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Written Comments of the European Roma Rights Center Concerning the Czech Republic

**For Consideration by the United Nations Human Rights Committee
at its 72nd Session, July 11-12, 2001**

Executive Summary

The European Roma Rights Center (“ERRC”), an international public interest law organisation, respectfully submits written comments concerning the Czech Republic for consideration by the Human Rights Committee (“the Committee”) at its 72nd session on July 11-12, 2001.

We are aware of the efforts undertaken by the Czech Government (“the Government”) to comply with its obligations under the International Covenant on Civil and Political Rights (the “Covenant”), as detailed in its report to the Committee.¹ To date, however, these measures are insufficient to ensure the effective implementation of the Covenant, particularly with regard to Articles 2, 6, 7, 14, 20 and 26.

As to Article 2, notwithstanding the numerous breaches of the Covenant perpetrated against Roma in the Czech Republic, protection is lacking or ineffective, and remedies non-existent or inadequate. In the overwhelming majority of cases monitored by the ERRC, the judicial system continues to render inadequate decisions, in particular by failing to take into account racial motivation even where evidence has clearly shown that the victims were attacked only because they were Roma. As a result, countless Romani victims of human rights abuse remain without redress.

As to Articles 6 and 7, Roma are the victims of an unchecked wave of racially-motivated violence at the hands of law enforcement authorities, skinheads and others. In 1998 alone, skinheads killed at least two Roma in the Czech Republic and violent attacks against Roma, including women and minors, continue to be reported at an alarming rate. Law enforcement authorities, meanwhile, systematically fail to provide effective protection to Roma.

As to Article 14, Roma are discriminated against in the judicial system, both as victims pursuing justice for violations perpetrated against them (their complaints are not adequately investigated and prosecuted), and in the capacity of defendants (they are subjected to pre-trial detention more often and for longer periods of time than non-Roma, and receive disproportionately severe sentences). As a result, the Covenant’s right to equal treatment before law enforcement and judicial authorities rings hollow for Roma.

As to Article 20, in failing to acknowledge and condemn widespread anti-Roma policies, practices and attitudes, Government authorities have undertaken insufficient efforts to ensure effective implementation of legislation prohibiting dissemination of racism and incitement to racial discrimination. Prominent public officials have continued to disseminate racist speech targeting Roma, thereby encouraging racism rather than combating it.

As to Article 26, notwithstanding Constitutional provisions guaranteeing equality, the Government has failed to ensure Roma equal protection of the law. Roma suffer widespread discrimination, amounting in some areas to racial segregation, in virtually all fields of public life, most egregiously and systematically, education, housing, employment, and access to public accommodations, while legal prohibitions against racial discrimination remain inadequate and provide for ineffective remedies. The problem of insufficient legislative provisions aimed at combating racial discrimination is further compounded by the failure to ensure effective implementation of those few legislative prohibitions which do exist.

In view of these deficiencies, the Government should adopt a comprehensive body of legislation prohibiting discrimination in all fields of public life and providing civil, criminal and administrative remedies for breach thereof; establish an effective enforcement body empowered both legally and through the provision of adequate resources to effectively secure full compliance with the new law; abolish the practice of race-based educational segregation of Romani children in special schools; investigate promptly and impartially incidents of racially-motivated violence against Roma and duly prosecute perpetrators of such crimes, whether committed by law enforcement officers or private parties; adopt effective measures to prevent and punish manifestations of racial bias in the judicial system; conduct systematic monitoring of access of Roma and other minorities to education, housing, employment, health-care and social services, and establish a mechanism for collecting ethnic data in these fields; and at the highest levels, speak out against racial discrimination against Roma and others, and make clear that racism will not be tolerated.

Expertise and Interest of the ERRC

The ERRC is an international public interest law organisation, which monitors the human rights situation of Roma in Europe and provides legal defence in cases of abuse. Since its establishment in 1996, the ERRC has undertaken first-hand field research in some twenty countries, including the Czech Republic, and has disseminated numerous publications, from book-length studies to advocacy letters and public statements. An ERRC monitor is presently stationed in the Czech Republic reporting regularly on human rights developments concerning Roma. ERRC publications about the Czech Republic – including a book-length study on the issue of racial segregation of Romani children in the Czech educational system – and other countries, as well as additional information about the organisation, are available on the Internet at <http://www.errc.org>.

The ERRC believes that the upcoming session of the Committee offers an opportunity to highlight some of the most significant respects in which the Government has failed to fulfill its commitments under the Covenant. We submit that our extensive factual research concerning the Czech Republic and our substantial experience in litigating on behalf of Romani victims of abuse warrant the attention of the Committee to our written comments.

Discussion

Unremedied or Inadequately Remedied Racially-Motivated Violence and Abuse against Roma by State Actors

Roma in the Czech Republic are regularly subjected to unremedied or inadequately remedied violence and other forms of abuse by law enforcement officials. Article 7 of the Covenant provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” ERRC research indicates that Czech authorities have on repeated occasions violated this article as well as Article 2 of the Covenant, which provides that each person whose rights have been violated “shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

A number of international monitoring bodies have noted the frequency of reports of police abuse against Roma, and voiced concern that police misconduct is often racially motivated. In a report released in March 2000, the Council of Europe European Commission against Racism and Intolerance (ECRI) expressed “concern[] at evidence of differential treatment of members of minority groups, especially

Roma/Gypsies, on the part of some Czech national and municipal law enforcement officials” and “harassment and excessive use of force, deliberate prolonging of investigations, wrongful arrests and ill-treatment of detainees belonging to [Roma].” The report also noted “[m]ore generally” that “it is claimed that racist attitudes are widespread among the police, some of whom sympathise with right-wing extremist groups.”²

Notwithstanding the frequency with which monitoring bodies have in recent years noted the prevalence of police abuse specifically targeting Roma in the Czech Republic, the Government Report makes no mention of this issue in its discussion of Article 7. ERRC notes that the Government’s failure to address police ill-treatment of Roma is all the more surprising in light of the Committee’s General Recommendation No. 20, which specifically instructs States to “provide detailed information on safeguards for the special protection of particularly vulnerable persons.”³

Police abuse of Roma in the Czech Republic takes various forms, ranging from insults and arbitrary arrests to severe physical mistreatment. Law enforcement officers are rarely, if ever, disciplined or prosecuted for these unlawful acts. As recently noted by ECRI, “[d]espite [...] reports of misbehaviour, measures to counter such actions seem to be inadequate. The police itself conducts investigations into misconduct by its officers and appears reluctant to acknowledge any incidence of racist behaviour on its part. In addition, a serious lack of transparency is reported, as complainants and the public seldom find out about the results of investigations or the disciplinary measures taken in specific cases.”⁴

The following cases are illustrative and do not purport to constitute a comprehensive survey:

- On May 29, 2001, 13-year-old T.B. was reportedly arrested and severely ill-treated by two police officers in the northern town of Náchod for breaking a window in an abandoned laundry house. A medical examination performed on the day of the alleged beating documented substantial injuries to the spine and the boy was ordered to rest for three weeks. A check-up on June 21 apparently concluded that the boy’s state had not improved considerably. On May 30, T.B.’s father filed a formal complaint against the police who have reportedly opened an investigation into the incident.⁵
- On September 17, 2000, at around 8:00 p.m., a 17-year-old Roma named Martin Tomko was approached by a plain clothes police officer in a park in the south-eastern town of Brno. The officer reportedly sat down beside Martin and started to stare at him. When Martin asked why the officer was staring at him, the officer allegedly grabbed him by the neck and threw him to the ground. Approximately ten minutes later, a police patrol arrived at the scene and requested to see Martin’s identity card. When Martin asked the officers to check his identity by radio, they reportedly kicked and punched him. Following the incident, Martin obtained a medical certificate stating that he was not able to work for over a week. He also filed a formal complaint against the police. Notwithstanding initial charges brought against three officers in December 2000, ERRC was recently informed that the Brno State Attorney decided to drop the case, reportedly arguing that he had not found enough evidence for the initiation of criminal proceedings against the officers involved.⁶
- On February 26, 1999, nine police officers in riot gear reportedly stormed a Romani house in the Czech town of Rokycany. The officers allegedly forced the three persons residing in the house at the time of the attack to stand against a wall while rifling through their possessions. The raid came in apparent response to a petition to the mayor of the town, submitted by the Council of Roma in the Czech town of Rokycany on January 27, 1999, calling attention to the fact that ten percent of the Rokycany Roma had left the town to apply for asylum in other countries. The owner of the attacked house was the brother-in-law of Romani activist Iлона Ferková, one of the signatories to the petition. A few weeks later, on March 23, police reportedly visited the home of Ondřej Giňa Jr., the son of Ondřej Giňa Sr., another signatory of the petition, and demanded to know whether signatories had signed the petition under pressure. The officers apparently showed no warrant indicating that they were legally authorised to interrogate Mr. Giňa Jr. ERRC is not aware of any investigation into these allegations of unlawful conduct by the police.⁷

- On April 12, 1998, in the Czech town of Ústí nad Labem, a non-Romani Czech couple accidentally hit three Romani men with their car in front of the predominantly Romani housing estate on Matiční Street. One of the men reportedly suffered a concussion in the accident. According to police reports, the Roma pulled the driver and his wife out of the car and started beating them, whereupon two officers from the city police department had to intervene. According to witness testimonies, however, the two officers emerged from a local pub and simply began to beat the Roma present, including the one who had been injured by the car. A police back-up involving several police cars and more than ten officers arrived shortly thereafter and allegedly attacked the Roma who had gathered at the scene of the incident. ERRC is unaware of any disciplinary measures against the police officers involved.⁸
- At approximately 10 p.m. on November 27, 1997 in the town of Písek, A.B., a 23-year-old Romani woman, her boyfriend P.O., and her cousin M.L., were allegedly physically attacked by off-duty policemen in the local pub Na Radosti. A.B. reported to ERRC that when her boyfriend managed to pull the policeman off her cousin, the four or five friends of the policeman joined in. She related that, when she shouted for help, one of the police officers “ran up to me and said, ‘Don’t shout, you black whore or I’ll shoot you.’” According to P.O., on-duty police who were called to the scene did not detain the officers involved in the attack. Instead, they asked P.O. to go to the police station with them to report the incident. P.O. did not go to the police, stating that he had been subjected to police abuse before and feared that he would be accused of having triggered the incident.⁹

As stated supra, the above cases are only a few illustrative examples of a wider pattern of police abuse targeting Roma in the Czech Republic. ERRC research suggests that most cases of police misconduct go unreported due to lack of trust and fear of reprisals.

Unremedied or Inadequately Remedied Racially-Motivated Violence Against Roma by Non-State Actors

Roma in the Czech Republic continue to experience a wave of racially-motivated violence of late.¹⁰ According to a recent Council of Europe report, “[r]acially motivated violence is one of the most pressing and dangerous expressions of racism and intolerance threatening particularly Roma/Gypsies [...] in the Czech Republic.”¹¹ The Czech authorities have not undertaken sufficient measures to protect the rights recognised in the Covenant with respect to Roma. The Committee’s General Comment No. 20 makes clear that “[i]t is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”¹² Most notably, the Government has failed to protect the right to life and the right to be free from torture and cruel, inhuman or degrading treatment or punishment provided in Articles 6 and 7 of the Covenant.

International monitoring bodies, both governmental and non-governmental, have on numerous occasions criticised the Czech authorities’ failure to confront intense anti-Romani racism by resolute and effective measures, noting with concern that inaction in this area appears to have led to an escalation of the racially motivated violence targeting Roma.¹³ Despite the seriousness of this problem, the Government makes virtually no reference to it in its report under the Covenant, which simply refers to “the Second and Third Progress Reports on the Meeting of Obligations Ensuing from the International Convention on the Elimination of All Forms of Racial Discrimination” for those interested in “more detailed information on the issues of racial hatred, especially with regard to racially motivated attacks against the Roma [...]”¹⁴ ERRC is concerned that the Government’s failure to adequately address the systematic violence targeting Roma in the Czech Republic and to inform the Committee about the measures it has undertaken to counter this alarming problem suggest that it does not consider these issues of relevance for its reporting obligations flowing from the Covenant.

In 1998 alone, skinheads killed at least two Roma in the Czech Republic – 40-year-old Milan Lacko and 26-year-old Helena Biháříová. The former case has, more than three years after the incident, just about reached its conclusion, while in the second, both the investigative authorities and the court refused to recognise racial motivation behind the murder.¹⁵ Due to limitations of space, only a few recent examples are provided of the numerous racist attacks perpetrated against Roma throughout the Czech Republic:

- On October 19, 2000, a group of skinheads armed with knives and baseball bats attacked six Romani students of the Integrated Secondary Technical School at a tram stop near their school in the northern town of Most. One of the students suffered a deep laceration on his head and required emergency transport to the hospital. ERRC is not aware of anyone arrested for the attack.¹⁶
- On September 8, 2000, at approximately 10:50 p.m., a gang of skinheads attacked Jiří S., a 34-year-old Romani man, as he was walking home in the town of Most. They hit him on the head with a bottle causing him to lose consciousness and then kicked him repeatedly all over the body and hit him on the head with a rock. He was later found and taken to a hospital. On November 11, 2000, J.P., one of the attackers, was charged with aggravated bodily harm and rioting. The police investigation did not find racial motivation behind the crime. As of this writing, furthermore, no judicial proceedings have been initiated in the case and J.P. remains at large.¹⁷
- On July 27, 2000, at around 3:00 p.m., a group of men reportedly attacked nine Roma, including women and children, at the OMV petrol station in Houžna near the south-western Czech town of Vimperk. According to the testimony of the Romani victims, the men pulled up in three cars, jumped out and began to threaten the Roma with baseball bats and power saws. Ms. G., one of the victims, told the ERRC that there had been approximately 15 attackers and that they had shouted racist slogans such as “black whores” and “go back to India,” and threatened to kill them. Ms. G. was allegedly thrown into a ditch and shot at, while attackers injured her brother-in-law with a power saw and stole his money and mobile telephone. The attackers also reportedly destroyed the car of one of the victims with kicks, axes and baseball bats.

Police apparently arrived quickly and managed to catch four of the attackers. ERRC was informed on July 31, 2000, that an investigation had been initiated against four men accused of rioting and damage to property. Although Investigator Pangl in charge of the case stated that he was aware that one of the Romani men had been injured during the attack, he explained that he had not received a doctor’s report and therefore had no evidence to pursue charges for assault. According to ERRC’s information, as of this writing, none of the attackers have been indicted and all of them remain at large.¹⁸

- On June 8, 2000 at approximately 2:15 p.m., P.R., an 18-year-old Romani woman, was attacked by three skinheads and beaten unconscious at the petrol station “The Cross” in the town of Orlová. P.R. did not report the incident to the police, stating that she was afraid of being attacked again.¹⁹
- On the evening of May 2, 2000, two men attacked and severely injured a Romani couple during a promenade on Lazecká Street in the north-western Czech town of Orlová with their five-year old daughter and 11-year-old son. The attackers, who were wearing black hoods, repeatedly struck the man, L.P., and his wife R.P. with a baseball bat and shouted racist slogans such as “Shut up your black swine.” L.P. reportedly suffered lacerations and contusions to his head, broken arms and contusions to his left side, while his wife’s kneecap was broken. Both were treated at a local hospital and required surgery. Despite reports that the couple’s 11-year-old son was able to recognise one of the attackers from photographs of local skinheads shown to him by the police, ERRC is not aware of anyone being arrested for the attack.²⁰

- On February 5, 2000, a group of approximately 15 skinheads physically attacked and shouted racist insults at five Roma and one non-Roma in the eastern town of Náchod. Although the victims were able to identify several of the attackers by name, the police failed to arrest anyone in connection with the assault. A local police officer informed the ERRC shortly after the incident that it was being treated as a pub fight rather than a racially motivated attack. Investigating authorities have since continued to deny any racial motivation behind the attack. On December 7, 2000, ERRC was informed that the investigation into J.K., one of the attackers, had been passed to municipal authorities to be dealt with as a summary offence.²¹

Discrimination against Roma in the Judicial System

ERRC research indicates that Roma suffer widespread discrimination in the Czech judicial system. This discrimination takes two broad forms; on the one hand, complaints by Romani victims of human rights abuse are not adequately investigated and prosecuted, and on the other, Romani defendants are subjected to pre-trial detention more often and for longer periods of time than non-Roma, and receive disproportionately severe sentences. These areas of discrimination violate Article 14 (obligation of the Government to ensure that all persons are equal before the courts and tribunals) as well as Articles 2 (obligation of the Government to provide victims with an effective remedy) and 26 (obligation of the Government to ensure that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law) of the Covenant.

A number of international monitoring bodies have noted the inadequate response of the Czech judicial system to hate crimes targeting Roma. According to a recent report of the Council of Europe, “the Czech Republic disposes of an adequate legal battery to combat racial violence. However [...], the implementation of the relevant legal provisions is still unsatisfactory.”²² In its most recent “Regular Report” assessing the Czech Republic’s progress towards EU membership, the European Commission similarly noted that “further efforts are needed, in particular to combat anti-Roma prejudice and to strengthen the protection provided by the police and the courts.”²³

While the Czech Criminal Code does contain recent amendments increasing sentences for racially-motivated crimes,²⁴ this alone is not enough. As the Committee’s General Comment No. 3 notes, “constitutional or legislative enactments [...] are often not ‘per se’ sufficient.” It draws attention to the fact that “the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction.”²⁵ It is clear from this comment that the Czech Government must not only enact laws to protect human rights, but must ensure their effective implementation in practice. The Committee’s General Comment No. 2 further states that States parties have an obligation to report “relevant facts which are likely to show the degree of the actual implementation and enjoyment of the rights recognized in the Covenant [...]”²⁶ Even in the absence of any relevant facts provided by the Government Report indicating the degree to which implementation of the new legal provisions has been successful, information gathered by the ERRC and other monitoring bodies suggests that the Czech judicial authorities have continued to fail to properly enforce the law when it comes to racially-motivated crimes against Roma.

To take one recent example, on February 22, 2001, the District Court of Bruntál returned a second verdict acquitting all three defendants who had been charged with a firebomb attack against a Romani woman and her family on January 17, 1998, in the northern Moravian town of Krnov.²⁷ A bottle containing burning flammable liquid was thrown into a flat in which five Romani individuals were present, severely injuring two of them.²⁸ The Bruntál District Court acquitted all three defendants of all charges in its initial verdict in December 1999. The Regional Appeals Court in Ostrava overruled this verdict in May 2000, and sent the case back to the District Court for retrial. As stated above, the District Court returned its second verdict on February 22, 2001, again acquitting all three defendants. The presiding judge apparently argued that although the defendants had demonstrated links to neo-nazi groups, there was no concrete evidence linking them to the specific attack in question.²⁹

Most cases, however, never even reach the courtroom, due to failure on the part of the police to carry out prompt and impartial investigations into reported attacks. As noted by the OSCE High Commissioner on National Minorities, Romani victims “encounter significant obstacles in their efforts to secure legal redress for [...] attacks. [...] [P]olice and other authorities have often resisted the obvious implication that [...] crimes [perpetrated by skinheads against Roma] might have been racially-motivated.”³⁰ Commenting on a major skinhead attack against Roma in the town of Děčín on December 18, 1999, local police chief František Pelhart stated that there was no evidence of racial motivation behind the attack. He told the ERRC, “[t]he men were drunk and wanted to fight. It was a coincidence that they ran into Roma. None of them is a sympathiser of an extremist movement. Today it is fashionable to have short hair.”³¹

Roma also receive differential treatment when entering the criminal justice system in the capacity of defendants. Evidence of such discriminatory trends has recently been noted by a number of international monitoring organs.³² According to information provided to the ERRC by the Czech non-governmental organisation “Counselling Centre for Citizenship/Civil and Human Rights,” Roma in the Czech Republic often receive higher sentences than non-Roma for the same crimes committed and are not given suspended sentences in situations in which non-Roma are granted such. Additionally, Roma are apparently often not afforded alternative punishment, such as community service, while such sentences are available to non-Roma. Furthermore, according to the Centre’s findings, Roma are placed in pre-trial detention more often than their non-Romani counterparts, and, once convicted, are less likely than non-Roma to be released on parole.³³

Discrimination against Roma in Various Fields of Public Life

Roma in the Czech Republic are subjected to discrimination in most areas of public life while legal protection against discrimination remains largely inadequate. In its General Comment No. 18, the Committee has made clear that “[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of Human Rights.” The Comment further asserts that in addition to the foregoing, “Article 26 [...] also prohibits *any* discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as [inter alia] race [...]”³⁴ Thus, the obligation of States not to discriminate contained in Article 26 extends beyond the rights provided for in the Covenant.³⁵

International monitoring bodies have on numerous occasions noted the widespread discrimination targeting Roma in the Czech Republic and the inadequacy of existing legislation to tackle this serious problem. According to a March 2000 report of the Council of Europe on the Czech Republic, “given that discrimination against Roma/Gypsies especially is reported to be pervasive in virtually all spheres of life, ECRI urges the authorities urgently to consider the establishment of a comprehensive anti-discrimination law which would cover all fields of life, *inter alia* education, employment, housing, access to public services and to public places.”³⁶ Other bodies have expressed similar concerns.³⁷

The Government itself has recognised that its legal framework pertaining to racial and other discrimination appears insufficient: “[T]o prosecute discrimination in services is difficult, as the restriction of rights and freedoms alone, or non-public instigation to it (i.e. the appeal to do so before one or two persons) is not punishable by law. Also missing is legal regulation laying down sanctions for discrimination in the educational and health systems, in employment, in social care, penitentiaries, and other spheres of life.”³⁸ In a resolution adopted in April 1999, the Government apparently contemplated presenting draft legislation “restricting racial (or other) discrimination” to the Parliament, but has, as of this writing, not made public any concrete steps taken in this regard.³⁹

In relation to its reporting under Article 26, the Government has also failed once again to fulfil the requirements of General Comment No. 2 (obligation to report beyond the relevant laws and norms). It has provided the Committee with no information concerning discrimination of Roma in the Czech Republic. The Government Report makes no reference to specific cases or concrete measures the authorities have taken to combat racial discrimination against Roma or other minorities. Again, the only reference in this regard is to the previously-submitted State report under the International Convention on the Elimination of

All Forms of Racial Discrimination.⁴⁰ The following sections aim to briefly address some of the most egregious forms of discrimination experienced by the Czech Romani population.

Discrimination in Education

Disproportionate numbers of Romani children in the Czech Republic are relegated to second-class educational facilities – so-called “special schools” – designed for pupils said to be suffering from intellectual or behavioural “deficiencies.” These institutions generally offer little opportunity for skills training or educational preparation. Few graduates of such schools go on to higher education.⁴¹ The result is a system of de facto racial segregation in education, the harmful effects of which cannot be overstated.⁴²

The Committee’s General Comment No. 17 on Article 24 of the Covenant emphasises that “every possible measure should be taken to foster the development of [children’s] personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant [...]” The Comment further specifies that “[t]he Covenant requires that children should be protected against discrimination on any grounds such as [inter alia] race [...]”⁴³

ERRC research in the Czech Republic, focusing on the north-eastern district of Ostrava in 1998-1999, found that Romani children there outnumber non-Roma in special schools by a proportion of more than twenty-seven to one. Although Roma represent fewer than 5% of all primary school-age students in Ostrava, they constitute 50% of the special school population. Nationwide, as the Czech Government itself concedes, approximately 75% of Romani children attend special schools, and more than half of all special school students are Roma.⁴⁴

Numerous international bodies have on a number of occasions raised the problem of racial segregation of Roma in the Czech educational system. Most recently, according to experts of the United Nations Committee against Torture, “the fact that the majority of children in the special schools were Roma was a sign that the Government was pursuing a policy in which it was placing Roma children in those schools. The special schools were intended for mentally retarded children, which was not the case for Roma children.”⁴⁵ The United Nations Committee on the Elimination of Racial Discrimination has similarly expressed concern about “the practice of school segregation by which many Roma children are placed in special schools, offering them lesser opportunities for further study or employment” and recommended that “the State Party undertake effective measures to promptly eradicate practices of racial segregation, including the placement of a disproportionate number of Roma children in special schools.”⁴⁶

To date, the Government has failed to comply with the recommendations set forth by international bodies with regard to racial segregation of Roma in the educational system. There still exists no legal recourse in the Czech Republic to effectively challenge racial discrimination in the field of education.⁴⁷ Meanwhile, remedial schools in the Czech Republic continue to be frequented by what the Government itself has termed “an unreasonably high proportion of Romany children.”⁴⁸

Discrimination in Housing

Discrimination against Roma in the field of housing is so widespread in the Czech Republic that the situation has in recent years been termed “de facto racial segregation” by a number of international monitoring bodies.⁴⁹

Perhaps the most notorious example of discriminatory housing policies with respect to Roma in the Czech Republic occurred in 1999 in the town of Ústí nad Labem, when the municipal authorities ordered the construction of a wall separating the Romani residents of Matiční Street from their non-Romani neighbours.⁵⁰

The city council first announced its decision to build the wall in May 1998. Despite intense international outcry, the Czech Cabinet reacted only in May 1999, and even then, merely by “recommending” that the regional government of the city rescind its decision to build the wall.⁵¹ On October 13, 1999 – the

same day that the Czech Parliament finally annulled the resolution by the city council – the latter went ahead with the planned construction. Inhabitants of the buildings on Matiční Street were awoken at around four o'clock in the morning when builders arrived and began constructing the wall under an approximately eighty-person-strong police guard. Construction was completed by evening.

On November 23, 1999, following massive national and international condemnation, the Ústí nad Labem City Council resolved to remove the wall, and on November 24, 1999, builders tore it down. While welcoming the demolition of the wall, ERRC finds the one and a half years of inaction by the Czech Government irresponsible and unacceptable. It should have promptly and unequivocally made clear that segregation and racism are not tolerated in the Czech Republic. Instead, it effectively stood by and watched as the Roma of Ústí nad Labem were subjected to the continuous and humiliating threat – and later reality – of racial segregation.⁵² ERRC further notes with concern the credible reports according to which, as part of the negotiated settlement between the national Government and the Ústí nad Labem city authorities, the Government agreed to provide a large grant to buy the houses of non-Romani residents of Matiční Street, effectively capitulating to their segregationist desires.⁵³

Municipal authorities in the Czech Republic have also failed to accommodate Romani and non-Romani families according to the same standards. Romani applicants for municipal housing are often relegated to segregated areas with substandard or unsafe accommodations. The case of Hrušov, Ostrava, is just one example of this trend. Following heavy floods in the area in 1997, damaging or entirely destroying apartments of both Romani and non-Romani families, municipal authorities declared the area to be unacceptable for human habitation and began to move out residents, providing them alternative housing in the city. ERRC investigation in early 1999, however, revealed that no Romani families had received apartments from the Ostrava-Jih municipality. According to the Czech non-governmental organisation “Counselling Centre for Citizenship/Civil and Human Rights,” while non-Romani residents have been transferred to housing in other parts of the city, those few Romani residents who were granted a transfer were simply moved to other apartments within the flooded area.⁵⁴ As of this writing, nearly five years after the city declared it uninhabitable, several hundred Roma continue to live in the area.⁵⁵

De facto segregation of Roma in ghetto-like areas in the Czech Republic is also the result of transferring Romani families to the so-called “holobyty” – housing for people who have failed to pay rent, but are entitled to state-provided accommodations under Czech law. “Holobyty” is synonymous with substandard housing. It is usually located on the outskirts of the city and access to the centre is difficult due to the lack of public transportation. Tenants are not allowed to have visitors and are apparently bound to allow access to any person appointed by the municipality at any time of the day.⁵⁶ Despite the fact that the “holobyty” were designed for low-income families, municipalities reportedly often impose high rents.⁵⁷ Due to their chronic unemployment (see *infra*), Roma are the single most likely ethnic group living in the Czech Republic to be transferred to the “holobyty.” Indeed, a survey by the Counselling Centre for Citizenship/Civil and Human Rights in June and July 2000, has indicated that Roma represent between 60 and 100% of the “holobyty” tenants, while they constitute less than 3% of the total population in the country.⁵⁸

Discrimination in Employment

Roma also experience widespread discrimination in employment. Estimated unemployment among Roma continues to be at 70%.⁵⁹ Lack of access to adequate education and skills preparation (see *Discrimination in Education supra*) is compounded by widespread discrimination on the part of employers. Numerous reports suggest that, even when Romani job applicants possess the requisite qualifications, they are turned down solely because they are Roma.

The Government itself has recently concluded that “there is often discrimination on the part of employers who refuse to employ Romanians without explanation, or state as the reasons for not accepting Romanians the ‘unadaptability’ of Romanians to the usual working regime or their bad experience with other Romanians.”⁶⁰ In addition to discrimination by employers themselves, discriminatory practices targeting Roma by governmental employment offices have also been reported. Czech press announced on October

26 and 27, 1999, that “for years,” Czech unemployment offices had pursued the practice of marking with an “R” the files of all persons who appeared to be Roma.⁶¹ In the ensuing media scandal over the discovery, the private television station “TV Nova” reportedly procured lists of Romani job seekers from offices in Prague and the southern Czech city of České Budějovice, indicating that authorities were keeping records of the ethnicity of applicants.⁶²

Czech legislation in its present state does not provide an effective tool to combat the discrimination faced by Roma in the field of employment. A recent amendment to the Labour Code prohibits hiring and employment discrimination based on ethnic origin.⁶³ Notwithstanding the absence of enforcement statistics, however, it is clear that this law is inadequate; victims claiming discrimination apparently do not have the right to file complaints. Instead, action must come from government authorities.⁶⁴

Moreover, according to the “Counselling Centre for Citizenship/Civil and Human Rights,” the new labour legislation fails to define the kind of conduct that amounts to racial discrimination and provide effective sanctions for breach. Victims of racial discrimination can only invoke the general prohibition of discrimination established in Article 1(1) of the Law on Employment.⁶⁵ There are no provisions for obtaining an injunction against discriminatory treatment or for remedying the effects of discrimination.⁶⁶

Discrimination in Access to Goods and Services Available to the Public

Roma in the Czech Republic are regularly denied admission to restaurants, bars, and other public places. As the Government itself admits, “protection against racial discrimination, especially in public services, has [...] been accompanied by certain problems.”⁶⁷

On May 29, 1999, for example, a guard at the swimming pool in Brno reportedly demanded health certificates from each member of a Romani family before allowing them to bathe. As no one in the family could produce the requested certificates, they were refused entry. When members of the family protested that they had bathed at the swimming pool in the past without showing health documents, the guard reportedly responded that a new set of rules had been introduced, whereby Roma could only be let into the pool upon showing a certificate documenting their good health. Witnesses report that the guard was not requesting similar documents from non-Romani clients.⁶⁸

The overwhelming number of cases of racial exclusion documented by the ERRC in the Czech Republic concern bars and restaurants. In February 1999 and November 1998, in two different bars in the north-eastern Czech town of Ostrava, as well as in October 1998 in a club in south-eastern Brno, Roma have been denied entry and/or service solely because they are Roma. In the Brno case, police investigators told ERRC in November 1998 that they had decided not to bring charges in connection with the barring – which concerned the single Romani member of the Czech Parliament, Monika Horáková. A subsequent appeal filed by Ms. Horáková’s attorney in December 1998 was rejected by a state prosecutor in Brno on January 12, 1999.⁶⁹

Racist Statements by Public Officials

Notwithstanding the Government’s obligations under Article 20 of the Covenant, which provides that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law,” racist speech against Roma by public officials is common. In its most recent report on the Czech Republic, the Council of Europe European Commission against Racism and Intolerance noted the problem of “some elected local officials publicly express[ing] anti-Roma/Gypsy attitudes.”⁷⁰ As a result, racism is, not challenged; it is encouraged.

The below examples are illustrative:

Miroslav Sládek, leader of the Czech Republican Party, is reported to have stated in a speech delivered at a rally in 1998 in Písek, that “summer is getting near, it’s time for swimming lessons again.”⁷¹ The statement is believed to be a reference to the drowning of a Romani teenager at the hands of skinheads in 1993.⁷²

In July 1997, Zdenek Klausner, Senator from the then-ruling Civil Democratic Party (ODS) and Mayor of Prague 4, published an article in the Prague 4 municipal newspaper “Tučnák,” in which he attributed alleged difficulties landlords had with “large problem families” to the prior regime’s failure to “assimilat[e] [...] the Romani minority.”⁷³ Senator Klausner recommended that landlords in Prague pursue the “solution” adopted by one of their counterparts: moving the Roma out of Prague. Despite statements of disapproval by then-Prime Minister and then-Minister of the Interior, the Civil Democratic Party undertook no disciplinary measures against this prominent public official.

Shortly after Senator Klausner made his remarks, the deputy mayor of Ostrava, Radoslav Štědroň, also of the Civil Democratic Party, responded to criticism of a segregationist housing policy by stating, “most Roma do not know how to behave and the town hall must find some way to deal with them; what Klausner suggested seems to me a sensible solution.”⁷⁴

During the flooding in the summer of 1997 in north-eastern Czech Republic, Liana Janáčková, mayor of the Mariánské Hory district of Ostrava, speaking on a television programme on August 12, offered to pay Roma who wanted to move to Canada two-thirds of the money for their flight, provided that they return the rights of tenancy to their flats and cancel their official residence. Mayor Janáčková reportedly explained, “this is how I see it: there are two groups living here, Roma and whites, and the situation does not suit either of them. They do not want to live together. Why shouldn’t one of the groups make a friendly gesture towards the other? This is not a racist act. On the contrary, we want to help the Roma. If they don’t want to live here, it is a friendly gesture for the administration to help them. We are contributing two-thirds of their ticket. To pay the whole amount would be immoral.”⁷⁵ Jirí Jezerský, the mayor’s deputy, commented at the time, “they are mostly problem families who terrorise other people. Roma do not respect the night-time ban on noise; they encourage their children to rob cars; they spit on people and throw rubbish in places other than rubbish bins, thereby constantly increasing the threat of rats and fleas.”⁷⁶

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¹ United Nations Human Rights Committee, “Initial report of the Czech Republic on the implementation of the International Covenant on Civil and Political Rights for the period 1993-1999,” CCPR/C/CZE/2000/1, May 4, 2000 (hereafter the “Government Report”).

² Council of Europe, European Commission against Racism and Intolerance, “Second Report on the Czech Republic,” CRI(2000)4, March 21, 2000, para. 16.

Following its most recent review of the Czech Republic, the United Nations Committee against Torture concluded that it “remains concerned [...] about reports of degrading treatment by the police of members of minority groups” and about “[t]he lack of a mechanism of external control of the work of the police.” Among its recommendations addressed to the Czech Government, the Committee stressed “in particular” the need to “increase efforts to combat and adequately sanction police ill-treatment of minorities” and requested that “[t]he State party ensure the independence and thoroughness of investigations of all allegations of ill-treatment” and “take appropriate measures to ensure the independence of investigations of offences committed by law enforcement officials by introducing a mechanism of external control.” (United Nations Committee against Torture, “Conclusions and Recommendations of the Committee against Torture: Czech Republic,” CAT/C/XXVI/Concl.5/Rev.1, May 14, 2001, paras. 8 and 9).

See also the conclusions of the United Nations Committee on the Elimination of Racial Discrimination on the Czech Republic which expressed “concern [...] about the degrading treatment by the police of members of minority groups” and recommended the “strengthening of training programmes for police and all officials in charge of implementing the law [...]” (United Nations Committee on the Elimination of Racial Discrimination, “Concluding Observations of the

Committee on the Elimination of Racial Discrimination: Czech Republic,” A/55/18, paras. 271-288, August 14, 2000, para. 284.).

³ Human Rights Committee, General Comment No. 20, April 10, 1992, para. 11. The General Comment further specifies that “[i]n their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress,” and “provide specific information on the remedies available to victims of maltreatment and [...] statistics on the number of complaints and how they have been dealt with.” (para. 14). ERRC notes that the Government Report contains no information of this kind.

⁴ Council of Europe, European Commission against Racism and Intolerance, op. cit., para. 17. See also footnote 2 supra on similar concerns expressed by the Committee against Torture, and Amnesty International, “The Czech Republic: Arbitrary Detention and Police Ill-treatment following the September 2000 Protests,” AI Index: EUR 71/001/2001, March 12, 2001, noting the lack of an independent mechanism (outside the Ministry of Interior) for reviewing complaints against law enforcement officials. The Government Report itself notes that “the existing inspection mechanism is being criticised [...] for its lack of openness. The rate of success in dealing with complaints by citizens against undue behaviour, abuse of official position and, namely, use of physical violence remains rather low though the number of complaints accepted as justified slowly grows.” (Government Report, para. 126).

⁵ ERRC interviews, June 21, 2001, Náchod.

⁶ For a more detailed account of the case, see *Roma Rights*, No. 4, 2000, p. 17. See also the United States Department of State, “Country Reports on Human Right Practices: Czech Republic,” February 2001, <http://222.state.gov/g/drl/rls/hrrpt/2000/eur/index.cfm?docid=733>, last visited June 25, 2001.

⁷ For a more detailed account, see *Roma Rights*, No. 1, 1999, pp. 6-7. ERRC notes that police harassment of the kind described in this case implicates also Article 17 of the Covenant prohibiting “arbitrary or unlawful interference with [...] privacy, family, home or correspondence [...]”

⁸ For a more detailed account, see *Roma Rights*, Summer 1998, pp. 7-9.

⁹ For a more detailed account, see *Roma Rights*, Winter 1998, pp. 20-21.

¹⁰ The Prague-based non-governmental organisation “Documentation Center for Human Rights” recorded more than 1,800 racially motivated attacks over the past eight years in which nearly 32 persons died.” (see United States Department of State, op. cit.). In 2000 alone, Czech police apparently recorded 364 “racially motivated or extremist crimes” in the country, as opposed to the 316 it had documented the previous year (Ibid).

¹¹ Council of Europe, European Commission against Racism and Intolerance, op. cit., para. 28. The “Executive summary” of the report singled out “the continuation of racial violence [...] directed towards members of the Roma/Gypsy population” as a “severe problem” “[o]f special concern.” (Ibid., p. 4).

¹² Human Rights Committee, General Comment No. 20, April 10, 1992, para. 2.

¹³ Following its most recent review of the Czech Republic, in August 2000, the United Nations Committee on the Elimination of Racial Discrimination expressed “concern[]” about “the increasing number of incidents of racially motivated violence against minority groups, in particular against members of the Roma community, many of which may not even be reported,” and “recommend[ed] that the State party [...] intensify enforcement of the criminal law against racially motivated crimes.” (United Nations Committee on the Elimination of Racial Discrimination, op. cit., para. 282).

The recent conclusions of the United Nations Committee against Torture similarly expressed “concern about [...] continuing reports of violent attacks against Roma and the alleged failure on the part of police and judicial authorities to provide adequate protection [...]” (United Nations Committee against Torture, op. cit., para. 8).

See also the most recent annual report of the international non-governmental organisation “Human Rights Watch,” noting that “increasing racial violence against the ethnic Roma minority demonstrated an alarming pattern of neglect on the part of police and legal authorities in failing to investigate and prosecute hate crime. This pattern included lenient sentences for perpetrators of hate crimes, incompetent and protracted investigations, and little recourse for victims who in many cases feared reprisals.” (Human Rights Watch, “World Report 2001,” <http://www.hrw.org/wr2k1/europe/czech.html>, last visited June 15, 2001).

¹⁴ Government Report, para. 333.

¹⁵ Milan Lacko, a Romani father of four, was beaten unconscious by a group of skinheads and left to die on a road where he was ran over by a car on May 15, 1998. Although found guilty of several charges by the first instance court in October 1998, all four defendants received suspended sentences. This initial verdict, which led to outrage in the local and international Romani and human rights community, was subsequently appealed and overruled by the Ostrava second instance court in June 1999. Subsequent rulings have found all four defendants indirectly responsible for the death of Mr. Lacko, most recently – on May 24, 2001 – sentencing two of them to 16 months and three years (non-suspended) imprisonment respectively, while the other two received suspended sentences. The driver, finally – who turned out to be an off-duty police officer – was reportedly given a 15-months sentence suspended for

2.5 years.’ To ERRC’s knowledge, however, as of this writing, all of the convicted remain at large. For detailed accounts of the case, see *Roma Rights*, Spring 1998, pp. 6-7; No. 2, 1999, p. 6 and No. 2, 2000, pp. 21-22; as well as United States Department of State, *op. cit.*

Helena Bihářiová died on February 15, 1998, after being forced into the Labe River in the Czech town of Vrchlabí by P.K. and J.N., two non-Romani youths. In September 1998, a court in Hradec Králové ruled that there had been no racial motivation in the case. The same court also overturned its own earlier ruling and reduced the sentence against P.K. from 6.5 years to 15 months imprisonment for disturbing the peace. He was set free on the day of the verdict, while J.N. was sentenced to 8.5 years in prison for duress resulting in death, and disturbing the peace. For detailed accounts of the killing of Helena Bihářiová and its aftermath, see *Roma Rights*, Winter 1998, p. 6; Summer 1998, p. 21; No. 1, 1999, pp. 13-14; and No. 3, 1999, pp. 5-8.

¹⁶ For a more detailed account, see *Roma Rights*, No. 4, 2000, p. 13.

¹⁷ For more a detailed account, see *Roma Rights*, No. 4, 2000, pp. 12-13.

¹⁸ For a more detailed account, see *Roma Rights*, No. 3, 2000, pp. 12-13.

¹⁹ For a more detailed account, see *Roma Rights*, No. 2, 2000, p. 20. Commenting on racially-motivated violence against Roma, a recent Council of Europe report on the Czech Republic noted that “the number of reported cases is deemed vastly to underestimate the scope of the problem as attacks often go unreported due to fear of reprisals or lack of confidence in the response of the criminal justice system.” (Council of Europe, European Commission against Racism and Intolerance, *op. cit.*, para. 28).

²⁰ For a more detailed account, see *Roma Rights*, No. 2, 2000, p. 20.

²¹ For a more detailed account, see *Roma Rights*, No. 1, 2001, pp. 17-18.

²² According to the report, “[p]roblems arise at different levels of the judicial process. Firstly, police and investigators appear often to misclassify racially motivated crimes and do not follow through investigations. [...] Secondly, problems arise at the level of prosecutors. [...] A certain reluctance has [...] been noted in some cases to prosecute this type of crime. [...] Thirdly, the interpretation of ‘racial motivation’ rendered by some judges is a very restrictive one,” resulting in a situation in which “perpetrators of racially motivated crime often escape being brought before the courts, and even when they are found guilty of such crimes, punishment is relatively light.” (Council of Europe, European Commission against Racism and Intolerance, *op. cit.*, para. 30).

²³ European Commission, “2000 Regular Report from the Commission on the Czech Republic’s Progress towards Accession,” November 8, 2000, p. 26. An October 1999 report by the European Union on the Czech Republic similarly noted, “[a]s illustrated by recent judgements of district courts, sentences for criminal offences motivated by racism or national intolerance often remain inadequate.” (European Commission, “Regular Report from the Commission on Progress of Accession,” October 13, 1999).

On the occasion of its recent review of the Czech Republic, the United Nations Committee against Torture expressed concern about “the alleged failure on the part of police and judicial authorities to investigate and prosecute [violent attacks against Roma], as well as the lenient treatment of offenders,” and recommended that the Government “increase its efforts to combat and adequately sanction police ill-treatment of minorities and their failure to provide them with adequate protection.” (United Nations Committee against Torture, “Concluding Observations and Recommendations of the Committee against Torture: Czech Republic,” CAT/C/XXVI/Concl.5/Rev.1, May 14, 2001, paras. 8 and 9).

In August 2000, the United Nations Committee on the Elimination of Racial Discrimination “reiterate[d] its concern about the lack of effectiveness and confidence in the ability of the criminal judicial system to prevent and combat racial crimes.” (United Nations Committee on the Elimination of Racial Discrimination, “Concluding Observations of the Committee on the Elimination of Racial Discrimination: Czech Republic,” A/55/18, paras. 271-288, August 14, 2000, para. 284). See also footnote 13 *supra* for concerns expressed in this field.

²⁴ See, e.g., Council of Europe, European Commission against Racism and Intolerance, *op. cit.*, para. 8 (the provisions amended were as follows: Section 196 (“violence against a group of inhabitants and against individuals on the basis of race, nationality, political conviction and religion”), 198 (“defamation of a race, nation or belief”), 198(a) (“incitement to national and racial hatred”), 260 (“sponsoring and promotion of movements which aim to suppress the rights and freedoms of citizens”), and 261 (“public expression of sympathy for fascism or similar movement”).

²⁵ Human Rights Committee, General Comment No. 3, July 31, 1981, para. 1.

²⁶ Human Rights Committee, General Comment No. 2, July 31, 1981, para. 3.

²⁷ For a more detailed account of the case, see *Roma Rights*, Winter 1998, pp. 6-7.

²⁸ Emilie Žigová, one of those injured in the attack, suffered life-threatening burns when trying to protect her daughter from the flames, the consequences of which she continues to suffer to date.

²⁹ For a more detailed account, see *Roma Rights*, No. 1, 2001, p. 17. In another, older case of racist attack, resulting in the death of Romani teenager Tibor Danihel in 1993, the High Court in Prague annulled lower instance verdicts by a

regional court in Tabor which had sentenced three skinheads to prison terms ranging from 7 to 8.5 years in October 1998. Following a subsequent appeal to the Supreme Court, a June 1999 decision finally held the three defendants guilty of the gruesome killing, which reportedly involved approximately 40 skinhead youths. In its "Report on the State of Human Rights in the Czech Republic in the Year 1999," the Czech Government itself noted that "in several cases of serious violent attacks against Romanies and foreigners, again the bodies responsible for penal proceedings tended to trivialize the case." ("Report on the State of Human Rights in the Czech Republic in the Year 1999," April 19, 2000, para. 9.2.1. (unofficial translation).

³⁰ See Organization for Security and Co-operation in Europe, High Commissioner on National Minorities, "Report on the Situation of Roma and Sinti in the OSCE Area," March 10, 2000, pp. 36-38.

³¹ For a more detailed account of the incident, see *Roma Rights*, No. 1, 2000, p. 13-14.

³² See, for example, the recent report on the Czech Republic by the European Commission against Racism and Intolerance, cited *supra* under "Unremedied or Inadequately Remedied Racially-Motivated Violence and Abuse against Roma by Non-State Actors."

³³ Information provided by the Counselling Centre for Citizenship/Civil and Human Rights, June 2000. When it comes to sentencing, for example, according to the Centre, for the crime of attacking a public official, male Romani defendants receive on average 8.2 months longer imprisonment than non-Romani defendants. For drug trafficking, the disparity is 6.5 months; for murder, 12.9 months; and for robbery, 17.1 months. Female defendants, meanwhile, were identified as receiving on average 13.1 months longer imprisonment for theft than non-Romani women.

³⁴ Human Rights Committee, General Comment No. 18, November 10, 1989, para. 1 (emphasis added).

³⁵ As the Committee's General Comment No. 18 explains, "article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. [...] In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant." (Ibid., para. 12). In this regard, ERRC also notes the Committee's recent Concluding Observations concerning Croatia, expressing "concern[] at the lack of a comprehensive law prohibiting discrimination in private-sector areas such as employment and housing" and making clear that "[p]ursuant to article 2, paragraph 3, and article 26 of the Covenant, the State party has a duty to protect persons against such discrimination." (United Nations Human Rights Committee, "Concluding Observations of the Human Rights Committee: Croatia," CCPR/CO/71/HRV, March 6, 2001 (Unedited version), para. 19).

³⁶ Council of Europe, European Commission against Racism and Intolerance, *op. cit.*, para. 10.

³⁷ Following its review of the Czech Republic last August, the United Nations Committee on the Elimination of Racial Discrimination "reiterate[d] its concern at the lack of criminal, civil or administrative law provisions expressly outlawing racial discrimination in education, health care, social care, the penitentiary system, as well as in the private sphere." The Committee recommended that the Government "undertake legislative reform to safeguard the enjoyment, without any form of discrimination, by all segments of the population, of the economic, social and cultural rights listed in article 5 of the Convention," specifying that "such reform should include the provision of adequate reparation for victims of racial discrimination." (United Nations Committee on the Elimination of Racial Discrimination, *op. cit.*, para. 283).

See also the most recent annual report of the United Nations Special Rapporteur on Contemporary Forms of Racism, noting specifically with respect to the situation in the Czech Republic, that "[t]he piecemeal legislation currently in force fails to offer adequate protection against racial discrimination and the victims of racist acts are unable to secure proper redress. Victims have access to inefficient administrative remedies only." (United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, "Report by Mr. Maurice Glele-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights Resolution 2000/14," E/CN.4/2001/21, February 6, 2001, para. 150).

³⁸ Government Report, para. 393.

³⁹ Resolution No. 279 of April 7, 1999, quoted in Organization for Security and Co-operation in Europe, *op. cit.*, pp. 52-53. In this regard, ERRC notes that a recent directive of the European Union "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" (2000/43/EC, adopted in June 2000), provides a minimum level of protection against racial discrimination in a range of areas, including access to employment and training, education, social protection (including security and healthcare), social advantages and the supply of and access to goods and services, including housing. The directive further provides definitions of both direct and indirect discrimination, harassment and victimisation; shifts the burden of proof in civil cases once a *prima facie* case of discrimination has been established; and provides a common minimum level of redress through a judicial or administrative procedure, associated with appropriate sanctions, including compensation. It is important to note that this directive is part of the community *acquis* (the body of law which all states wishing to join the Union must adopt), and, as such, has to be complied with by the Czech Government as a condition of EU membership. ERRC further

notes that the Government signed Protocol No. 12 to the European Convention on Human Rights on November 4, 2000, thereby demonstrating a welcome commitment to undertake concrete measures, including in the area of law, to ensure full and effective equality without discrimination on the grounds of, inter alia, race.

⁴⁰ *Ibid.*, para. 397.

⁴¹ Legislation barring children who graduated from special schools from continuing in anything other than a parallel system of substandard schools was amended in 1999. In practice however, as shown by the Hungarian experience, children graduating from special schools do not cross the line from special primary to normal secondary education (see *Roma Rights*, Summer 1998, pp. 30-36 and Organization for Security and Co-operation in Europe, *op. cit.*, p. 75).

⁴² As recently noted by the OSCE High Commissioner on National Minorities, “[p]erhaps no legally-sanctioned practice affecting Roma is more pernicious than the phenomenon of channeling Romani children to ‘special schools’ – schools for the mentally disabled. [...] Aside from the obvious disadvantage this entails in terms of the substandard quality of education made available to Romani children – depriving them of the equal opportunity to learn and to develop as capable and self-reliant citizens – the effect is also automatically to disqualify Romani children from admission to certain secondary and tertiary educational and professional institutions.” (See Organization for Security and Co-operation in Europe, *op. cit.*, pp. 74, 4).

⁴³ Human Rights Committee, General Comment No. 17, April 7, 1989, paras. 3 and 5.

⁴⁴ See Government Resolution No. 279, of April 7, 1999, “Draft Conception of the Governmental Policy Towards the Roma Community,” para. 5 (“three-quarters of Romani children attend special schools destined for children with a moderate mental deficiency and [...] more than 50% (estimations are that it is about three-quarters) of all special school pupils are Romani”).

⁴⁵ United Nations Press Release, March 7, 2001, Morning.

⁴⁶ United Nations Committee on the Elimination of Racial Discrimination, *op. cit.*, para. 280.

⁴⁷ Legal complaints challenging racial segregation of Roma in special schools, filed in June 1999 by a group of Romani children in Ostrava, assisted by local counsel and ERRC, were unsuccessful at the domestic level. In its decision of October 20, 1999, the Constitutional Court, acknowledging the “persuasiveness” of the applicants’ arguments, nonetheless rejected the complaints, ruling that it had no authority to consider evidence demonstrating a pattern and practice of racial discrimination in Ostrava or the Czech Republic. The Court effectively refused to apply applicable international legal standards for proving racial discrimination. Having unsuccessfully exhausted all domestic remedies, on April 18, 2000, representing 18 Romani children from Ostrava, the ERRC and local counsel filed an application with the European Court of Human Rights in Strasbourg where the case has been pending since. For a more detailed account of the Ostrava case, see e.g. *Roma Rights*, No. 1, 2000, p. 58-59.

⁴⁸ “Report on the State of Human Rights in the Czech Republic in the Year 1999,” *op. cit.*, para. 6.2.4.1. (unofficial translation). Recent changes to laws governing Czech schooling, purportedly aimed at responding to international criticism, have done little to nothing to change the situation. See also the recent annual report of the United Nations Special Rapporteur on Contemporary Forms of Racism, noting that “[t]he system of special schools is still in place and no improvements have been made.” (United Nations Special Rapporteur on Contemporary Forms of Racism, *op. cit.*, para. 150).

⁴⁹ On the occasion of its most recent review of the Czech Republic last August, the United Nations Committee on the Elimination of Racial Discrimination expressed “concern [...] about the existing situation of de facto segregation in the areas of housing and education of the Roma population” and “recommend[ed] that the State party undertake effective measures to eradicate promptly practices of racial segregation [...]” (United Nations Committee on the Elimination of Racial Discrimination, *op. cit.*, para. 280).

Also the Council of Europe European Commission against Racism and Intolerance has expressed “particular[] [...] concern[] [...] at evidence of ghettoization of the Roma/Gypsy community.” The report further states that “Roma/Gypsies are reported to be the least preferred neighbours compared to all nationalities and ethnic groups. This is reflected not only in the private housing market, but also in the assignment of council flats. As a result, there are large concentrations of Roma/Gypsies on the outskirts of cities, where people often live in poor hygienic conditions, far from work and educational opportunities and where they are essentially separated from the rest of society.” (Council of Europe, European Commission against Racism and Intolerance, “Second Report on the Czech Republic,” *op. cit.*, para. 40).

⁵⁰ For detailed accounts of this widely-publicised case, see, inter alia, *Roma Rights*, Summer 1998, pp. 7-10; No. 1, 1999, pp. 7-8; No. 4, 1999, pp. 7-9; No. 2, 2000, p. 31.

⁵¹ In August 1998, the United Nations Committee on the Elimination of Racial Discrimination requested, under its early warning measures and urgent action procedures, information from the Czech Government about “disturbing reports that in certain municipalities measures are contemplated for the physical segregation of some residential units housing Roma families.” (United Nations Committee on the Elimination of Racial Discrimination, “Decision 2(53) on the Czech Republic: Czech Republic,” A/53/18 par. IIB2, August 11, 1998). The Committee considered the Czech

Government's reply during its 54th session on March 11, 1999, at which time the Government steadfastly refused to concede – against all evidence to the contrary – that the threatened construction of what it then euphemistically termed a ceramic fence, 1.8 meters high without gates, would result in segregation (See “Additional information pursuant to Committee Decision: Czech Republic,” CERD/C/348, January 21, 1999, para. 3) and merely promised to “consider” legal action in the event that the local authorities would go ahead with the construction of the wall (Ibid, para. 8). Not surprisingly, the Committee concluded that the Czech Government's response and the measures it had taken were unsatisfactory, and “called upon the Government to cancel the decision and report to the Committee in its forthcoming periodic report.” (See the United Nations Press Release HR/CERD/99/19 of March 11, 1999).

⁵² On November 12, 1999, local counsel, in conjunction with ERRRC, filed a civil lawsuit on behalf of Ms. G.L., a Romani resident of Matiční Street against the local government of Ústí nad Labem. The lawsuit claims breach of the right to human dignity pursuant to Article 11 of the Czech Civil Code and requests a written apology, a declaration of breach of Article 11, a declaration of breach of international legal norms pertaining to racial discrimination and segregation, and an order for demolition of the wall and damages. Following the removal of the wall, the claim pertaining to its demolition was withdrawn and substituted by the proposal of a declaratory verdict, according to which the plaintiff requested the Court to declare that the construction of the wall and its existence until it was removed had unjustly infringed her right to protection of her civil credit and human dignity. Following appeal of an initial rejection of the claims on February 1, 2000, the High Court in Prague recently returned the case to the Regional Court for retrial, with a hearing scheduled for July 16, 2001.

⁵³ According to ERRRC's information, thus far, one third of the grant, which totalled 10 million Czech crowns (approximately 286,000 US dollars), has been spent on purchasing the houses of three non-Romani families. For a more detailed account, see *Roma Rights*, No. 2, 2000, p. 31 and United States Department of State, *op. cit.*

⁵⁴ According to the Centre, “[t]he municipality gave non-Roma residents priority for transfer regardless of the condition of the housing. For example, if a Roma family lived on the first floor and a non-Roma family lived on the fourth floor, the non-Roma family would be transferred even if the first floor apartment more extensively.” (Counselling Centre for Citizenship/Civil and Human Rights, *op. cit.*, p. 6).

⁵⁵ On discriminatory housing policies of the municipal authorities in Ostrava, see also Ina Zoon, “On the Margins: Roma and Public Services in Romania, Bulgaria and Macedonia (with a supplement on housing in the Czech Republic),” Open Society Institute, New York 2001, pp. 169-170. In mid-May this year, a group of Roma reportedly protested in front of the mayor's house in Ostrava, demanding “to live like human beings,” and carrying photos documenting the catastrophic living conditions that they have to bear in Ostrava-Hrušov. Kumar Vishwanathan, chair of the project “Village of cohabitation – Jekhetane” announced that his organisation is planning to sue the local government for failure to provide adequate housing to an entire category of citizens under its jurisdiction. Mr. Kudela, deputy mayor of the district Slezská Ostrava, of which Hrušov forms part, is reported to have stated that he is not able to say when the inhabitants of Hrušov will be able to move out. (*Mladá Fronta Dnes*, May 16, 2001.)

⁵⁶ ERRRC notes that in addition to Article 26, this practice also appears to violate Article 17 of the Covenant, prohibiting “arbitrary or unlawful interference with [...] privacy, family, home or correspondence [...]”

⁵⁷ See Ina Zoon, *op. cit.*, pp. 178-181.

⁵⁸ Information provided by the Counselling Centre for Citizenship/ Civil and Human Rights, April 2001.

⁵⁹ See, e.g. United States Department of State, *op. cit.*

⁶⁰ “Report on the State of Human Rights in the Czech Republic in the year 1999.” *op. cit.*, para. 6.2.3.1 (unofficial translation). (A common pattern in many countries, including the Czech Republic, is that when applying in person for a job that has been advertised, Roma are told that the position has been filled, even though they have been told otherwise when making telephone inquiries. See Organization for Security and Co-operation in Europe, *op. cit.*, p. 33).

⁶¹ *Lidové Noviny*, October 26 and 27, 1999.

⁶² For a more detailed account, see *Roma Rights*, No. 4, 1999, pp. 11-12.

⁶³ Law No. 167/1999 of the Collection of Laws, Amendment to Law No. 1/1991 of the Collection of Laws, Law on Employment as subsequently amended.

⁶⁴ See e.g. United States Department of State, *op. cit.*

⁶⁵ Law No. 1/1991 of the Collection of Laws, as subsequently amended.

⁶⁶ Information provided by the Counselling Centre for Citizenship/Civil and Human Rights, June 2001. Furthermore, according to the Centre, “the Government did not take action to educate employers, employees, or applicants for employment of the existence of the new law, of the terms of the law and of the remedies for violation of the law. No affirmative action measures were implemented. Without public awareness and more extensive measures to ensure racial equality, the law will prove completely ineffective.” (Counselling Centre for Citizenship, Civil and Human Rights, *op. cit.*, June 2000). Also commenting on the new Labour Code, a recent report by the International Helsinki Federation for Human Rights describes a case in which “[a] company refused to hire a Roma woman clearly because of her ethnic origin. She complained to the employment agency but was informed that the employer was free to choose whom he/she wanted to hire.” (See International Helsinki Federation for Human Rights, “Human Rights in the

OSCE Region, Report 2001 (Events of 2000),” p. 110).

⁶⁷ Government Report, para. 393. In a report issued last year, the Government also noted that “[p]articularly problematic are possibilities of the prosecution of racial discrimination in services, which are still supported only by a regulation of law no. 64/1986 of the Coll., of the Czech Trade Inspection (CTI), in connection with law no. 634/1992 of the Coll., of the protection of customers, as amended by later regulations. Racial discrimination in services is mentioned by many integrated and successful Romanies or foreigners who resemble Romanies. Amongst those who reported discrimination in services in 1999, was, for example, member of the CHR, and Indian, Kumar Vishwanathan in Ostrava and a British diplomat, Tony Brennan, whose Indian colleagues were not allowed into a Prague discotheque. In both these cases, however, the CTI arrived at the decision that a fine cannot be imposed on the basis of their testimony, because inspectors found that other people of dark complexion were served during the inspection of these businesses.” (“Report on the State of Human Rights in the Czech Republic in the Year 1999,” op. cit., para. 9.1.4. (unofficial translation)).

⁶⁸ For a more detailed account, see *Roma Rights*, No. 2, 1999, p. 6. In another, well-publicised Czech case concerning access to a swimming pool, in the absence of legislation expressly prohibiting racial discrimination per se, the deputy mayor of Kladno was criminally prosecuted under Article 198(a) of the Czech Criminal Code – which punishes incitement to ethnic and racial hatred – for barring all Romani children under the age of 15 from entering the town swimming pool in 1996.

⁶⁹ For more detailed accounts, see *Roma Rights*, No. 1, 1999, p. 16. Ms. Horáková was later granted damages by a civil court. A second legal challenge brought against discrimination in access to public services in the Czech Republic, initiated by the three Roma refused service in the November 1998 case, resulted in a court-approved settlement in which the Hotel Imperial in Ostrava agreed to pay the Roma 25,000 Czech crowns (approximately 650 USD) in exchange for the Roma dropping their lawsuit. See *Roma Rights*, No. 4, 1999, p. 13 and ERRRC Press Release “ERRRC Applauds Court-Approved Compensation for Racial Discrimination against Roma by Czech Hotel Owner,” October 29, 1999.

⁷⁰ Council of Europe, European Commission against Racism and Intolerance, op. cit., para. 21. In a similar vein, the Vienna-based International Helsinki Federation for Human Rights (IHF) recently reported about the Czech Republic that “[s]ome municipal board members openly expressed their racist opinions about Roma, saying, for example, that they will ‘kick them out of town.’” (International Helsinki Federation for Human Rights, op. cit., p. 110).

⁷¹ Cited in Organization for Security and Co-operation in Europe, op. cit., p. 44.

⁷² The above statement is not the first racist slur made by Sládek. In mid-1996, he apparently went on record stating that the first crime of Roma is birth (see Czech Helsinki Committee, Annual Report 1996, citing *Mlada Fronta Dnes*, July 1996, p. 34). ERRRC is not aware of any disciplinary measures against Sládek for his statements.

⁷³ *Tučňák*, July 1997.

⁷⁴ *Mlada Fronta Dnes*, August 1997.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*