

Council of Europe contribution for the 14th UPR session regarding the Czech Republic

Fight against racism and intolerance

European Commission against Racism and Intolerance (ECRI)

ECRI released on 15 September 2009 its fourth report examining racism, xenophobia, antisemitism and intolerance in the Czech Republic (attached below).¹

The Chair of ECRI, Eva Smith Asmussen, said the report noted positive developments in the country, but also detailed continuing grounds for concern.

In 2008 the Czech Republic adopted a new criminal code, containing more extensive provisions against racism. The report notes that in recent years the Ombudsman has carried out detailed investigations into cases of possible discrimination against the Roma. Steps have been taken to adjust the education system so as better to meet the needs of socially disadvantaged children.

At the same time, however, there has been a disturbing intensification in the activities of extreme right-wing groups. Most victims of racially motivated offences are reported to be Roma. Little progress has been made towards improving the situation of the Roma, who face segregation in schools and housing and discrimination in employment. The issue of forced sterilisations of Roma women has not been adequately addressed yet.

The report contains findings and recommendations regarding the following issues:

- I. Existence and implementation of legal provisions²
- II. Racism in public discourse³
- III. Racist violence⁴
- IV. Antisemitism⁵
- V. Discrimination in various fields including education, employment, housing and health⁶
- VI. Vulnerable/target groups including Roma, Jewish communities, refugees and asylum seekers and migrant workers⁷
- VII. Conduct of law enforcement officials⁸
- VIII. Monitoring racism and racial discrimination⁹

ECRI selected the following three specific recommendations for which it requests priority implementation from the authorities:¹⁰

- ECRI strongly encourages the Czech authorities to complete the work presently under way in drafting and enacting a law on legal aid as soon as possible, and no later than two years following the publication of this report, and emphasises the importance of making provision in such a law for legal aid to be granted in cases where racial discrimination is at stake. ECRI draws the authorities' attention to the recommendations made in this respect in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

¹ A summary of the report can be found on pp. 7-9.

² pp. 11-19.

³ pp. 19-23.

⁴ pp. 23-24.

⁵ p. 24.

⁶ pp. 25-36.

⁷ pp. 36-44.

⁸ pp. 45-46.

⁹ pp. 46-47.

¹⁰ p. 49.

- In order to give additional impetus to the process of including every Roma child in ordinary streams of education, with the sole exception of those in need of specialised education due to severe mental disability or multiple disabilities, ECRI urges the authorities at the relevant levels to transfer substantial numbers of children from specialised primary schools to ordinary education, based on clear and ambitious yearly targets. The implementation of these targets should be monitored and a national supervisory mechanism set up to ensure that the relevant authorities are held to account for the results achieved.

- ECRI strongly urges the Czech authorities to develop and put in place, as a matter of high priority, a coherent system of social housing in the Czech Republic, including a clear definition both of the concept of social housing itself and of the social criteria to be applied in allocating it to persons in need.



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Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights, Thomas Hammarberg, visited the Czech Republic from 17 to 19 November 2010. In the course of his visit he held discussions with representatives of the Czech authorities and institutions as well as with members of the civil society.

The report attached below focuses on the following selected human rights issues¹¹:

I. Action against discrimination, racism and extremism¹²

II. Protection of the human rights of Roma¹³

For each issue the Commissioner provides specific conclusions and recommendations¹⁴

The Commissioner concluded that “there has been virtually no change on the ground in the Czech Republic since the European Court of Human Rights found three years ago that the country had discriminated against Roma children by educating them in schools for children with mental disabilities.” He stated that the implementation of this landmark judgment (D.H. and Others v the Czech Republic) “is, worryingly, delayed and it is not clear that this will change in the near future”.

The Commissioner welcomed the fact that an action plan to promote inclusive education for all children, including Roma children, is finally in place. The Czech authorities were also to be commended for establishing statistics on the situation of Roma children in education. However, with these statistics indicating that Roma children are still 12 times more likely than their non-Roma peers across the country to be educated in special schools offering inferior education – and much more likely than that in certain regions – “it is abundantly clear that the time is now for concrete action”.

The Czech authorities should now set clear, measurable and ambitious targets for transfers of children from special to ordinary education and for overall desegregation of the school system. With thousands of Roma children lost to the mainstream education system in the Czech Republic and condemned to a future as second-class citizens every year, the Commissioner urged the

¹¹ A summary of the report appears on pp. 2-4

¹² Section I, paras 6-25.

¹³ Section II, paras 26-107.

¹⁴ Paras 11-14, 22-25, 33-36, 43-46, 53-56, 66-71, 82-88, 94-97 and 102-107.

Czech authorities to ensure that the next intake of children in the 2011-2012 school year will finally mark a clear change of direction.

Roma persons remain the main target of hate crime. However, the Czech authorities have taken a more proactive approach to investigations, prosecutions and sentencing in recent years. The authorities reported that the extreme right-wing movements are less active at the moment as a result of this approach. According to the Commissioner, these efforts must now be built upon and sustained in accordance with Council of Europe standards on recording racist incidents and responding to racist offences. It is particularly important to ensure that efforts to counter hate crimes are not limited to crimes committed by members of extremist groups.

The situation of women sterilised in the past without informed consent – the majority of them Roma – has registered a positive development in November 2009, with the Czech government's expression of regrets over unlawful instances of sterilisation. However, due notably to legal obstacles, difficulties in obtaining evidence and the absence of an out-of-court settlement mechanism, these women are at present unable in practice to obtain compensation for what happened to them. "According to the information I could gather, only one woman has so far been able to do so", said Commissioner Hammarberg, underlining the need to remedy this situation. The Commissioner was also informed that long-awaited legal changes to healthcare legislation on sterilisation and informed consent are expected to be adopted in the first semester of 2011.

The Commissioner found that there is still a widespread and disturbing presence of anti-Gypsyism in Czech society, including public and political debate. This unfortunately provides fertile grounds for the problems experienced by Roma in the areas mentioned above as well as elsewhere, including the segregation of Roma in marginalised localities, a phenomenon which is reportedly increasing, and the placement of Roma children in institutional care.



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Protection of Minorities

Framework Convention for the Protection of National Minorities

On 19 March 2012 the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities published its third Opinion on the Czech Republic¹⁵, and the Government's Comments. Both documents are attached below. However the Council of Europe's Committee of Ministers has not yet examined the Advisory Committee's third Opinion on the Czech Republic and the written comments of the Czech Government, and consequently the Committee of Ministers has not yet adopted a resolution on the implementation of the Framework Convention of National Minorities by the Czech Republic.

The Opinion indicates as issues for immediate action:

- increase efforts to combat all forms of intolerance, racism, and xenophobia; take further legislative measures and policies to combat racist manifestations, in particular against Roma, including in the media, and the political arena, in conformity also with the Committee of Ministers' Recommendation N° R(97)20 on "Hate Speech";
- eliminate, without further delay, practices that lead to the continued segregation of Roma children at school; redouble efforts to remedy all shortcomings faced by Roma children in the field of education;

¹⁵ A summary of the report can be found on pp. 1-2.

- ensure that local committees for national minorities are effectively established in the municipalities where the conditions are met for setting them up.

Section I¹⁶ of the Advisory Committee's Opinion contains the Committee's main findings on key issues pertaining to the implementation of the Framework Convention in the Czech Republic. These findings reflect the more detailed article-by-article findings contained in Section II¹⁷, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise. The concluding remarks, contained in Section III¹⁸, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on the Czech Republic.



Czech Republic
Opinion



Czech Republic
comments

European Charter for Regional or Minority Languages

On 9 December 2009, the Council of Europe Committee of Ministers made public the first report on the situation of minority languages in the Czech Republic. The report drawn up by a committee of independent experts, which monitors the application of the Charter, is contained in the attachment below. It includes the Committee of Ministers' Recommendation on the application of the European Charter for Regional or Minority Languages by the Czech Republic.

On the basis of the report, the Committee of Ministers calls on the Czech Republic to promote awareness and tolerance vis-à-vis the regional or minority languages as an integral part of the cultural heritage of the Czech Republic, both in the general curriculum at all stages of education and in the media.

The Czech Republic should also adopt a structured policy for the protection and promotion of Romani and German, and create favourable conditions for their use in public life. It needs to ensure that speaking Romani at school is not prohibited or discouraged.

Furthermore, the Czech Republic should improve legislation concerning the composition and powers of committees for national minorities, so that these rules do not present barriers to the implementation of the Charter; including

- the creation of regional or minority language schools and
- the use of Polish place names in topographical signs.

Finally, the Committee of Ministers calls on the Czech Republic to take measures to make available teaching in or of Slovak, Romani and German, in co-operation with the speakers.

The regional or minority languages protected under the Charter in the Czech Republic are Polish, Slovak, German and Romani.



Czech Republic

¹⁶ pp. 5-7.

¹⁷ pp. 8-26.

¹⁸ pp. 27-29.

Prevention of Torture

CPT ad hoc visit to the Czech Republic in March/April 2008

The Council of Europe's Committee for the Prevention of Torture (CPT) published on 5 February 2009 the report on its ad hoc visit to the Czech Republic in March/April 2008, together with the response of the Czech Government. Both documents are attached below.

One of the main objectives of the visit was to examine the application of testicular pulpectomy (“surgical castration”) on sentenced sex-offenders. The CPT found that surgical castration was carried out not only on violent sex offenders but also on persons who had committed non-violent crimes, such as exhibitionism.

In its report, the CPT expressed several fundamental objections to the use of surgical castration as a means of treatment of sex-offenders. Firstly, it is an intervention that has irreversible physical effects, and direct or indirect mental health consequences. Further, there is no guarantee that the result sought (i.e. lowering of the testosterone level) will be lasting. Moreover, given the context in which the intervention is offered, it is questionable whether consent to the option of surgical castration will always be truly free and informed. The CPT also pointed out that effective alternative therapies for the treatment of sex offenders are currently available.

In the CPT's view, surgical castration of detained sex offenders amounts to degrading treatment and the Committee called upon the Czech authorities to end immediately this practice. In their response, the Czech authorities stated that surgical castration is carried out with the free, informed, consent of the patient and that they do not consider the reasons given by the CPT in favour of abandoning its use as “sufficient and established”.

During the 2008 visit, the CPT also paid a follow-up visit to Section E of Valdice Prison, which accommodates persons sentenced to life imprisonment as well as “troublesome” or “dangerous” high security prisoners. It found that the treatment and conditions of detention of these prisoners continued to raise serious concerns and recommended that the Czech authorities undertake a thorough review of Section E.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.¹⁹

In their response, the Czech authorities provided information on various measures taken to implement the Committee's recommendations.



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CPT ad hoc visit to the Czech Republic in October 2009

On 21 July 2010, the CPT published the report on its ad hoc visit to the Czech Republic in October 2009, together with the response of the Czech Government. Both documents are attached below.

One of the main objectives of the visit was to review action taken to bring an end to the application of testicular pulpectomy (“surgical castration”) vis-à-vis detained sex offenders, in the light of the recommendations made in the report on the CPT's visit to the Czech Republic in

¹⁹ pp. 31-34.

March/April 2008. The CPT's delegation held discussions with Government ministers and officials on this subject. In its visit report, the CPT once again called upon the Czech authorities to bring an immediate end to the application of surgical castration in the context of the treatment of sex offenders.

In their response, the Czech authorities stated that the issue of surgical castration of sex offenders is the subject of ongoing discussions by various advisory bodies to the Government and that an expert study was being prepared by the Ministry of Health in collaboration with the Government Commissioner for Human Rights.



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Social and economic rights

The Czech Republic ratified the European Social Charter on 03/11/1999 accepting 52 of the Charter's 72 paragraphs.

On 25 March 2008 it denounced the provision of Article 8 paragraph 4 of the Charter.

It ratified the 1988 Additional Protocol to the Charter on 17/11/1999, accepting all of the four articles.

The Czech Republic ratified the Amending Protocol to the European Social Charter on 17/11/1999.

It signed the Revised Charter on 04/11/2000, but has not yet ratified it.

On 4 April 2012 it ratified the Additional Protocol providing for a system of collective complaints, which will enter into force on 1 June 2012.

Cases of non-compliance

Employment, training and equal opportunities

► Article 15§2 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement - Employment of persons with disabilities
There is no legislation explicitly prohibiting discrimination in employment on the ground of disability.
(Conclusions XIX-1 (2008) p. 6 'Non-discrimination legislation')

► Article 1 of the 1988 Additional protocol – Right to equal opportunities and treatment in employment and occupation without sex discrimination
– compensation in sex discrimination cases where the victim does not wish to be reinstated is not proportionate to the damage suffered;
– it is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims.
(Conclusions XIX-1 (2008), p. 11 'Conclusion')

Health, social security and social protection

► Article 12§1 – Right to social security - Existence of a social security system

The levels of the minimum old-age, invalidity and survivors pensions as well as the level of unemployment benefit are manifestly inadequate.
(Conclusions XIX-2 (2009))

► Article 12§3 – Right to social security - Development of the social security system
It has not been established that the developments in the sickness insurance and in the old age pensions schemes have maintained a basic compulsory social security system which is sufficiently comprehensive.
(Conclusions XIX-2 (2009))

► Article 12§4 – Right to social security - Social security of persons moving between states
The retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Czech Republic is not guaranteed.
(Conclusions XIX-2 (2009))

► Article 13§1 – Right to social and medical assistance - Adequate assistance for every person in need
- it has not been established that the level of social assistance is adequate;
- the granting of social assistance to foreign nationals is subjected to an excessive length of residence requirement.
(Conclusions XIX-2 (2009))

► Article 13§3 – Right to social and medical assistance - Prevention, abolition or alleviation of need
It has not been established that foreign nationals legally resident or regularly working in the Czech Republic are provided with equal access to advice and personal assistance services, without being subjected to an excessive residence requirement.
(Conclusions XIX-2 (2009))

► Article 14§1 - Right to benefit from social services – Promotion or provision of social services
Access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.
(Conclusions XIX-2 (2009))

► Article 14§2 – Right to benefit from social services – Public participation in the establishment and maintenance of social services
It has not been established that initiatives have been taken to encourage the participation of the public in the running of social services.
(Conclusions XIX-2 (2009))

► Article 4 of the 1988 Additional Protocol – Right of the elderly to social protection
- it has not been established that there is an adequate legal framework to combat age discrimination outside employment; and
- the level of the minimum old-age pension is manifestly inadequate.
(Conclusions XIX-2 (2009))

Labour rights

► Article 2§1 - Right to just conditions of work - Reasonable working time
Daily working hours may be extended to 16 hours in various occupations.
(Conclusions XVIII-3 (2010) p. 5 'Conclusion')

► Article 2§5 - Right to just conditions of work - Weekly rest period
Agricultural workers may, pursuant to collective agreement or individual contract, postpone weekly rest so as to permit an excessive number of consecutive working days.
(Conclusions XVIII-3 (2010) pp. 6-7, 'Conclusion')

► Article 4§4 - Right to a fair remuneration - Reasonable notice of termination of employment
Two months is not reasonable notice for employees with more than fifteen years' service.
(Conclusions XVIII-3 (2010) p. 9 'Conclusion')

► Article 5 - Right to organise
It has not been established that depriving members of the Security and Intelligence Service from the right to form trade unions (Section 49 of Act No. 154/1994 on the Security and Intelligence Service), and prohibiting them from forming any type of association to protect their economic and social interests was justified.
(Conclusions XVIII-3 (2010) p. 10 'Conclusion')

► Article 6§4 - Right to bargain collectively - Collective action
1. All strikes are prohibited at nuclear power stations, oil or gas pipelines, in the fire service and by air traffic controllers;
2. It has not been established that the restrictions on the right to strike in health care and social care establishments and in telecommunications are in conformity with Article 31 of the Charter.
(Conclusions XVIII-3 (2010) p. 12 'Restrictions on the right to strike')

Children, families, migrants

► Article 7§4 – Right of children and young persons to protection - Working time for young persons under 16
The length of working time for young workers under 16 years of age is excessive.
(Conclusions XIX-4 (2011) p. 6 'Conclusion')

► Article 8§2 – Right of employed women to protection - Illegality of dismissal during maternity leave
Exceptions to the prohibition on dismissal during maternity leave go beyond those authorised by the Charter.
(Conclusions XIX-4 (2011) p. 12 'Conclusion')

► Article 16 - Right of the family to social, legal and economic protection
- it has not been established that families receive adequate social protection with regard to housing;
- the level of family benefits does not constitute an adequate income supplement.
(Conclusions XIX-4 (2011) pp 13-14 and 16-17 'Social protection of families' and 'Economic protection of families')

► Article 17 – Right of mothers and children to social and economic protection
There is no explicit prohibition in legislation of corporal punishment in the home, in schools and in other institutions.
(Conclusions XIX-4 (2011) p. 18 'Protection from ill treatment and abuse')

Please see attached below the Conclusions regarding the Czech Republic from 2008, 2009, 2010 and 2011 as well as the fact sheet.



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Action against Trafficking in Human Beings and Preventing and Combating Violence against Women and Domestic Violence

The Czech Republic has not yet signed or ratified the Council of Europe Convention on Action against Trafficking in Human Beings. Thus the country is not yet covered by the monitoring carried out by the Group of Experts on Action against Trafficking in Human Beings (GRETA).

Nor has the Czech Republic signed or ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it is not yet concerned by the monitoring procedure which will be carried out by a Group of experts on action against violence against women and domestic violence (GREVIO) once the convention enters into force.