing estate of Chanov, just outside the northern Czech city of Most, a targeted campaign was carried out against Romani women; both offers of financial incentive, as well as threats to withhold social welfare or take children into State care, were carried out throughout the 1980s, and resulted in the sterilisation of tens if not hundreds of Romani women. The person named repeatedly by surviving victims of these practices as the leader of the campaign to sterilise the Romani women of Chanov, is a social worker named “Mrs. Machacová,” who some believe may have since died. However, the **partners of Romani women** reveal that they are not aware of any official investigation that has been carried out, in order to investigate the actions of social workers and/or doctors in Chanov.
- 5.33 Three areas of recommendations are brought by the Ombudsman in his report:
- 1) Initiate changes in Czech domestic law, to better anchor the principle of informed consent in these areas;
 - 2) Supplementary measures to ensure a change of culture with regard to informed consent in the medical community, as well as among users;
 - 3) A procedure to provide compensation for victims, in the cases where social workers have been involved in implementing a coercive sterilisation policy.
- 5.34 The League of Human Rights and cooperating partners have welcomed the Ombudsman’s report, identifying it as one of the most significant developments in challenging human rights violations in a post-Communist country. Notwithstanding the fact that all partners believe that (i) a number of issues have been arbitrarily excluded from the report; and that (ii) certain issues are not entirely accurate or fully revealed (particularly the role of racism in influencing and bringing about this systemic practice), (iii) it has been recognised that given the particular political circumstances currently prevailing in the Czech Republic, the report as it exists is a

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very strong document, with a number of very important conclusions, and a wealth of new information on these issues.

- 5.35 It is therefore of very serious concern that (i) in the preceding fourteen months since the publication of the report, there has not been any high-level authority in the Czech Republic who has made a public pronouncement on the subject matter, despite efforts by the Ombudsman’s office and others to seek statements on the findings of the report by Parliament and/or the Prime Minister’s office and/or other agencies of government; and (ii) there is no indication that any Czech governmental authority intends to act on the issues, or any of the recommendations which were provided in the report.⁸

Court Proceedings in Coercive and Unlawful Sterilisation Cases

- 5.36 So far there have been two cases where courts ruled favourably for the victim of coercive sterilisation. First is the case of Ms. Ferenčíková, which has been reproduced below. Another case took place in 2000, when a court in the town of Plzeň had awarded 100,000 CZK (approximately 2,500 Euro) in damages to a woman sterilised in Plzeň in 1998. It was reported that she repeatedly and explicitly refused to be sterilised, but doctors had performed the operation regardless to her opposition.

Case of Ms. Ferenčíková:

On 10 October 2001, Ms. Ferenčíková gave birth in the Vitkovice hospital in the city of Ostrava to her second child, a son named Jan. The child was born at 4:45 AM, by caesarean section birth. Ms. Ferenčíková’s first child had also been born via caesarean section.

At the time of her second birth, Ms. Ferenčíková was also sterilised by tubal ligation. Her files indicate that, “the patient requests to be sterilised.” Procedures are established under Czech and international law, to ensure that in instances of extremely invasive or irreversible sterilisation procedures, consent meets the full standard and the patient is informed. However, in the case of Ms. Ferenčíková, these legal regulations were not followed by doctors at the Vitkovice hospital. Although it had been foreseen well in advance of labour that she would give birth by caesarean section, Ms. Ferenčíková’s “consent” to the sterilisation was apparently secured by doctors several minutes before the operation, and when she was already deep in labour. As a result, Ms. Ferenčíková emerged from her second birth traumatised and irrevocably harmed by the doctors to whom she had entrusted herself for care.

Ruling on 11 November 2005: the Ostrava regional court recognised that Ms. Ferenčíková’s sterilisation was coercive and therefore illegal, and ordered the Vitkovice hospital to apologize in

⁸ A draft recommendation prepared on the matter by the Czech government’s advisory Subcommittee on Biomedical Ethics and Human Rights was reviewed by the government’s advisory Human Rights Council on 19 May 2006 and sent back to the former body for revision after strenuous opposition by representatives of several government Ministries, including the Ministry of Health.

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writing because the act “seriously encroached into your most intimate sphere, and caused you durable physical and psychological harms”.

Nevertheless the Court rejected Ms. Ferenčíková's claim for financial compensation with the reasoning that the statutory limitation for the claim has already expired. Both the Vitkovice hospital and Ferenčíková's legal representative and League of Human Rights lawyer, Michaela Kopalová,, filed an appeal against the decision. However, each party filed an appeal for a different reason/. Nevertheless, the judgment of the regional court was approved by the High Court in Olomouc on 17 January 2007 with similar reasoning.

A League lawyer will lodge an appeal with the Supreme Court because financial compensation for the unlawful sterilisation has been refused by the courts. The Supreme Court considered a claim for financial compensation as legitimate in a similar case in the past, but expressed different legal opinion with regards to the clause of statutory limitation.

5.37 Despite two favourable rulings by Czech courts, it is important to recognize that in most of the cases where the League of Human Rights and its partners are aware that women have been subjected to the extreme harm of coercive sterilisation, it is very unlikely that court proceedings can even be initiated, let alone won, unless an administrative mechanism to provide compensation to victims is established - one which would provide victims some level of presumption of harm. Otherwise, almost all of the victims will have no access to due compensation for one or more of the following reasons: (1) statutory limitation for the claim having already expired, (2) no money to risk a civil claim, (3) records destroyed by the hospital, (4) rigidity of the courts in applying standards of proof in civil claims.

Criminal Investigation

5.38 On 11 March 2005, the Ombudsman sent eight sterilisation cases which had also been reviewed by the Czech Health Ministry to the Supreme Public Prosecutor, along with the information that the facts of the cases indicate that crimes may have been committed. In three of these cases, the review panel from the Ministry of Health had also proposed sending the materials for to the prosecutor.⁹ Since March, other cases were subsequently sent to the Supreme Public Prosecutor and then to the relevant Czech Police departments during the course of 2005. Czech criminal law includes provisions banning bodily harm, and therefore in principle should provide one mode through which victims have an opportunity to seek and secure justice.

5.39 After one year of investigation, the approach of the criminal investigative bodies to these complaints gives rise to serious concerns that these procedures will not ultimately prove effective as a remedy for these extreme abuses, despite clear indications that there has been a breach of criminal law in the cases concerned. Police have interrogated the witnesses, the

⁹ See Section 3.2. of the Ombudman's Report.

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sterilised women themselves, and their husbands/partners, as well as the health care workers involved, and they have also commissioned expert evaluations, then using unconvincing arguments, they have shelved most of the cases. Almost all of the cases originally filed have already been dismissed by the prosecutor.

- 5.40 A number of aspects of the criminal proceedings gives rise to serious concerns. The views of the expert institution relied upon during the investigation, for example, held that a correctly performed medical procedure could not constitute a crime. This opinion is open to dispute, however, if the procedure is performed without the consent of the patient, then it would breach law, and evaluation of the act as to its criminal character would then depend on further evaluation of the act. Moreover, in sterilisations performed without consent, a women’s health is seriously damaged and her reproductive ability is impaired – usually irrevocably -- for the rest of her life. The public prosecutor charged with enforcing the legality of some of these preliminary proceedings did not concern himself with the claims of the sterilised women; even though they had technically signed sterilisation requests, they had signed them under such circumstances that the sterilisations performed could not be considered legal because they did not satisfy the requirement of informed consent.
- 5.41 The manner in which the evidence has been evaluated during these preliminary proceedings also gives rise to fundamental concerns. In one case, the criminal investigation appears to have been closed on the grounds that a handwritten note on the reverse side of the medical protocol was made, 50 minutes prior to the procedure. The note read, “patient requests sterilisation,” which is supposedly deemed as proper consent to the sterilisation. The expert also inappropriately characterised the victims as “irresponsible,” if they had not agreed to sterilisation voluntarily, indicating possible bias on the part of the expert. The conduct of the doctors, however, was characterised by the expert as correct.
- 5.42 Each body active in the criminal proceedings has the right to evaluate the evidence during the individual phases of the proceedings within limits. This particularly applies to the police. In the cases of women sterilised without their informed consent, the police performed a legal evaluation on the merits of the case, which according to the victims’ legal representative, is a matter for an independent court only to perform. It is therefore no surprise that the police, lacking the requisite legal education and expertise, evaluated the question of the (non)-existence of free and informed consent in a matter diametrically opposed to that of the Regional Court in Ostrava in the subsequent civil complaint proceedings (see above), and dismissed the case. In addition, the police body did not demonstrate deep concern with the racial motivation for these acts. In one case, a Constitutional complaint was already filed in the name of one of the women whose case was dismissed.
- 5.40 As a result of the foregoing investigations and reports, Czech criminal law has not yet proved a viable mode for providing redress to Romani victims of coercive sterilisation.

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Recommendations:

The Government should issue a public apology to the victims of the practises described in the Ombudsman's Report.

Initiate the appropriate legislative changes necessary to establish the criteria for informed, free and qualified consent in the context of sterilisation, as set out in the recommendations of the Ombudsman's Report. This should be adopted without delay,

A compensation mechanism as proposed in the Ombudsman's Report should be established by a law without delay,

All other outstanding recommendations of the Ombudsman's Report should be implemented,

Establish a fund to assist victims of coercive sterilisation, and allow victims to bring claims under the compensation mechanism, or where relevant, victims can appear before a court of law established so that all victims of coercive sterilisation have access to justice.

Such a fund should be able to: (i) provide compensatory damages to victims, in such cases where the mechanism established pursuant to the Ombudsman's Report may not be able to; (ii) support the work of advocates in bringing claims to court; (iii) where relevant, ensure payment of court fees and other relevant costs arising in the course of establishing coercive sterilisation claims before courts of law and/or other instances,

In cases in which hospital records of relevance to establishing claims of coercive sterilisation have been destroyed, criteria by which individuals shall establish the veracity of claims for compensation for practices of coercive sterilisation should be made public by the Government,

Within the limits of the powers available to his office, the General Prosecutor should monitor investigative proceedings in the matter of criminal complaints filed in the course of the Ombudsman's investigation into these practices, and report to the public the findings of these investigations; furthermore all investigations should be conducted impartially and effectively,

Financial assistance should be provided to women who have been coercively sterilised,

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such that they have the opportunity to undertake artificial insemination measures if desired.

The Right to Housing

- 5.43 The issue of housing is complex. The problems that Roma face in housing often arise from a mix of problems in other areas, such as the right to work, but it also derived from racial discrimination and segregation. Two issues will be discussed in this Report: the spatial exclusion of Roma, and the forced resettlement of Roma.
- 5.44 A study conducted by a private company, GAC, for the Ministry of Labour and Social Affairs, identified 310 socially excluded Roma localities. From this number, 35% emerged in the last 10 years. These localities are a considerably sub-standard quality for housing in the Czech Republic (flats of lower quality, unsatisfactory hygienic conditions, bad transport services, often on the outskirts of towns etc.). These “ghettos” are created in places where people who are evicted are typically relocated. A common cause for their eviction is the inability to pay rent for their original housing. Ghettos are also created for other reasons, including the greater degree of certainty provided by living “with their own kin,” escape from manifestations of racism by the majority, as well as the desire to maintain the close links between individual related families. Often, however, the establishment of predominantly Roma ghettos are the result of deliberate policy decisions within some municipalities.
- 5.45 Families and individuals with the lowest incomes, or those dependent on social benefits, inhabit the poorer ghettos; these people are characterised by a high-unemployment rate, and a low level of education. The inhabitants are not capable to escape their situation or social exclusion without outside help, and they often do not have the means to leave these places. People living in ghettos are often poorly integrated in terms of neighbourhood relations, lack a broader social environment, and they generally have poor access to services and health care. The apartments in which they reside are of poor quality, overcrowded, and characterised by unhealthy hygienic conditions; they may even lack warm running water, gas, or electricity. No one maintains the commonly used surroundings of these apartments. If there is a common characteristic uniting the inhabitants of these ghettos – besides the frequency of their membership of the Romani ethnicity – it is that they are mistakenly perceived by outsiders as forming a uniform community. This results in the authorities ignoring the needs of individuals in the ghettos. However, the authorities do not even attempt to address the living conditions and problems faced by the citizens of these ghettos as a whole. Having one’s residential address in a ghetto can also be another reason for discrimination.
- 5.46 A discriminatory approach in the housing area also manifests itself in the accommodation of people in their “bare-walled” apartments, otherwise known as, “apartments of the lowest quality,” into which people with outstanding rent are relocated. The percentage of Roma

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inhabitants of bare-walled apartments is over 50%, but in some cities this amount reaches as much as 90%.¹⁰

5.47 The system of providing housing owned by municipalities is not transparent, and the criteria are often indirectly discriminatory. This results in Roma being unable to obtain adequate housing. The typical criteria for approval includes: confirmation that the applicant has a completely clean criminal record, and evidence that the applicant and members of his/her immediate family do not have any debts.

5.48 Roma families are also often subjected to practice of forced resettlement from their original place of residence to other parts of the country. This practice has been known in the past. For example, in the city of Mladá Boleslav, there used to be approximately 3,000 Roma. After a resettlement programme for Roma outside of town, the number of Roma in the city is now around 300. However, the best documented example of this practice is the recent resettlement of Romani families from the town of Vsetín.

5.49

Forced Resettlement in the Town of Vsetín:

In 2006, before the municipal and Senate elections, the local government in the eastern town of Vsetín, was busy “solving” the problem of inhabitants in a big house in the centre of the town. The house was inhabited by 42(mostly Romani) families. The house was in a critical condition, many of the inhabitants did not pay the rent, and there were many complaints on the disorderly behaviour of some of its inhabitants and bad hygienic conditions in and around the house, especially from doctors and patients of the hospital which was located across the street. The mayor decided to demolish the house and resettle the inhabitants. New flats on the outskirts of town were built, and some of the families were resettled to the new location.. Even though this might not have been the best solution, as a new Romani “ghetto” was established, the flats are at least of good quality and the place is within the boundaries of the town. Some families (altogether about 100 persons), however, were forced to resettle in various parts of the Czech Republic and often to completely unsuitable houses.

One evening, three families were resettled to a little village called Stará Červená Voda, almost 200 km away from Vsetín, without prior knowledge into which conditions they were moving. There they were given an old house to live in, which was described simply as “a ruin.” An expert called to view the house, described it as, “uninhabitable” due to the fact there is no potable water, the roof is full of holes, rafters are rotting, the chimney is damaged and the electricity distribution in the house is unsuitable and according to a local public official life-threatening. Another 11-member Tulejov family, which had been paying its rent regularly, was resettled to a different village (Čechy pod Kosířem) to a house in a similar condition.

The way in which the problem of one house in Vsetín was “solved” is particularly deplorable. Most of

¹⁰ <http://www.diskriminace.cz/dt-neziskovky/bydleni.phtml>.

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the resettlements were done at late evening/night. The people did not have an idea before into which conditions they are being moved. Many families allege that they were forbidden to look at the places before the move because the local inhabitants of the villages would find out about it, and oppose their coming into the village. The Tulejova family claims that they were told either to move far away from Vsetín, or they would simply be evicted onto a street, and the children will be taken from them and placed into institutional care.

The mayor of Vsetín, Jiří Čunek, who planned all these resettlements shortly before elections, apparently does not perceive there is any problem. On the contrary, it is due to the “success” of the resettlements that he became popular; he was not only elected to the Senate, but also elected to be the leader of a traditional and mainstream Parliament party in the Czech Republic, the Christian and Democratic Union, and he also became the first Deputy Prime Minister and the Minister for Regional Development. His actions sadly demonstrate the prevailing attitude of the majority population against Roma. The majority population in fact applauded his forced resettlement programmes, and due his unethical actions, his political career has clearly profited.. The popularity of his Christian party increased from 7% to 11% after his election to a chairman, according to opinion polls.

On the other hand, numerous criminal complaints were filed on Mr. Čunek. The police have not so far concluded any investigation of them.

5. 49 The Vsetín resettlement clearly indicates that it was a non-voluntary programme. It is a fact which was more or less acknowledged by Mr. Čunek himself, who reportedly said that there were not places for all the inhabitants of the old house (to be demolished) in Vsetín, so they had to move these people to other parts of the country. **Non-voluntary resettlement is a violation of the right of everyone to freedom of movement and residence, which is guaranteed also by article 5(d)(i) of the ICERD.**
- 5.50 Many Romani families claim that they are forced to move from their houses and flats because they are threatened that their children will be taken from them and placed into institutional care. **Although it is often not possible to substantiate these allegations for obvious reasons, the truth is that there is a disproportionately high number of Romani children in institutional care. This situation is also appalling, especially considering the fact that the Czech Republic has the highest amount of children in institutional care in Europe. Again, exact numbers on to account for Roma children in institutional care are not available, solely because it is forbidden by law to officially collect such data.** There are many reasons for taking children away from a family and putting them into institutional care. Inadequate housing is one of the main reasons. Unfortunately, all too often the system prefers placing children into institutional care rather than helping the family to improve its social situation.

Recommendations:

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- **To take effective measures to avoid segregation of Roma communities in housing**
- **Ensure that any deliberate policies of municipalities to house Roma together in one locality be stopped without delay**
- **Thoroughly investigate all cases of resettlement of Roma families in order to determine if it was a forced situation.**
- **Ensure that any resettled Roma families act voluntarily, and furthermore that they have the possibility to view their new place of residence in advance.**
- **Respect the dignity of all persons during their resettlements, and not conduct the resettlements in the evening time.**
- **To decrease the amount of Roma children in child-care institutions.**

V. Article 6

- 6.1 The Anti-discrimination Bill should have established a general remedy to a victim of discrimination in all its forms and in all areas (see above para. 2.2). According to the Bill, the victim would be able to ask the court to stop such discrimination, to eliminate consequences of discrimination and to give the victim just satisfaction.
- 6.2 Currently an act of discrimination can be a misdemeanour under the Act on Misdemeanours 200/1990 Coll.¹¹ Yet there are many cases where the Police are reluctant to pursue such a case. A victim of discrimination can claim just satisfaction for discrimination before a civil court by using a general provision in the Civil Code on the Protection of Personality. However, such an approach has many drawbacks because that provision has specific conditions that are not always met, especially when harassment is concerned. For example, in one case reported by the NGO Counselling Centre for Citizenship, Civil and Human Rights, a group of Roma visited a restaurant where there was a statue holding a baseball bat with a manifest sign stating, “On Gypsies.” The group of Roma asked the court to rule that the statue be removed, and they requested just satisfaction as their dignity was violated by the sign and they felt intimidated. Yet the Court ruled that the sign on the baseball bat was without a reference to any particular persons, and therefore it could not objectively affect the personality of the plaintiff. Accordingly, the Court then refused the claim. The decision however, was upheld by a court of appeal.

¹¹ Zákon č. 200/1990 Sb. o přestupcích.

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6.3 There are other provisions in various acts of administrative law prohibiting discrimination and introducing sanctions (mostly fines), as described in the Government Report. An example is the Law No 634/1992 Coll., on the protection of Consumers according to which consumers cannot be discriminated against on any grounds in access to goods and services. Yet the overseeing body – the Czech Trade Inspection – rarely gives fines on the grounds of discrimination. From January to November 2004, it was discovered that there were 32 cases of discrimination against a customer. Most of them consisted of double prices for foreigners; others were cases of generally overpriced goods. There was not one case of discrimination on the grounds of race or ethnicity. This is in contrast with information from NGOs who claim that there are many cases of discrimination in access to goods and services mainly for Roma. In 2005, the Czech Trade Inspection reports only two cases of racial discrimination. The Czech Trade Inspection employs only two female Romani inspectors that are able to conduct the inspections (testing discriminatory practices).

Recommendations:

- **Adopt legislation providing for the general remedy for victims of discrimination**
- **Use more effectively the existing mechanisms for combating discrimination**

VI. Article 7

7.1 Some issues relevant to article 7 were previously considered in the Introduction (see above).

The League of Human Rights is a non-governmental, non-profit, public interest law organization. Its work is based on the defense of human rights and other public interests of legal means; legal and psychological aid in specific cases of domestic violence; patients; the disabled; police ill-treatment; racist attacks; the rights of children; and the interpretation of international human rights law obligations. In July 2001, at the invitation of FIDH (the International Federation for Human Rights), the current chair of the League of Human Rights was the first representative of the Czech NGO sector, in the first session of the UN Human Rights Committee on the situation in the Czech Republic in Geneva. The chair presented a shadow report to the Human Rights Committee. After the official establishment in August 2002, representatives of the Czech League, with the assistance of FIDH, participated in the Geneva session for the UN Committee on the Rights of the Child in September 2002. In August 2005, with the cooperation of the European Roma Rights Center and

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Gender Studies, the representatives also participated in the New York session of UN Committee on the Elimination of All Forms of Discrimination against Women. For this session, the participation of the League has been supported by FIDH.

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