



PRO OBČANSTVÍ, OBČANSKÁ A LIDSKÁ PRÁVA

ANNUAL REPORT

●●● 2002 – 2003





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I. MESSAGE FROM

● ● ● THE CHAIRMAN

In 2002-2003, the Counselling Centre for Citizenship/Civil and Human Rights continued to uphold its basic strategy and philosophy of work which links practical aid offered to concrete individuals with activities aimed at systemic change in the environment that our clients and all of us share together. Our success in either of these lines of activity remains to be assessed by others, and particularly, our clients and sponsors, but also other institutions and organisations that work with us.

A majority of our clients are very poor, and therefore highly vulnerable in their “environment“. We are extremely grateful to all of our sponsors for providing the funding which, combined with our effort, enables us to serve people in need.

I am happy to say that in the past year we expanded our work related to the rights of children and parents, and persons deprived of freedom; we also continued our pioneering work in litigation and testing focused on uncovering and combating discriminatory practices affecting our clients. In 2003 we achieved first major successes in this field: with our help, Roma victims of discrimination in access to public services were granted financial compensation for the diminishing of dignity they had suffered as a result of being denied service in restaurants or pubs. In all of these cases, it was our Roma volunteers who stood up against ill will and injustice. Assisted by our staff, they visited establishments that have long been known as “White Only“, they documented the owner’s or keeper’s behaviour, and, represented by our in-house or external experts, sued the discriminating individuals and companies. The financial compensation awards have been a clear message to other establishments that refusing to serve the Roma could be very costly. At the same time, this has helped build up our clients’ self-confidence and personal aspirations. As one client said: “I hope waiters will now understand that we are not so much removed to the margins, and that we know how to get things straight“. Our Centre has now started testing for discrimination in access to employment and housing as well.

At this point, I would also like to express my thanks and admiration for the high commitment of all my colleagues.

Ladislav Zamboj
Chairman, association of citizens
Counselling Centre for Citizenship/Civil and Human Rights



II. WHO WE ARE



The thrust of our work at the Counselling Centre for Citizenship/Civil and Human Rights (referred to below as “Counselling Centre“ or “Centre“) is in providing legal advice to individuals, NGOs and civil servants, monitoring and analysing observance of civil and human rights, monitoring and assessing existing and upcoming legislation, and proposing and initiating systemic solutions. Our long-term focus in this respect has been on discrimination, equal opportunities, issues of citizenship and foreign nationals’ residence in this country. As part of developing our legal programmes, we comment on government documents in our reports and position documents.

In the area of legal advice, we have been following racial discrimination issues in particular over a long period of time. We offer legal advice and legal representation in litigations to racial discrimination victims and NGOs, assist victims in gathering evidence of racial discrimination, e.g. by organising testing experiments, and deposit petitions and recommendations with government bodies through whom we have been actively involved in the drafting of an anti- racial discrimination law. In these efforts, we have been collaborating with other NGOs. As part of our legal programmes focusing on discrimination, we have provided legal advice to several hundred clients.

In 2002 we also launched a programme supporting non-institutional family care through social counselling programmes including legal advice and legal representation for families at risk and children placed in institutional care. For the purposes of this work, we successfully applied for an authorisation to act as a child (social and legal) protection agency. We have now completed a pilot research project on searching out these children, ways of helping parents to resolve their problems related to child-raising, and ways of working with children placed in institutional care and their parents. During the pilot research, counselling and social services were extended to hundreds of children, dozens of families, and dozens of women in prison.

Since the very beginning of our work, we have also been providing legal advice concerning immigrants integration and citizenship issues. Our clients mainly approach us with problems concerning residence requirements on foreign nationals and the conditions for granting Czech citizenship. Again, hundreds of clients benefit from our advice on these issues every year.

At present, we continue our work on programmes aimed at fighting racial discrimination and offer advice on issues of citizenship and residence requirements on foreign nationals, as well as develop programmes for families and children at risk.

In implementing our programmes, we have long worked together with NGOs that deal with issues of seclusion or segregation and discrimination of groups at risk, and with government and local government bodies.

In addition, we conduct analyses and monitoring of selected issues in the criminal justice system and initiate systemic change. In 2002, we expanded this work to cover the situation of sexual deviates and protective in-patient treatment facilities.



III. MISSION

● ● ● STATEMENT

Our Counselling Centre is an NGO registered as a civic association (unincorporated association). Our main objectives are:

- to raise proposals concerning the harmonisation of Czech legislation with conventions on human rights and fundamental freedoms ratified by the Czech Republic;
- to facilitate dialogue and collaboration between the NGO sector and government bodies, with a special focus on the enforcement of human rights and fundamental freedoms in our country;
- to monitor legislative activities of government bodies with a view to fulfilling our country's obligations arising out of ratified conventions on human rights and fundamental freedoms.

We try to achieve our objectives particularly through:

- developing programmes aimed at the integration and development of national minorities and foreigners,
- pointing out instances of discrimination against minorities and proposing systemic solutions, monitoring and analyzing unaddressed problems of those at risk of becoming homeless (people without shelter), and supporting concepts for helping them, offering information and advice to private individuals, NGOs, and state administration officials,
- organising lectures and workshops focusing on current problems in existing legislation,
- promoting all suitable forms of non-institutional family care, with a special view to the Convention on the Rights of the Child,
- monitoring and analyzing levels of respect for civil and human rights, and the impact of valid legislation on the rights persons placed in any facilities where their freedom of movement is restricted (especially, children and youth facilities, prisons and remand prisons, homes for the long-term ill, old people's homes, and psychiatric confinement wards), and has been pro-active in drafting legislation and promoting external audit/control systems,
- fighting for a more open prison system and supports greater use of alternative sentences,
- striving to enhance the legal awareness of the public, and develops legal aid programmes in areas of need so as to contribute to improved levels of enforceability of law in the Czech Republic.



IV. ORGANIZATIONAL STRUCTURE

● ● ● AND STAFF

Chairman: Ladislav Zamboj

Board: Matej Šarközi
Kumar Vishwanathan
Pavla Boučková
Marie Harčárová
Jan Šipoš

Audit committee: Leoš Zima
Jiří Janoušek
Lenka Vtípilová

Foreign consultants committee:

Edwin Rekosh – Public Interest Law Initiative in Transitional Societies,
Columbia University, New York, USA

Ina Zoon – Open Society Institute New York, European Roma Rights
Centre, Madrid, Spain

Zdravka Kalaydieva – Bulgarian Lawyers for Human Rights, Sophia,
Bulgaria

Lilla Farkas – NEKI and Hungarian Helsinki Committee, Hungary

Staff and collaborators:

Pavla Boučková – head of office, lawyer

Barbora Bukovská – lawyer, project coordinator

David Záborský – lawyer, project coordinator

David Strupek – attorney-at-law

Alena Svobodová – social worker, project coordinator

Ladislav Zamboj – social worker

Andrea Gruberová – field worker, office manager

Michal Hubálek – legal assistant

Pavel Čižinský – lawyer, project coordinator

Iva Ptáčnicková – accountant

Marie Švecová – accountant

Petra Broumová – field worker

Eva Holečková – assistant, office administration

Karla Karešová – volunteer

Ram Murali – volunteer (trainee)

Lisia Leon – volunteer (trainee)



V. PROGRAMMES

● ● ● AND PROJECTS

A. PROGRAMME FOR PROTECTION AGAINST RACIAL DISCRIMINATION AND SUPPORT OF EQUALITY

DISCRIMINATION AND PROTECTION OF PERSONAL RIGHTS

As an organisation whose emphasis is on tackling discrimination through recourse, we view discrimination primarily as a violation of the victim's dignity. This is why we have been working to build up an active awareness among the judiciary and the public about the right of victims to compensation for their mental suffering caused by their degradation and violation of their self-esteem by the discriminator.

„Having regard to the level of intensity of the violation of the plaintiff's personal rights, which, seen objectively, was considerable when the plaintiff was discriminated by the defendant's actions, the court of appeal disagrees with the conclusion of the court of first instance that moral satisfaction should sufficiently offset the other than proprietary harm suffered by the plaintiff as a negative consequence of the violation. Contrary to the court of first instance, the court of appeal has therefore concluded, with a view to the circumstances of the case under review, that the conditions for granting financial compensation for other than proprietary loss according to the provisions of Section 13, Subsection 2 of the Civil Code have been met in this case.“

Quoted from a resolution of the High Court of Prague concerning an appeal against the decision on a case for the protection of personal rights, file No. I Co 62/2002-63

Our projects under the legal programme of protection against racial discrimination and support of equality draw mainly on the principles of equal opportunities irrespective of racial or ethnic origin within the scope applied by EU member states with advanced levels of protection against racial discrimination, and particularly, Ireland, the Netherlands, and the U.K. This approach is characterised by emphasising the right of racial discrimination victims to protection against all forms racial discrimination: direct or indirect, harassment, and bullying (persecution). This is why despite the lack of adequate mechanisms for protection against discrimination in the Czech legal environment, we have been positively influencing Czech jurisprudence in the area of civil law instruments for the protection of personal rights. While we make broad use of test cases involving volunteers that are aimed at securing evidence and documenting discriminatory practices, our efforts would never be successful if the broad professional community had a poor understanding of the legal aspects of the European approach to equal opportunities and anti-discrimination. This is why we have been building our network of committed legal counsels and raising awareness among attorneys-at-law (barristers) and judges.

USING THE TEST CASE METHOD

I wanted to visit the disco bar on March 15, 2001, at approximately 10:30 pm. I knew that in the past, its staff had denied entry to members of the Roma ethnic community. I do not deny that I had, in case this situation should be repeated, made plans with other people who would be present to the potential incident, and we were also equipped with a recording device. When I first tried to enter the establishment, I was told by three members of staff that they would not let me in. One of them explained that their employer had prohibited them from allowing Roma inside. Later I came back and the below-mentioned witnesses gave me a dictaphone. I repeatedly tried to enter the disco bar, each time with the same result.

Statement by a volunteer tester

Even when perpetrated in public, discrimination is difficult to prove. This has to do with the moment of surprise or even shock as discrimination usually occurs unexpected. The victim is having a hard time overcoming the degradation that goes hand in hand with discriminati-

on, and will only think of securing evidence or witnesses much later when it is often too late. This is why we use the method of “test cases“ to eliminate the moment of surprise, and, for the first time, give victims a chance to effectively prove discrimination. The test case method helps uncover discriminatory practice. It is based on the assumption that no one is required to give in to a violation, and everyone has the right to fight it.

The test case method stands a good chance of bringing about a real change in the approach to discrimination cases because it is built on the assumption that everyone has the right to use services free of any discrimination, and everyone is therefore free to test at any time whether they can in fact properly access services, as long as the testing involves no trick or ruse. The method, now used in most democratic countries, was originally developed in the United States where its applications are also discussed in an extensive body of court decisions.

RACIAL DISCRIMINATION – MORAL SATISFACTION OR FINANCIAL COMPENSATION?

When somebody pays their fare and they get on a bus or they order a meal in a restaurant, they are effectively using (or trying to use) a publicly available service... if they are banished or arrested because they refused to observe the racial barrier, then they suffered injury regardless of whether they came with the intention to disclose a discriminatory practice or really needed to take the bus or get the meal.

Decision of the U.S. Court of Appeals for the Seventh Circuit re Kyles and Pierce v. J.K. Guardian Security Services, Inc. from 2000

Ten cases for the protection of personal rights linked to our test cases have been filed so far, of which only one has been decided finally and conclusively. The position of our Centre regarding financial compensation has been clear from the very beginning. Our priority objective in filing the cases was to obtain court decisions that would qualify discrimination as a violation of the victim’s dignity, protected by private law. This would also have meant explicit recognition of the victim’s right to stand up to discrimination by securing relevant evidence and bringing their case to court. This would probably never have been achieved had we not claimed financial compensation: where evidence is available that can hardly be questioned, and all that the victim asks is an apology, the counterparty is likely to propose out-of-court settlement. Our volunteers in the test cases knew that they might be subjected to humiliating treatment, sometimes quite brutal perhaps. Theirs was not the widespread attitude of avoidance, but rather they decided to stand up to discriminatory practice. In any event, this is not to say that their feeling of humiliation should have been less intense – in fact, the only difference between unexpected and expected discrimination is the moment of surprise or its absence. Therefore, in each of the cases, our volunteer testers asked for an apology as well as financial compensation.

BEYOND PRIVATE LAW PROTECTION OF PERSONAL RIGHTS: HARASSMENT ON RACIAL GROUNDS

In the left-hand corner of the restaurant, there is – or was at that time – a white statue approx. one meter tall, in Ancient Greek style, which held in its hand a massive baseball bat with the highly visible inscription “GO GET THE ROMA“ showing into the restaurant.

Statement by a volunteer tester

Cases for the protection of personal rights filed in cooperation with our Centre also include cases that go beyond the common understanding of discrimination by Czech courts. The truth is, discrimination victims are much worse affected by discriminatory practices resulting in the creation of an intimidating and degrading environment. While under the EU directive concerning equal treatment irrespective of racial or ethnic origin, such practices can be prosecuted as harassment, the Czech legal system lacks any corresponding mechanism of civil law protection in such cases.

By representing victims of discriminatory harassment before courts, we would like to achieve the issue of Czech court decisions recognising such humiliating and intimidating harassment as a violation of the right to have personal rights protected.

PROJECTS IMPLEMENTED UNDER OUR PROGRAMME OF PROTECTION AGAINST RACIAL DISCRIMINATION AND SUPPORT OF EQUALITY

● ● ● Anti-discrimination litigation project

Implementation period: 1 January 2003 – 31 December 2003
Supported by: The Open Society Institute's Human Rights Advocacy Program, Budapest, contribution: 53,000 USD

The anti-discrimination litigation project strives to eliminate racial discrimination against the Roma minority in the Czech Republic through monitoring, litigation and awareness-raising activities. Within the framework of this project, we have been monitoring various forms of racial discrimination and their impacts on housing, employment and services, and recently also the impacts of segregated housing and a poor hygienic standard of housing on the health of the Roma population. Under this project, too, we represent discrimination victims before courts in defined regions, and we organise awareness-raising and educational events.

● ● ● A chance for equal opportunities

Implementation period: 1 January 2003 – 31 December 2003
Supported by: Civil Society Development Foundation, EU Phare programme 2001, contribution: CZK 2,317,000

This project helps promote the principles of racial anti-discrimination. By representing racial discrimination victims before courts, we help uncover discriminatory practices and build up victims' self-confidence and aspirations. Through direct contribution to the drafting of the relevant law and involvement of the non-governmental and professional sector in the drafting exercise, the project tries to identify the most adequate way of transposing Council Directive 2000/43/EC concerning protection against racial discrimination into the Czech legal system. This key directive imposing duties on member states in the area of protection against discrimination on the grounds of racial and ethnic origin was adopted by the EU Council in 2000. Directive 2000/43/EC sets out a legal framework for protection against racial discrimination in employment, occupation, access to education and vocational training, membership of organisations of workers or employees, access to goods and services including housing, access to health care, social security and social advantages. By explaining the need for, and the objectives and principles of the bill under preparation, the project has opened and developed a debate about the manifestations of discrimination in society, and it has raised levels of awareness about discrimination issues in the professional community and among civic groups. The target groups include racial discrimination victims, the law profession, and civic and interest groups.

● ● ● Equal Rights

Implementation period: 1 October 2001 – 30 September 2002
Supported by: Ford Foundation, New York, contribution: USD 80,000

The goal of this project was to compare the effectiveness of protection of racial discrimination victims' rights under civil law and criminal law. The key question was which of the two was more efficient, and whether they easily complemented each other. At the same time, we continued to provide legal counselling, including representation before courts and drafting of actions and petitions to courts, to victims of discrimination in access to housing, employment and services. The project implementation team also mapped current discrimination practice and acquired new clients through field investigation.

IN the course of the project, it was established that existing forms of criminal law protection were applied only in instances of the most serious forms of discrimination, while civil law protection had poor efficiency levels and was insufficient. These conclusions were used by the project implementation team in writing comments and proposals for the drafting of the anti-discrimination bill. In a case filed by us for the protection of victims of discrimination in services, the court decided, for the first



time, that racial discrimination was so grave a violation of personal rights that in every such case, a decision on other than proprietary harm to the victims need to be taken. Representation before courts was offered to victims of discrimination in housing and services in other cases as well, and dozens of additional test cases were undertaken. Hundreds of clients used our counselling services.

● ● ● **EU Accession: implementing the European directive on equal access irrespective of racial and ethnic origin into the Czech legal system**

Implementation period: 1 May 2001 – 30 April 2002

Supported by: Open Society Fund Prague, contribution: USD 48,000

The aim of this project was to conduct an analysis and formulate recommendations as to whether the European non-discrimination directive would be better transposed through amendments to several laws or through introducing a single piece of legislation. In formulating their recommendations, the project implementing team worked together with officers from a twinning project that ran at the Human Rights Department of the Office of the Government of the Czech Republic until last May. In parallel, the project tested possibilities of protection against racial discrimination through existing protective remedies, and legal advice and representation was offered to discrimination victims.

As a result of the recommendations formulated jointly with the twinning project and the Human Rights Department of the Office of the Government of the Czech Republic, the Government decided to draft a new anti-discrimination law implementing the directives concerning equal treatment irrespective of gender and racial or ethnic origin. In another part of the project, members of the implementation team contributed their proposals to the first draft document on the substance of the new law.

Under the practice-oriented section of the project, legal advice was provided to discrimination victims, test experiments were carried out, and in justified cases, and victims were represented in court by the project's attorney. The project thus extended legal advice to hundreds of clients. Main activities included the drafting of actions, appeals and other petitions to court, representation before courts, and solving related problems with respect to government and local government bodies.

● ● ● **Joint litigation project of our Counselling Centre and the European Roma Rights Center**

Implementation period: 1 July 2001 – 30 June 2002

Supported by: European Roma Rights Center, Budapest,
contribution: USD 29,950

Under this project, ten cases for the protection of personal rights were filed in relation to discrimination in services and housing.

B. PROGRAMME OF LEGAL AND SOCIAL SERVICES FOR CHILDREN AND PARENTS AT RISK

According to Ministry of Health, Ministry of Education, Youth and Physical Education, and Ministry of Labour and Social Affairs data, about twenty thousand children live in institutional care facilities. We have found that hundreds of other children are at risk of being placed in institutional care not because their biological parents no longer care for them, but because their family has suffered a social decline, and as a result, it is unable to carry out its basic functions. The first sign of social decline is job loss, or long-term unemployment, followed by a loss of housing or the family's housing standards falling to poor hygienic and technical levels. Placing the child in institutional care is often used by the social worker as the "solution" to their inability or lack of possibility to respond adequately to the problems of socially weak families. When children are taken away from their families, this causes emotional stress to them and their parents, and a disruption of the relationship between the family and society at large. While the child is staying in institutional care, there is high risk that relations-

hips inside the family might collapse, and the parents are potentially faced with further social decline due to their resignation and loss of aspirations.

In most cases, an intervention so drastic and cruel as taking the child away is not at all necessary. The negative impacts of social decline can be compensated, and the basic function of the family, namely to bring about children and take care of them, can be regenerated or maintained. We therefore use social services as a tool for equalising opportunities for socially weak families to overcome the negative impacts of social exclusion on their family life. While they are receiving our services, the families are our partners. It is them who play a key role in the effort to prevent their children from being taken away, or to gain them back.

We apply the quality standards and the typology of social services elaborated by the Ministry of Labour and Social Affairs under their social services development programme. In addition, we are testing the possibilities for creating additional types of social services that might assist families.

PROJECTS IMPLEMENTED UNDER OUR PROGRAMME OF LEGAL AND SOCIAL SERVICES FOR CHILDREN AND PARENTS AT RISK

●●● Children and parents: Bringing the child back into the family

Implementation period: 1 January 2003 – 31 December 2003

Supported by: Civil Society Development Foundation, Prague, from the EU Phare programme 2001, contribution: CZK 259,434, and the Ministry of Labour and Social Affairs, contribution: CZK 800,000

Children and parents: Bringing the child back into the family is a one-year project aimed at the rehabilitation of families whose children have been placed in substitute care facilities and families with children at risk of such placement. Through involving a comprehensive range of social services, and particularly, assistance, drafting and implementation of individual rehabilitation plans and providing legal and social advice, the project works towards preventing and removing the consequences of social exclusion, promotes self-sufficiency and protection of the socially weak against violation of their civil rights, supports bringing up children in their natural family environment and strengthens protection against the consequences of living in a family unable to fulfil its natural functions or in the artificial environment of institutions. The goal of the project is to bring down the numbers of children placed in substitute care facilities because of their family's poor functioning or social problems, and enables children placed in institutions to return into their home environment inside their original family. Target groups include children at risk of being placed or already placed in substitute care facilities, and their parents.

●●● Bringing the child back to the family – 2001/2002

Implementation period: 1 April 2002 – 31 March 2003

Supported by: Tereza Maxova Foundation, contribution: CZK 211,428

The goal of this project was to search out families who wanted to keep contact with or have back their children detained in special (medical) care institutions, and families with children at risk of being detained there and the parents wanting to take care of them. As part of this project, we carried out basic research which mapped out the numbers of children that had been taken away, on what grounds other than torture, abuse or other maltreatment, and the procedures that this involved. Legal and social counselling and social services were also provided under this project. We found that children were increasingly being taken away from their families and placed in institutional care facilities on the grounds of unsecured housing; problematic communication between their family and their school and government or local government bodies; the parents being detained or sent off to prison; or their parents being minors; while no alternative solutions to these problems were being considered or applied.. Families were unable to get their children back even after their situation has consolidated, usually because they lacked the necessary abilities and knowledge for dealing with government and local government bodies and courts. Provision of social services and legal advice worked well in addressing these issues.

C. PROGRAMME OF SYSTEMIC CHANGE IN THE ORGANISATION OF CUSTODY, PRISON AND OTHER CONFINEMENT FACILITIES

„...The procedural rules for adopting a decision to take a person into banishment custody had been violated... in conformity with...Article 5, para 3 of the European Convention for the protection of human rights and fundamental freedoms, the court of first instance should have heard the convicted person properly before deciding on banishment custody in order to clarify whether the fear that the convicted might hide or otherwise obstruct execution of the sentence of banishment was justified, and whether custody could be replaced by any other institutions envisaged by law...moreover, the convicted man's right to defence was violated by the court of first instance hearing the case without allowing him to select his defending counsel or appointing a counsel to him.“
(From a Municipal Court of Prague resolution concerning a complaint by the convicted R.S. against a lower-instance court decision remanding him into banishment custody)

Under this programme, we systemically monitor and analyse selected issues in the Czech Republic's criminal justice system, and particularly, issues of serving the life sentence, pregnant women in remand prisons, and banishment custody. In this connection, we have also carried out systematic monitoring of the conditions of imprisonment and detention in all Czech prisons, and we commented on proposals of the Prisons Service of the Czech Republic during the drafting of their life sentence policy. In banishment custody cases, we initiated court decisions on whether the on-going practice of not hearing the convicted when remanding them into banishment custody and the long stays in banishment custody were constitutional. Since 2002, activities have been added under this programme which are aimed at the overall humanisation of protective in-patient treatment facilities, and particularly sexological wards. We have tried to help set up a legal framework in which the rights and duties of patients and medical practitioners would be defined in a special law (or, possibly, initiate the introduction of a Mental Health Act modelled e.g. on the Polish example). The reason for this is partly that legislation governing this sector is often outdated and incomplete, and in practice, secondary legislation or methodological guidelines are followed. We want to exert positive influence so as to increase the share of those who undergo protective treatment already in prison, and promote the practice of imposing, wherever appropriate, either an unconditional sentence of imprisonment combined with protective treatment in prison, or alternatively, only a protective measure for a definite period. We believe that thanks to our effort in this field, not only will instances of possible degrading treatment in these facilities be prevented, but also protection of the public against particularly dangerous sexual deviates and pathological aggressors will improve. With that aim in mind, we have initiated the introduction of new types of protective measures to be administered in special facilities secured through technical and building adjustments against escape, and the introduction of new types of protective measures also for out-patient forms of protective treatment.

PROJECTS IMPLEMENTED UNDER OUR PROGRAMME OF SYSTEMIC CHANGE IN THE ORGANISATION OF DETENTION, PRISON AND OTHER CONFINEMENT FACILITIES

●●● **Protective in-patient treatment of sexual deviates**

Implementation period: 1 October 2002 – 31 March 2003

Supported by: The Kingdom of Netherlands Embassy, MATRA programme, contribution: CZK 129,600

The aim of this project was to improve the overall effectiveness of protective in-patient sexological treatment and provide treatment in a legal environment that clearly defines the rights and duties of patients and medical staff, and, at the same time, improves patients' motivation for treatment and better protects the public against dangerous sexual deviates. As part of the project, we conducted a detailed analysis of the current legal situation in protective in-patient sexological treatment, including laws and regulations as well as methodological guidelines which are not generally binding legislation. We also carried out detailed surveys in protective in-patient sexological treatment facilities using structured questionnaires (one for patients who have been ordered into treatment, and one for the facilities' staff), and analysed and assessed their internal rules (and other internal guidelines). The results of our rese-

arch were presented in the form of a study containing also proposals for concrete systemic measures. This project also initiated the setting up of an expert advisory group who attempted to draft a proposal for legislative changes (including in the form of a legislative intent or a draft law reduced to sections), and might recommend additional measures to improve this kind of treatment in the future.

●●● Implementing human rights standards in the criminal justice system

Implementation period: 2001 - 2002

Supported by: Penal Reform International, contribution: CZK 181,584

This project monitored compliance with human rights standards in remand prisons and prison facilities throughout the Czech Republic, in police cells and rehabilitation centres for youth offenders. In addition, it focused on issues of banishment custody, and the situation of lifers and pregnant women in detention. It also examined the consequences of the lack of an independent body that would handle complaints about prison conditions from the convicted and accused, and advocated its introduction.

D. PROGRAMME FOR CITIZENSHIP AND ALIENS' RIGHTS

OPTING FOR CZECH CITIZENSHIP

As an organisation that supported the amendment of the Czech Citizenship Act in the past, we continue to monitor its application by administrative bodies. The rights of ex-Czechoslovak citizens under the amended provisions of the Citizenship Act, and particularly, the right to opt for Czech citizenship and access to that citizenship remain as key issues for us.

As regards my working and living in the territory of the Czech Republic, I proposed that several witnesses be heard. It was only in the course of the proceedings that I found out that the company I had worked for had failed to properly register me as their employee with the relevant bodies. The witnesses confirmed that I had worked for the company in the period in question, and that I must have been living in the Czech Republic at that time if I was continuously working for the company. One witness could not remember me, but he did recall that my father had worked for the same business, and thus his statement also supports my assertion because all the other statements have shown that I lived and worked together with my father. The owner of the business then denied in his written statement that I had worked for him. The tenants from the building owned by his company all remembered me working for him and living in that building but because a long time has elapsed since then, they were unable to recall the time or length of my stay there.
(Statement by a claimant whose opting for Czech citizenship was rejected by administrative authorities)

After the Czech Citizenship Act was amended, there remained a serious problem with the situation of those ex-Czechoslovak nationals who had been living in the territory of the Czech Republic since the collapse of the federation, but were never registered there as permanent residents. When they approach the authorities, these people are often simply told that they are “not entitled”, with no one ever examining and issuing a decision on their declaration of citizenship. In other cases, their declarations have been dismissed wholesale with the explanation that they have not sufficiently proved their residence in the Czech Republic or that they repeatedly left the country, albeit for very short periods time.

With our support, administrative actions were filed in court against many of the negative decisions by the authorities. A few cases have already been decided, all of them in favour of our clients. The High Court of Prague (7A112/2000-27) and the Regional Court of Ostrava (22Ca 407/2001-18) were in agreement when they stressed in their decisions that a person's permanent residence was where they had their family, where they lived, worked, managed property and abided with the intention to reside there permanently. Both courts also pointed out that in cases where it was necessary to determine whether the plaintiff effectively lived in the territory of the Czech Republic on a permanent basis without being registered there as a permanent resident, evidence proceedings and the use evidence needed to be adjusted, and in the future, the facts of a case should be proven not only with documentary but also other types of evidence. The courts reproached the authorities for not having observed the difference between persons registered as permanent residents in the territory of the Czech Republic and those residing in the country on a permanent basis without getting registered. On top of that, the Regional Court of Ostrava found quite unacceptable the view of the

defendant authority that the Citizenship Act allowed for no interruption of the citizen's stay, not even for a single day – this would effectively amount to a violation of one of the fundamental human rights, and namely, the right to freedom of movement, which is enshrined in the Charter of Fundamental Rights and Freedoms.

In implementing this programme, we rely on our own resources, and particularly the volunteer work of our staff.

PROJECTS IMPLEMENTED UNDER OUR PROGRAMME FOR CITIZENSHIP AND ALIENS' RIGHTS

●●● Citizenship

Implementation period: ongoing since 1996

Supported by: our own resources, volunteer work of our staff

Legal advice and legal aid is provided through this project to applicants for Czech citizenship or permanent residence in the Czech Republic or those who have problems legalising their stay. Counselling is available in one-on-one sessions at our office, over the phone or by e-mail.

●●● Resident aliens: reasons, motivations, regimes

Implementation period: 1 October 2002 – 31 July 2003

Supported by: Open Society Fund Prague, contribution CZK 351,000

The project originated on the basis of the study "International migration and the Czech Republic" which mapped the current situation in migration in the Czech Republic from the point of view of the concerned governmental and non-governmental institutions and the academic community. It is a joint project of the Multicultural Centre Prague, the benevolent society People in Need, and our Centre. Multicultural Centre Prague developed the internet portal Migration Online (www.migraceonline.cz), intended to provide comprehensive information service over the internet for organisations dealing with migration; currently, legislative documents and non-legislative texts, expert studies, and data bases of research efforts and NGO projects carried out in the Czech Republic in the area of migration are published on the server. People in Need, associated with the public TV service Czech Television, has implemented the media part of the programme, aimed at providing objective information in the media about the phenomenon of migration in the Czech, European and global context, and explaining its consequences for Europe and the Czech Republic. Our Centre has elaborated a comparative legal study in an attempt to improve the legal status of aliens in the Czech Republic through relevant laws and regulations. An expert team reviewed legislation concerning the rights of aliens in other European countries, and searched out liberal and positive concepts of aliens' rights that the Czech Republic might draw on. The resulting document, A legal comparative study produced under the Migration programme, examines which laws and regulations stipulate different rights and duties for foreigners than for Czech citizens, poses the question of whether such differences are justified or discriminatory, and compares these pieces of legislation concerning aliens' rights with similar ones in other European countries. The study serves as a source of inspiration for the NGO sector.

E. FREE LEGAL AID PROGRAMME

At present, Czech legislation and practice fail to provide efficient access to legal services to people in need. Legislation governing free legal aid and its implementation do not guarantee equality before courts as enshrined in the Charter of Fundamental Rights and Freedoms and the International Convention for the protection of human rights. Inaccessibility of legal aid means that many people in the Czech Republic are unable to defend themselves in criminal proceedings or to enforce their rights in civil or administrative proceedings, or to defend their human rights in hearings before the Constitutional Court. Other procedural problems that people without means are faced with include the cost of representation, high court fees and the danger of having

to reimburse the expenses to the counterparty if they lose the case. Under the existing framework, people in need are thus often denied access to justice, and the impact is asymmetrically adverse on vulnerable groups such as ethnic minorities, women, prisoners and pensioners. Legislation in this area is extremely vague: although the Charter of Fundamental Rights and Freedoms guarantees the rights to legal aid in hearings before courts and other bodies, from the very beginning of the trial, this guarantee has not been sufficiently incorporated in implementing laws and regulations. Existing provisions in relevant laws are rare and vague, and in practice they cannot ensure effective access to justice for the unpropertied. The Czech Republic does not even set aside specific budget allocations for legal aid, and the concerned ministries or courts do not even monitor the numbers of applicants for free legal aid nor the numbers of assigned counsels, and lacks any adequate mechanism for assessing the quality of defence in assigned cases.

We have tried to fill in this gap, define and present problems in the existing system, propose the inevitable changes, and advocate reform measures. Through this particular programme, we try to provide free legal aid for people without means, we offer counselling to NGOs, community centre clients, Roma advisors and their clients, and we often arrange free representation in courts. We have also been pushing for legislative change in this area, e.g. through commenting on related draft laws and calling for the inevitable reform.

PROJECTS IMPLEMENTED UNDER OUR PROGRAMME OF FREE LEGAL AID

●●● Access to justice and free legal aid

Implementation period: 1 August 2003 – 31 March 2005

Supported by: Trust for Civil Society in Central and Eastern Europe,
contribution: CZK 700,000

Our key aim in this project is to influence optimum choice of the legislative solution to regulate free legal aid in the Czech Republic in line with the principles enshrined in international conventions, recommendations and constitutional principles. The project documents imperfections in the current system of free legal aid in the areas of criminal, civil and administrative law and in hearings before the Constitutional Court with a view to the practical problems of accessibility of legal aid, quality of the representation provided, and insufficient funding including lack of specific budget chapters under individual ministries and courts. We have been trying to set up a task group (including representatives from ministries, courts, the Bar, NGO sector and independent experts) that would work out a clear and comprehensive legislative framework to ensure the right to free legal aid and the right to access to justice.

●●● Administration of free legal aid

Implementation period: 2001 – 2002

Supported by: Open Society Fund Prague

This project focused on arranging legal aid for members of the Roma community who could not afford legal representation. Thanks to this project, we addressed the cases of one hundred clients in total. Legal representation by an attorney was arranged for about one third of them. During the project, we developed excellent collaboration with several attorneys from Prague but also, for example, Usti and Labem and Ostrava. We were able to deal with a majority of the cases directly at our Centre. Often all that was needed was to analyse the case, and on several occasions, we were able to resolve the dispute through conciliation. As regards case structure, a majority were civil suits, which mainly concerned housing issues – evictions from rented flats, followed by criminal law cases with our clients sometimes in the position of the aggrieved party (suspected racially motivated crimes), and at other times, the accused. The latter cases were mainly due to errors of the investigating, prosecuting or adjudicating bodies, and we also came across convictions for behaviour whose level of danger to society was very low and the acts should therefore have been classified as administrative delicts. Another group of cases were those where the court had adjudicated without being aware of all the facts relevant to their decision. We also dealt with several cases in the areas of administrative law (mainly citizenship issues), labour law and family law. Of crucial importance in all these cases was available of free legal aid to the accused were able to get free legal aid through our Centre.

VI. LEGISLATIVE ACTIVITY

● ● ● AND COMMUNICATION

COMMUNICATION: CREATING MECHANISMS FOR COOPERATION

As an organisation active in the area of human rights protection, we are aware of the need to keep improving the effectiveness of our work by sharing knowledge and information and cooperating with other groups. This is why support of and engagement in joint efforts of non-governmental and governmental mechanisms and informal groups forms integral part of our work.

In the interest of efficient application and sharing of knowledge and experience in a committed group of experts, it is important that within the framework of NGO projects, non-governmental human right activists should meet with lawyers, judges, social workers and Roma advisers. This is why we take part in the activities of other human rights NGOs, and on the other hand, we apply the knowledge and experience of collaborating groups in our own projects.

In the interest of effective promotion of more general outputs from NGO activities, members of our group participate in the commenting mechanisms on government reports on compliance with international conventions, and in the work of committees set up by the governmental Council for Human Rights where fruitful cooperation leads to joint proposals from NGO activists, experts and government officials.

By providing our comments and positions on government documents, we are able to complement the official view of the human rights situation in the Czech Republic, adding the opposite perspective to reflect issues that we feel are urgent or poorly addressed. Our Centre has contributed to the drafting of the new anti-discrimination law that will implement the requirements of EU Council Directive 2000/43/EC on equal treatment irrespective of racial or ethnic origin, and we provided our comments e.g. on the government bill on rehabilitation of minors in institutions, protective youth and young offenders rehabilitation and preventive education in school facilities; the amendment to the Rules of Criminal Procedure, the Criminal Code, and other laws and documents in areas of our long-standing interest.

We also write shadow reports for international organisations on the fulfilment of obligations arising out of international conventions for the protection of human rights, such as the International Covenant on Civil and Political Rights, the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, International Convention on the Elimination of All Forms of Racial Discrimination, etc.



VII. SELECTED CASES



Our Counselling Centre initiates legal proceedings in various areas. We try to prepare and provide representation in cases leading to interpretation of equal treatment law and a broadening of its applications. This section of our annual report offers descriptions of selected cases that impact on the overall situation in the respective area and attempt to add visibility to important problems that transcend the interests of individual clients or communities and can serve as a source of inspiration for other groups and individuals.

HOUSING

••• The case of the lost lease contracts

It was objected against judgments of recognition that the fiction of recognition had not occurred since the pre-conditions for procedure according to Section 114b, Subsection 1 of the Rules of Civil Procedure had not been met; the judgment was contradictory to substantive law. The court should have considered whether it might be appropriate to proceed according to Section 30, Subsection 2 of Civil Procedure Code (CPC) when the defendants' actions showed beyond any doubt that without legal aid, they were unable to take part in the proceedings. The court is not allowed to use procedure according to Section 114b, Subsection 1 of RCP based on a petition containing hardly any allegations of facts, but only a legal opinion to the effect that the concerned flat was used without legal title. Therefore it would have been appropriate for the court to call on the plaintiff to rectify these defects in their petition, which never happened. The court thus had no ascertained facts available from which it could have derived that the nature of the matter or the circumstances of the case justified procedure according to Section 114b Subsection 1 of RCP.

During 1993, city L. allocated a large number of flats on K. Street. They were fourth category flats with only very basic equipment, which are in very poor technical condition today as a result of long neglected maintenance. Already in 1993, a majority of these flats were inhabited by members of the Roma community. The tenants had probably been given no lease contracts to sign. Most of them were told they would receive the contracts by post later. Only the flat keys and the flat were handed over, and the right to use the flat was never questioned. The situation changed in 2000-2003. At that time, city L. started to file actions for eviction against individual tenants on the grounds that the flats were being used without legal title. The city did not explain this claim any further in its petitions.

Throughout this whole time, however, city L. treated the flat users as tenants. For example, in 1998, Mr. and Mrs. T. asked for the permission to expand their flat to include an adjacent room, and their request was approved by the city as long as the couple completed related building adjustments, which they subsequently did. The city billed and collected rent from the tenants. Some tenants continuously upgraded their flats, doing not only minor but also bigger repairs (e.g. windows or floors). On the other hand, the city itself did not even repair the water and WC piping which was out of order even though the tenants had repeatedly notified the problem. It is also true that some families are now in default of their rent payments and have rent arrears. Even after filing the actions in which the city claimed that no rental relationship was involved, it billed a late fee to the tenants. It also systematically used the terms "rent" and "tenants" in its correspondence with all of the concerned families.



In the latter cases, the respondents did not actually recognise the city's claim. After the action for eviction was filed, the court proceeded in all cases according to Section 114b of CPC and set a deadline by which the defendants were asked to respond in writing; where they failed to do so, the court understood that they recognised the claim asserted by city L., and issued a judgment of recognition. A majority of the tenants did not understand letters from the court, they were not represented by an attorney, and they were far from able to estimate the consequences of their inaction. This was clearly shown in cases where tenants sent to the court their statements about issues that were irrelevant to the dispute, and thus they obviously did not understand the proceedings at all.

Our Counselling Centre became involved only in 2003 when many proceedings concerning the actions for eviction had already been initiated. In one case, the dispute had already been terminated with a final and conclusive decision on the duty to evict the flat, and another case had ended in an execution. In addition to these, two judgments of recognition had been issued. With our active involvement and legal aid from us including representation by an attorney, seven legal actions concerning the inhabitants on K. Street are currently under way, involving exactly the same factual circumstances. This also shows that allocating the flats without contracts of lease was no odd mistake, but rather an entirely systematic approach. In cases where proceedings concerning actions for eviction had already been initiated but not yet adjudicated, the defendants objected that a landlord-tenant relationship had been created, whether orally or impliedly, in accordance with a law effective before 1 January 1995. In the first of the newly tried cases, these arguments were used successfully by defendant D.H., and the court of first instance dismissed city L's case against her, reasoning that her tenancy had originated by implication.

Where final and conclusive judgments of eviction had been effective for a longer time or where an execution had already taken place, we were usually unable to influence the case any more. But appeals were lodged against two judgments of recognition with the tenant-respondents objecting that no fiction of recognition had occurred because the pre-conditions for proceeding in accordance with Section 114b, Subsection 1 of CPC had not been met; they further objected that the judgment was contradictory to substantive law.

Moreover, it was pointed out that the court should have considered whether procedure according to Section 30, Subsection 2 of CPC might have been appropriate when the defendants' approach showed beyond any doubt that they were not ready to participate in the proceedings without legal aid. Furthermore, it was mainly objected that the court was not allowed to use procedure according to Section 114b, Subsection 1 of CPC on the basis of a very brief petitions containing hardly any allegations of facts. All they comprised was a legal opinion to the effect that the concerned flats were used without legal title, and no further details were provided about the facts which had led the city to adopt their view. Therefore it would have been appropriate for the court to call on the plaintiff to rectify these defects in their petition, which never happened. The court thus had no ascertained facts available from which it could have derived that the nature of the matter or the circumstances of the case justified procedure according to Section 114b Subsection 1 of CPC. Besides, the court was not allowed to completely disregard the potential existence of a landlord-tenant relationship established impliedly or orally, and if such a relationship had existed, it would have been impossible for the court to issue any judgment imposing eviction of the flats even if the fiction of recognition had occurred because fiction relates only to allegations of facts, but not the legal assessment of a matter.

These cases have not been closed yet.

RACIAL DISCRIMINATION

●●● The case of the baseball bat

In June 2001, a client approached us stating that when he visited a restaurant in town H., he saw a statue inside that was holding a baseball bat with the inscription "Go get the Roma". The client was shocked by this and asked us whether steps could be taken to have the "decoration" removed from the establishment. Subsequently, our workers, joined by our Roma

Courts of both instances arrived at the conclusion that the statue holding a baseball bat with the inscription “Go get the Roma...” had merely evoked a negative individual response in the plaintiff, but his personal rights had not been encroached upon. The courts admitted that baseball bats were often used by people with racist tendencies as a weapon of attack against the Roma, and did not deny that this was a lethal weapon. They pointed out that the writing on the bat was not related to any concrete individual, and they believed that the inscription, objectively speaking, could not have affected the plaintiff’s personal rights. In the view of the courts, the claimant’s subjective feeling that his personal rights had been violated was irrelevant to the legal assessment of the case.

volunteer F.K., carried out an investigation in the restaurant. They were adequately equipped for documenting this.

After their arrival, they indeed saw a white statue in the corner of the restaurant that was approx. one meter high and represented an Ancient Greek god. In its hand it held a baseball bat that was showing onto the guest area and was inscribed with the clearly visible words “GO GET THE ROMA“. Our team ordered some refreshments the restaurant, as they had intended to do, and after documenting the scene, they called the police and filed a criminal information. The police who came in made it clear that they thought the whole matter to be a waste of time; they had known about the bat for several years, and it had bothered no one so far. On a similar note, one of the women guests kept calling out to the police officer who was talking to a member of our team: “Why don’t you just hit him with it on the head!” When our worker protested, the policeman told him to keep quiet since no one was allowed to disturb him while he was working.

In July 2001, having concluded that no offence had been committed, the police body referred the case to the Municipal Authority of Z. for hearing as an administrative infraction. After several urgent letters from us, the Municipal Authority of Z. terminated the proceedings with the explanation that the actions constituting the alleged infraction never happened. At the same time, the Municipal Authority of Z. ordered our worker who had first reported the incident to cover the proceedings cost of CZK 500. An appeal was filed. Still in July, we repeatedly complained to relevant superior bodies about the police team’s behaviour. The Police Presidium considered our complaint unfounded. Another complaint concerning the legal classification of the actions in question was filed with the District Prosecuting Attorney’s Office at K. The District Prosecuting Attorney agreed with the classification by the police body, but raised objections against the decision of the infraction committee of the Municipal Authority of Z. He also stated that he was not allowed to interfere with the powers of a body responsible for deciding infractions. The Regional Prosecuting Attorney’s Office in P. also said that at that stage, it was out of question that the matter should fall within their subject matter jurisdiction. In July 2001, F.K. filed a petition for the protection of his personal rights against the limited trading company B. who owned the concerned establishment. He argued that the company had violated his dignity by their actions when it was suggested to him as a guest that he was not welcome in their public restaurant, and that he as an individual was worthy only of having violence committed against him. Under those circumstances, it was unthinkable for him to stay in the restaurant or to make use of its services any further. Before arriving there, he had been aware of what he might expect; nevertheless, he went in with the intention to actually enjoy the restaurant’s services. No one must be forced to limit their choice of restaurant only because they may assume a certain likelihood of exposure to degrading and undignified treatment. The intensity of the encroachment was not in any way reduced by the fact that the aggrieved party did not try to avoid it for it would be unjust to expect him to do so. On the contrary, he had every right to stand up to the infringement in its full scope. On these grounds, he claimed an apology and CZK 300,000 in compensation for the other than proprietary harm he had suffered.

In their statement, the respondent company said that they had not intended to bring about such consequences. They believed the statue was a joke. They further objected that F.K. had been prepared for the violation of his personal rights, and visited their establishment in order to secure evidence for a potential litigation. In his follow-up statement, F.K. rejected the defendant’s claim about a mere joke, and mentioned attacks against the Roma using baseball bats. One such attack in Zdar and Sazavou in 1995 resulted in the victim’s death, while another attack in Jesenik in 1999 left the victim seriously wounded. The plaintiff argued that exhibiting a baseball bat with the inscription “Go get the Roma“



would have the same defamatory and degrading effect on any ordinary Roma person. As regards the undisputable fact that his visit to the restaurant had been pre-meditated, F.K. argued that a victim had the right of access to court, which covered not only the formal aspects, but also an effective chance for the victim to present and prove their case. Where discrimination occurred unexpectedly, it is basically impossible to obtain the necessary evidence. An opposing view would lead to the absurd conclusion that if F.K. could have previewed the violation of his integral personal rights, he should not have entered the restaurant, or else he was to blame and had no right to enforce his rights. The appropriate conclusion is the exact opposite. It is the respondent company who acted unlawfully, whilst the petitioner, who has the right to have his personal rights protected, was exercising his right to free movement. He is entitled to test whether his rights will be respected, and if he decides to do so, this is without prejudice to the unlawfulness of the defendant's actions.

The Regional Court of P. rejected F.K.'s petition. On the one hand, the court said that it did not question the claimant's right to test the response of people around him, and should his personal rights be infringed upon in the process, a simultaneous violation of his rights protected under Section 11 of the Civil Code could not be ruled out either. In the view of the judge, the statue with a baseball bat bearing the inscription "Go get the Roma" had merely evoked in the plaintiff a negative individual response but did not amount to encroachment upon his personal rights. The judge admitted that baseball bats were often used by people with racist tendencies as weapons of attack against the Roma, and he did not rule out that they could even be lethal weapons. Yet he could not see any violation of the plaintiff's personal rights in this case.

F.K. filed a timely appeal against the latter decision, arguing that the considerations which had led the court to decide about non-violation of his personal rights had not been made sufficiently clear in their decision, and he argued that if the court failed to grant him protection against such infringement, he would be denied justice. The High Court of P. upheld the decision of the court of first instance, arguing that the inscription on the baseball bat was not related to any concrete individual, and therefore, objectively speaking, could not have affected the personal rights of the petitioner. In light of Section 13 of the Civil Code, stipulating an objective perspective as a prerequisite for any liability in civil law, the court of appeal held the view that the claimant's subjective perception of infringement of his personal rights was irrelevant to the legal assessment of the case. F.K. applied for an appellate review of this decision. The case has not been closed yet.

●●● The case of disco club

An infringement aimed against a person's dignity, which is protected under Article 10 of the Charter of Fundamental Rights and Freedoms, is in itself objectively capable of affecting that person's dignity to a considerable degree. With regard to the considerable intensity of the infringement, when the respondent company discriminated against the plaintiff through their actions, the court of appeal did not uphold the conclusion of the court of first instance that moral satisfaction sufficiently offset the other than proprietary harm.

Already since 2001, our Centre has been carrying out independent investigations in establishments offering public services, such as restaurants, pubs, bars and disco clubs. These so-called test experiments have been conducted in a number of towns including K. There we organised them because our Roma clients complained to us that the local disco bars denied entry to members of the Roma community. An investigation was also conducted, in cooperation with our Roma volunteer J. K., at one the disco bar in K. During that investigation, J.K., a Roma, first tried to enter the establishment on his own. He was told by three members of staff that they would not let him inside because the keeper had issued a Roma ban. J.K. then went back to our workers who participated in the exercise, got a dictaphone from them, and repeatedly tried to enter the bar, each time with the same result. After this three workers from our Centre asked if they could get in and were answered in the affirmative – it was open and not yet fully booked. When they enquired why J.K. had been denied entry, they were again told about the owner's Roma visitor ban. The alleged reason for this was an unspecified fight between the Roma and skinheads which had suppo-



sedly occurred there in the past. It was said the disco was a “private club“, and it was at the keeper’s discretion to decide whom to let in.

Other guests, however, were allowed inside once they paid their ticket; they were never asked to show any membership card, and our three workers were treated in the same way. A later check in the Companies’ Register showed that the company which kept the disco bar did not have “club management“ entered as their purpose of business, but only organisation of cultural shows and dances and management of entertainment facilities, i.e. acting as a provider of publicly available services regulated by the Consumer Protection Act.

While they were at the bar, our workers called in the Police of the Czech Republic. The staff repeated before the police what they had said earlier, i.e. that they had been banned by the keeper from letting in people of Roma origin. The police wrote a report on the incident. (The case was later forwarded to a body responsible for hearing administrative infractions.)

J.K. filed a petition for the protection of his personal rights against the disco bar keepers, arguing that discrimination in itself always caused an infringement of personal rights; besides, the staff behaved in a way that also violated his right to have his dignity protected. He had been degraded and offended by the staff’s behaviour because they had effectively labelled him as a person who unlike most other people was unworthy of service and whose presence at the disco bar was a nuisance to others. He inferred from this that the infringement had considerably reduced his dignity, and apart from an apology, he claimed CZK 75,000 from the respondent company in compensation for his other-than-proprietary loss.

In February 2002, the Regional Court of P. accommodated J.K.’s petition on the count of the respondent’s duty to apologize; on the other hand, the court dismissed his claim for financial compensation for other than proprietary loss, and ordered the defendant to reimburse J.K. for the cost of the proceedings. The court of first instance referred to documents concerning a disciplinary procedure against the concerned staff that had been produced by the defendant; the court assessed this was a clear indication of the company’s attitude to their staff’s behaviour; it thought moral satisfaction sufficient; and it held that the court decision itself gave additional satisfaction to the plaintiff.

J.K. appealed against the court of first instance decision, arguing that the court was wrong in its assessment of the criteria for granting financial compensation for other than proprietary loss. He also pointed out that how the individuals whose actions were binding on the concerned legal entity had dealt with each other was of no relevance whatsoever. He stressed that the defendant’s actions accomplished the elements of racial discrimination as J.K. had basically been labelled as a lower-category person and made to feel degraded.

The High Court of P. found the appeal justified, revoked the contested dismissive part of the first-instance decision, and referred the case to the court of first instance. In particular, the High Court inferred that the infringement, aimed against the plaintiff’s dignity, which is protected under Article 10 of the Charter of Fundamental Rights and Freedoms, was in itself objectively capable of affecting his dignity to a considerable degree. With regard to the considerable intensity of the infringement in the given case where the sued company discriminated against the plaintiff through their actions, the court of appeal did not uphold the conclusion of the court of first instance that moral satisfaction sufficiently to offset the other than proprietary harm. The Regional Court of P., bound by the legal opinion of a superior court, in their subsequent decision granted J.K. compensation for his other than proprietary loss in the amount proposed by the petitioner. The respondent has appealed against the decision, and the case is thus remanded to the High Court of P. It has not been closed yet.

● ● ● The Restaurant case

Our Centre has conducted an independent investigation into a complaint of discrimination by a restaurant in the town of K. Complaints from Roma citizens reported that all pubs and restaurants in K. denied service to Roma guests. This was why in March 2001, our workers randomly selected and visited one of the restaurants there, accompanied by five members of the local Roma community: D.G., S.T., J.L., and the couple B. and J. L.

The Roma entered the restaurant first, followed by the white group shortly afterwards. The Roma went to the bar and B.L. asked the waiter whether they would get service. But he said

Beyond any doubt, any discrimination is, objectively speaking, humiliating to the victim. It is a particularly dangerous and socially unacceptable behaviour. In terms of the impact of this violation on personal rights, it is irrelevant whether victims prepare in advance for the potential discriminatory behaviour in order to be able to prove it later, if it has been perpetuated. The sound recording thus obtained was made in premises designated for public use within the framework of business activity, and was not related in any way to the privacy of the concerned persons.

he had to talk to the owner. The Roma therefore sat down at a table and when the waiter called in the owner, B.L. asked him again whether they were going to get any service. The owner responded that he had had problems in his restaurant with Roma diggers from Slovakia, and therefore he would not serve any of the local Roma. J.L. objected that none of the Roma were present had ever been involved in any disturbance there; they were decent people, and the owner personally knew her and her husband. The owner repeated the same arguments, and although he admitted that he knew Mr and Mrs L to be a decent couple, he insisted they would never be served in his restaurant. He said he was planning to convert it into a “private club” (emphasis added by the Counselling Centre) where visitors would be allowed only after showing their membership card. When J.L. expressed his interest in applying for membership, the owner told him that he would see.

The second group entered the restaurant while this discussion was taking place. They sat down and the waiter immediately attended to them. They ordered refreshments and listened together to the discussion between the owner and the Roma who were equipped with a recording device in order to secure evidence of how things really happened. After about ten minutes of fruitless discussion, the Roma got up and left.

Afterwards, our whole team went to the Police district office in K. and reported the incident. The Police investigated the case for suspicion of the crime of inciting national and racial hatred. In June the matter was handed over to the Czech Trade Inspection body in H. for suspicion of an administrative infraction in the entrepreneurial sector as defined in Section 24, Subsection 1 of the Administrative Infractions Act, with reference to Section 6 of the Consumer Protection Act. This classification may seem entirely beside the point as none of the facts of an infraction according to Section 24, Subsection 1 of AIA even remotely resemble the actions which occurred in the restaurant in K., but our complaints about how the Police and the supervising District Prosecuting Attorney handled the case were seen by relevant bodies as unfounded.

However, our Centre had filed a petition concerning this matter with the Czech Trade Inspection already in March 2001. A CTI Roma inspector got served in the restaurant; during her test purchase, she found problems with the billing and volume of her drinks. This was sanctioned with a fine. No consumer discrimination occurred during the inspection.

The group of K. Roma filed a petition for the protection of their personal rights against the restaurant’s owner, P.R. They claimed an apology from the owner to each of them separately, and CZK 10,000 each in compensation for their other than proprietary loss. The respondent offered his apology immediately after the petition was filed. He claimed that the petitioners had been mistaken for other Roma guests who had caused a row in his establishment about two weeks earlier. Otherwise, he said, Roma were commonly attended to in his establishment – even a recent CTI inspection had proved this. He also claimed there was no truth in the allegation that he had banned his staff from serving Roma guests. Under these circumstances, his apology, he said, was quite sufficient compensation to the petitioners for actually having been left without service. The respondent also proposed that evidence by playing the sound recording of the discussion between him and the plaintiffs (recorded with a dictaphone) should not be produced in court. He claimed that this was a recording of a private individual’s speech of personal character, and therefore constituted a violation. In his view, the petitioners’ social reputation had been affected only very slightly by his actions, and the satisfaction offered by him was quite sufficient.

The Regional Court of H. accommodated the petition on all counts. The court found in the first place that the petitioners quite undeniably had been left without service. This constituted a violation of their dignity, unprejudiced in any way by the fact that they had prepared for the visit and intended to record it with a dictaphone. If they had been attended



to, they would have had no reason to record the discussion. The court also pointed out discrepancies in the defendant's explanations of the incident. While in April, the attending waiter who worked for the defendant told the Police that he had immediately told the petitioners that he would not attend on them because there had previously been problems with a similar group in the restaurant, he told the court that if the petitioners had been seated, he would have served them, but they wanted to talk to the owner straight away. The court stated that the defendant cannot use any mistake as his excuse. No woman featured in the previous incident, and the owner himself had previously told the Police that the waiter did not even know the people involved. The proceedings failed to prove that Roma were never served in the restaurant as a matter of principle, but it was unjustifiable to deny the petitioners service simply because they belonged to the same ethnic group as someone else. Such actions were objectively capable of affecting the plaintiffs' dignity to a considerable degree. In this connection, the court again pointed out the section of the sound recording where B.L. said how shameful it was to sit at the table and be left without service, and how ashamed she was going to be to leave. Her husband found it very hard that among the guests who witnessed the scene, there were anglers from the same association that he adhered to. The court therefore granted the claimants compensation for their other than proprietary loss in the amount they had proposed.

The defendant appealed against the decision of the Regional Court of H. to the High Court of P., which upheld the regional court decision in June 2003. It dismissed the argument that unlawfully gained evidence had been used in the proceedings. The recording was made in premises designated for public use within the framework of business activity, and was not related in any way to the privacy of the concerned persons. In addition, the court stated that, objectively seen, any discrimination was, beyond any doubt, humiliating to the victim. It was a particularly dangerous and socially unacceptable behaviour. In terms of the impact of the violation on personal rights, it was irrelevant whether the plaintiffs prepared in advance for the potential discriminatory behaviour in order to be able to prove it later, if it was perpetuated.

● ● ● The case where the burden of proof was shifted

The petitioners rightly claim that they had suffered different treatment (discrimination on the grounds of ethnic origin). This fact is to be regarded in the proceedings as proven until the contrary is proved. If the witness claims that he had a meeting with his business partners in the restaurant after one o'clock, then he would undoubtedly have been there at the time of the incident. If he says that while he was there, the incident was not discussed, he must have been there on a different day. The version about the second witness's booking was not proved for certain either. No one has proved that the guests for whom the tables were allegedly booked ever arrived. The defendant thus failed to establish proof to the contrary.

Based on an agreement with our Center and our workers, a group of Roma inhabitants from N. and surrounding villages, consisting of J.S., M.B, J.G and L.S., visited the restaurant in N. Apart from getting refreshments there, they wanted to test whether the restaurant discriminated against the Roma. After they took their seats and were consistently ignored for some time, they asked the waiters and were told that they were not going to be given any service. Finally, after about twenty minutes, the waiter put the sign "Reservé" ("This table has been booked") in front of them on their table. J.G. and L.S. tried to order drinks at the bar but they were told the owner had ordered no service to them. The reason for this reportedly was the expected football players' visit. Allegedly bad experience with Roma was also mentioned. Our workers together with an official from the social affairs department of the District Authority in N. arrived shortly after the first group and were attended to.

Both groups then jointly called in the police and reported the incident. (The police later forwarded the case to the Municipal Authority of N. for hearing as an administrative infraction.) Later the group of Roma inhabitants of N. also filed a petition for the protection of personal rights against the keeper of the restaurant, K.S., who presented the whole matter as a misunderstanding. He claimed they had been expect-



ting football players, their club officials and supporters at his restaurant. Furthermore, he said that if he had mentioned bad experience with the Roma during his discussion with some of the petitioners at the bar, this was merely his verbal response to the question whether service would be denied to them because they were Roma. They had come to the restaurant with the intention to check out the situation. This was why he believed they had been prepared for the possibility that they might be denied service, and, he thought, they could not have been surprised by what happened, nor could their dignity have been diminished. Besides, previous inspections in his restaurants never identified any problems of this kind.

At the time of the proceedings, a new wording of the Civil Procedure Code had taken effect, introduced by Law No. 151/2002 Coll. and including a new and expanded Section 133a applicable even to proceedings initiated before the effective date of the law. According to the added paragraph 2 of Section 133a, allegations of direct or indirect discrimination on the grounds of racial origin shall be regarded by courts as proven also with respect to service provision until the opposite has been proved in the proceedings.

The court of first instance drew the following conclusions: witness S.G. did not confirm he had made a booking for the football party on that day. They were regularly booked there on Mondays, Wednesdays and Fridays. The incident occurred on a Thursday. Also, footballers never go to the restaurant during lunch hour when they are at work, but rather in the evenings after practice. S.G. claimed that he had booked a table for that time for the purpose of a business meeting with his partners. Witness E.R. who owns the building claimed that he had the right to a table booking under his lease contract, for the purpose of a working meeting with his staff and sub-contractors. Waiter M.M. maintained his original statement that the attending staff had been ordered to reserve three tables for Mr. S.G. In his additional statement, he maintained that he had thought the tables were booked for the footballers. On the other hand, he knew that the football party normally arrived between 6 and 7 pm. The other waiter, V.M. said that both witnesses, S.G. and E.R. had been shown on the bill as those who had made the booking.

The defendant, K.S. said that both R.S. and S.G. had booked tables. For the police record taken on the spot, he said that tables were booked from 2 pm onwards for E.R.'s business. According to the official record taken later on the same day at the police station, the respondent said that he had learned from E.R. before 2 pm that he needed to make a booking for twenty people.

None of the witnesses or parties confirmed that S.G. was seen in the restaurant on the day in question. If he claimed that he had a meeting with his business partners there after 1 pm, then he would certainly have been present during the incident. If he claimed that the incident had not been discussed while he was there, then he must have come on a different day. Therefore the court found the version that the tables had been booked by E.R. to be the more likely one. The waiters' statements were assessed by the court as not particularly reliable; although they did not admit this, their testimony was surely affected by the fact that they worked for the defendant K.S. With regard to the times given in the statements, the petitioners must have arrived in the restaurant between 1 and 1:30 pm. If tables were booked from 2 pm onward, one would have expected the waiters to ask the plaintiffs whether they only wanted to order drinks or lunch as well. How the waiters learned about the booking is irrelevant; the only thing we know for certain is that there is no written proof of the reservation. The very fact of service denial amounted to consumer discrimination. Anyone who would arrive at a restaurant, sit down at an empty table, and then keep being ignored by the staff, and, on top of that, get a "This table has been booked" sign placed in front of them 15 to 20 minutes later would be put off. If the waiters really did not manage to put the signs on the tables in time, they should have explained this to the plaintiffs politely, apologized to them and tried to find them another table.

The version about E.R.'s booking was not proved conclusively either. No one confirmed that the guests for whom the tables had allegedly been booked ever arrived. Based on this, the court concluded that although booked tables were given as the reason for denying service, this has not been proven for certain and beyond any doubt. The petitioners



rightly claim that they had been exposed to different treatment (discrimination on the grounds of ethnic origin). This fact is to be regarded in the proceedings as proven until the opposite has been proved. The defendant failed to establish proof to the contrary. The court therefore ordered the def to send his apology to each of the petitioners and pay each of them the amount of CZK 20 thousand in compensation for their other than proprietary loss. The decision has not yet become fully effective.

●●● The Canteen case

In the petition for protection of personal rights, it is argued that the person with her own trade license and registered shared business premises acted in the given case on behalf of the other businesswoman even though she did not appear to be formally employed by the latter. In the plaintiff's opinion it was therefore irrelevant whether the discriminatory employment policy had been adopted by the businesswoman on whose behalf the concerned person acted or whether this authorised person acted in contravention of the businesswoman's instructions. Where a violation is caused by one who has been used by a legal entity or natural person for the fulfilment of their activities, any civil law sanction shall affect that legal entity or natural person. Procedure in these cases is similar to that in cases of compensation for damage (Section 420, Subsection 2 of the Civil Code).

M.Z. and her child are living in a shelter. At the time of the incident, she was unemployed, registered at the Job Office, and looking for work. In this connection, the Job Office in H. issued a letter of recommendation for her when she applied to Ms. M.R., a business owner, for a job as an unqualified auxiliary worker. On the same day, M.Z. came to M.R.'s business premises and contacted E.P. who was shown on her recommendation card as the contact person. E.P. told her at the very beginning of their conversation, however, that she would not employ a Roma woman. M.Z. tried to convince her and begged her to at least give her a chance. But E.P. insisted on her position, filled in "Roma origin" on the recommendation card as the reason for not recruiting M.Z., stamped and signed the card.

M.Z. was humiliated by this behaviour very much. She approached the Job Office and the Police of the Czech Republic. She decided to inform the press and visited the editorial office of a regional paper. According to the article "Roma origin as the reason for rejection", which was published in that paper in January 2003, E.P. allegedly answered the editor: "We are a private business. We run a canteen for another company. I have nothing against the Roma, but what would our clients think if a Roma woman was giving out lunches? Some Roma are hard workers, but I have not had any of those here. They are happy to have work just for a while. After some time, when they become entitled to social benefits, they usually leave their job."

M.Z. filed a case for the protection of personal rights against the business owner M.R. In this case, E.P. had acted on behalf of M.R. irrespective of the fact that she does not appear to be formally employed by M.R., but rather holds her own trade license featuring the same business premises. It is therefore irrelevant whether the discriminatory employment policy had been adopted by M.R. or whether E.P. had acted in contravention of M.R.'s instructions. Where a violation is caused by one who has been used by a legal entity or natural person for the fulfilment of their activities, any civil law sanction shall affect that legal entity or natural person. Procedure in these cases is similar to that in cases of compensation for damage (Section 420, Subsection 2 of the Civil Code).

While trying to exercise her right to employment, M.Z. was subjected to less favourable different treatment for reason of her ethnic origin. M.Z. argued that the statement which E.P. reportedly offered to the press and used as an explanation for her behaviour toward M.Z., i.e. that the clients would be left with an unfavourable impression if a Roma woman was handing out lunches, was moreover capable of violating M.Z.'s dignity in public. The intensity of the violation depended also on the number of copies of the regional paper that published the statement. The case has not been closed yet.

CITIZENSHIP

●●● The case of determined maternity

Administrative bodies rejected the participants' consenting declarations concerning determination of paternity and insisted on judicial determination of maternity. The participants could not risk that they would remain persons without any identity or personal status. If the legal position held by the administrative body was correct, then only a court decision determining maternity could serve as a basis for further official procedure including some kind of convalidation of paternity as determined through the consenting declarations, and therefore, an urgent legal request for declaratory action exists in this case.

The oldest documents on file at our Centre indicating that the Czech authorities took up the case of the H. family's children date back to 1994. The care for children department (CfCD) of the Metropolitan District Authority of B. requested assistance from the Ministry of Foreign Affairs. According to their data, the family moved to B. in 1990. In 1994, the CfCD found that none of the four children in the family had any identity card or birth certificate. Their parents said that they had all been born in different countries where the parents travelled on false documents under various last names. The parents had not been married then. Each child was entered in a relevant register of births under the last name that the parents were using at the given time. All the children were currently using the father's last name. The children R.H., S.H., R.H. and M.H. were aged 21, 16, 15 and 7, respectively, in 1994. The parents wanted to apply for Czech citizenship or residence permits for their children, but without their birth certificates, this was impossible. CfCD asked for assistance in securing these documents. The matter was referred to Czech missions in the relevant countries, and based on their investigations, it was possible to obtain documents of birth for M.H. and R.H. Those for S.H. and R.H. could not be found.

The mother of the children was a Polish national, while the father was a Czech Republic national. The parents had not opted for Czech citizenship for their children, and CfCD therefore approached the Polish consular office, which in turn responded, however, that it believed the children were not Polish nationals because their documents of birth contained no reference to a Polish ID. In response to a query addressed to them by the CfCD in 1996, the Czech Foreigners Police said that in order to apply for a residence permit, the mother must secure the missing documents for the purposes of permitting their further stay in the country. The Police of the Czech Republic responded to CfCD's enquiry concerning Czech identity cards for the children that those cards would only be issued upon presentation of documents proving their acquisition of Czech citizenship and a Czech birth certificate, provided that the children were registered as permanent residents in B. Of course, the children were not entered in any register of permanent residents.

After several years of further queries and requests for assistance, the matter did not progress at all. In 1999, the Ministry of the Interior of the Czech Republic referred the CfCD in B. once again to the Polish Embassy, which, in the Ministry's view, was supposed to deal with the case.

Our Centre took up the case in 2001 in connection with our programme of assistance in prison and remand facilities. The elder children of the H. family had in the mean time been repeatedly convicted of crimes, and although their identity had not been questioned at all in the criminal proceedings, the prison and remand facilities were then unable to offer them effective assistance with obtaining their proofs of identity.

In November 2001, the children's parents issued their consenting declaration of paternity of these children. Based on this declaration, the children applied for certificates of Czech Republic citizenship, pointing out that at the time when their paternity was determined, the Agreement between the Czechoslovak Socialist Republic and the People's Republic of Poland concerning regulation of dual citizenship issues had already expired after being denounced in May 2001, and acquisition of Czech citizenship was therefore exclusively regulated by law No. 40/1993 Coll. Moreover, they claimed that no law or regulation valid at the time of their birth had acknowledged the Agreement as superior in application to national law, and therefore their acquisition of citizenship had to be assessed even at the time of their

birth under Law No.39/1969 Coll. concerning acquisition of Czech Republic's citizenship. Their applications for the certificates were rejected by the births, marriages and deaths registry of the metropolitan district authority in P, which mainly argued that a consenting declaration of paternity could only be made by the woman who gave birth to these children. The fact that Ms J.H. was their mother had not been documented in any way, however, as the registry held the view that this could not be proved with a consenting declaration of paternity. As for the presented registry documents from other countries, the registry in P. pointed out discrepancies in the parents' and children's names as the parents travelled under different names which appeared in their children's registry documents, as explained above. The children appealed against this decision in time through their legal representative. They mainly argued that the first instance body had drawn an incorrect conclusion in saying that the only proof of maternity could be an entry in the relevant register or some other official document. If this were the case, then any person whose birth was not recorded in any official document would be deprived of the possibility to determine his or her parents. They also claimed that no explicit regulation existed for a petition for determination of maternity, analogous to the petition for determination of paternity. There was mention of the possibility to file a petition under Section 80, letter c) of CPC in contentious maternity cases, but this was appropriate only where there was a dispute between the parties. This was not so in the case under review, and nobody questioned the claim that J.H. was the appellants' mother. However, in July 2002, the children told the registry that they had filed a petition for determination of maternity with the Municipal Court of B. The appellate proceedings were discontinued. In June 2002, the children of Mr. and Mrs. H. lodged a petition for the determination of maternity against their mother J.H. They stated that they were aware of the fact that general declaratory petition proceedings fell into the category of contentious proceedings, with the parties being the plaintiff and the defendant; and that where the parties were in agreement, there was usually a lack of exigent legal request to determine through a declaratory petition. They pointed out, however, that the authorities refused to acknowledge the consenting declarations of the concerned parties and insisted that maternity had to be declared in court. Under those circumstances, the plaintiffs concluded that they could not risk continuing to live as persons without identity and personal status merely because they disagreed with the conclusions of the administrative authority. On the other hand, if that authority's legal standpoint was correct and in the absence of an official document, maternity could only be determined by a court, it followed that only a judicial decision on determination of maternity could serve as the basis for further administrative procedure, including some kind of consolidation of the determination of paternity by previously made consenting declarations. In that case, urgent legal request to determine through a declaratory petition existed. The Municipal Court of B. concluded that the petition was legitimate and the facts it put forward and the petition proposal were undisputed between the parties, and determined through separate judgments that J. H. was the mother of the H. family's children, respectively. Subsequently, in February 2003, the Metropolitan Authority of P. as a second-instance body decided to alter the first-instance decision and admitted the applications for the issue of Czech citizenship certificates. In the reasoning to their decision, they stated that the Agreement between the Czechoslovak Socialist Republic and the People's Republic of Poland regulating dual citizenship issues was not applicable any more as it had expired in May 2001. The children acquired Czech citizenship as of the day of the consenting declaration of paternity in November 2001. The decision took full legal force, and certificates of citizenship, birth certificates and identity cards were issued to the children.

● ● ● The case of factual residency

V.B. declared himself a Czech Republic national, in accordance with Section 18a, Law No. 40/1993 Coll., in the year 2000 while he was serving a prison sentence in O. He attached to his declaration a confirmation from the Prison Service of the Czech Republic – the O. prison stating that had been detained there from 3 June 1992 until 10 March 1994; a confirmation of his registration for permanent residence in C. in the Slovak



The main responsibility for gathering evidence and other sources for their decision is with the administrative body. Whether or not the person making the declaration really lives in the territory of the Czech Republic on a permanent basis is a factual issue, proved primarily with the usual kinds of evidence, i.e. witnesses and documents. It would have been appropriate for the administrative body to hear the petitioner's ex-wife, the petitioner himself and his mother at whose place he lived according to his ex-wife. Only after this, and possibly other evidence, if this turns out to be necessary later in the proceedings, will the administrative body have enough sources available for its decision.

Republic, dated 29 November 1999; copies of Czech court decisions divorcing his marriage in 1995; and a statement by his ex-wife, J.B. that he lived within the territory of the Czech Republic, dated January 2000. In her statement, J.B. said that in between his prison sentences, V.B. lived with his mother in Cheb. In the divorce proceedings, J.B. had similarly said that after he was released from prison in 1994, V.B. stayed with her in K. for about four months. In the same proceedings, V.B. argued that the court in J. in the Czech Republic which was in charge of the proceedings did not have local jurisdiction over the case because V.B. was registered as a permanent resident in the Slovak Republic, and therefore the divorce of his marriage should be decided by a Slovak court.

V.B.'s declaration of Czech Republic nationality was rejected by the District Authority in C., which wrote in the reasoning that V.B. had never been registered as a permanent resident in the Czech Republic. According to the District Authority, it had not been proved for certain that V.B. had been living in the Czech Republic throughout the relevant period starting on 31 December and ending on the day he made his declaration.

V.B. appealed against the decision, arguing mainly that his children and his old mother lived in the Czech Republic, other family members were Czech Republic nationals, and he himself had been living in the country throughout the relevant time period up until the present day. The Czech Ministry of the Interior rejected his appeal. In their reasoning, the Ministry pointed to the divorce in 1995, the fact that V.B.'s children were still minors at the time of the divorce, and the fact that V.B. had used the objection of local jurisdiction in the divorce proceedings and asked for the proceedings to be moved to a court in Slovakia where he was registered as a permanent resident. The Ministry concluded that V.B. had failed to prove for certain that he had been living in the territory of the Czech Republic throughout the relevant time period.

V.B. appealed against this decision to the High Court of P. His primary objection was that although he as a party to the proceedings was responsible to some degree, in accordance with the provisions of Section 18a, for proving his compliance with the set requirements, this did not mean that the proceedings were governed by the principle to hear and the principle of formal truth similarly to contradictory proceedings under the Rules of Civil Procedure. The duty of the administrative body to establish properly and fully the true state of the matter was not precluded by the said provision. Thus if the administrative bodies thought his evidence insufficient, but at the same time, failed to ascertain facts to the contrary, they should have taken additional steps to establish the facts of the case. There was the opportunity to hear the plaintiff, his ex-wife, daughter and mother. His claim that he had been living in the Czech Republic in between serving his prison sentences was supported by the fact that he had been sentenced by Czech courts for crimes committed in the Czech Republic. When he had pointed to his registered permanent residence in the Slovak Republic during the divorce proceedings, this was because he wanted to appeal against the divorce decision and complicate the proceedings with a motion of lack of local jurisprudence.

The court concluded that his petition was justified. In its reasoning, it underlined the principle of material truth and the investigating principle that governs administrative proceedings including proceedings concerning the declaration of Czech Republic nationality. The main responsibility for gathering evidence and other sources for their decision lies with the administrative body. This is not prejudiced by the fact that the legislator, having regard to the nature of the proceedings and in the interest of speeding up the procedure, has included in Section 18a a list of documents to be attached to the declaration by the person making it. Whether or not this person really lives in the territory of the Czech Republic on a permanent basis is a factual issue, to be proved pri-



marily with the usual kinds of evidence, i.e. witnesses and documents. In the case under review, the defendant based their conclusions only on documentary evidence presented by the plaintiff; however, it was impossible based on this evidence to draw a clear conclusion that the petitioner had not been living in the territory of the Czech Republic in the relevant period. If the administrative bodies arrived at the conclusion that evidence presented by the plaintiff was insufficient, they should have asked him for additional evidence. An affirmation can be made in administrative proceedings only by one of its parties, but this does not mean that facts contained in affirmations by persons who are not party to the proceedings cannot be used as a source. Such persons need to be heard as witnesses. Therefore it would have been appropriate for the administrative body to hear the petitioner's ex-wife, and possibly the petitioner himself and his mother at whose place he reportedly lived, according to his ex-wife. Only after this, and possibly other evidence, if this turns out to be necessary later in the proceedings, will the administrative body have enough sources available for its decision about the plaintiff's declaration of acquisition of Czech Republic nationality. On this basis, the court referred the case to the defendant for further proceedings. The administrative body has not issued a new decision yet.

● ● ● The case of wrongly determined citizenship

The government bodies' procedure in assessing the plaintiff's nationality was the essential cause of harm suffered by her and her two children. The wrong assessment of her and her son's nationality was the reason for issuing a decision that the plaintiff must give back state social support benefits. The plaintiff was unable through regular redress to achieve a revocation of the decision requiring her to give back those benefits on the grounds that they had been paid out to her unreasonably. In fact, she had trusted government authorities' decisions as correct, and when she found out that her son had acquired Czech nationality by birth and not by admission, the time for having the benefits paid back and for applying extraordinary relief had lapsed.

M.B. was born in the territory of the Czech Republic in 1993. His mother, A.B., was also born in this country in 1973. A.B.'s husband, M.B. became naturalised in Slovakia because both his parents were born there. A.B.'s father was also born in Slovakia, but her mother in Bohemia in 1947. A.B. therefore became a Czech citizen, the Czech Republic nationality being passed on to her from her mother who had been born in Bohemia. Her father's Slovak nationality was not material in her case. Her Czech nationality passed on to her two children, L.B. and M.B., born in 1993 and 1996. When determining their nationality after the split of the federation, however, the relevant district authority overlooked information about the mother's place of birth, informed A.B. that she was a Slovak national, and several years later (in 1997) told her that her little son M.B., born before she opted for Czech citizenship as instructed by the district authority, was also a Slovak national. A.B. thus in 1997 applied for Czech citizenship also for her son. At the same time, she arranged his release from Slovak citizenship. While she was taking these steps, payment of state social support benefits for the whole family was discontinued on the grounds that its members had lost entitlement to those benefits. Moreover, A.B. had to give back benefits that had been previously paid out for her two children, M.B. and L.B.

In late 2000, a different official at the district authority pointed out to A.B. that she was in fact a Czech citizen since her birth, just like her son, and she had therefore been entitled to those benefits. But by then the time for getting the benefits paid back or for using extraordinary redress had lapsed. A.B. and her family had thus suffered a loss.

A.B. claimed compensation for her loss from the Czech Ministry of the Interior, arguing that the loss had been caused by the District Authority in B. through their wrong procedure. The DA had misinformed her that she was not a Czech Republic national and invited her to opt for Czech nationality. In a causal link, she suffered a loss when the DA subsequently declared Slovak nationality also for her son M.B., who had been born before she completed the opting procedure. The social support department of the DA in B. later decided that she must give back state social support benefits because they had been paid out to her unreasonably. The Ministry of the Interior dismissed her claim.



A.B. was thus forced to seek compensation in court. The court of first instance came to the conclusion that there was no causal link between the incorrect administrative procedure and the loss. The court held the view that the loss resulted from the decision of the social support department that A.B. must give back the unreasonably disbursed benefits. Based on A.B.'s appeal, the judgment dismissing her claim was revoked by the Municipal Court of P. for its procedural defects and unlawfulness.

The court of appeal concluded that government bodies' procedure in assessing A.B.'s nationality was the essential cause of the loss suffered by A.B. and her two children. With regard the defendant's objection that the claim had become statute-barred, the court of appeal stated that any assessment of this issue must be based on the fact that A.B. found out about the loss only after the certificate of naturalisation by birth was issued (in 2000).

The fact that the Regional Authority in B. had also committed an error in releasing A.B. from Slovak citizenship although she had never been a Slovak citizen did not relieve the District Authority in B. of liability for their incorrect procedure. The court pointed out that it was the DA who had invited A.B. in their document from April 1993 to opt for Czech citizenship because they had regarded her as a Slovak Republic national. Based on their wrong instructions, A.B. applied to be released from Slovak citizenship. Based on an inaccurate certificate attesting to A.B.'s naturalisation in the Czech Republic by declaration in September 1993, issued by the DA in B., her son M.B., born in May of the same year, was misclassified as a foreign national. (M.B. was in fact a national of both the Czech and Slovak Republic because his father was still a Slovak citizen at the time of his son's birth.)

The court also pointed out that A.B. was unable to achieve through ordinary redress a revocation of the decision that she should return state social support benefits that had been unreasonably disbursed to her. In fact, she had trusted government authorities' decisions as correct, and when she found out that her son had acquired Czech nationality by birth and not by admission, the time for getting the benefits paid back and for applying extraordinary relief had lapsed. The court therefore concluded that these facts must not prejudice A.B.

The Ministry of the Interior appealed against the decision, claiming that incorrect administrative procedure was to be blamed on the Regional Authority in B. who had released A.B. from Slovak citizenship. The court of appeal confirmed the first instance decision, however. Concerning the Ministry's argument, it said that the proceedings for her release from Slovak citizenship had been initiated by A.B. based on an instruction from the District Authority in B., which had also led to the incorrect assessment of her son's nationality. A causal link between the incorrect administrative procedure and the loss incurred had thus been proved.

THE RIGHT TO PRIVATE AND FAMILY LIFE

●●● The Constitutional Complaint case

The W. family had sold their house in D. and moved to district T. There they were unable to find permanent housing partly because the buyer of their house in D. had stopped paying his instalments. In that situation, the District Court in T. adjudicated supervision over the family's five children in 2000, stating that the parents were trying their best to bring up their five under-age children properly and did not neglect their upbringing, but were unable to secure adequate housing. The court did not find any other problems.

Less than a month later, the District Authority in T. applied for an emergency ruling. The District Court in T. approved the request and placed all five children in two different children's homes. The court noted that the family had no permanent and adequate housing. Their latest home up to that time was a scrap material salvage point. An appeal filed by the mother was dismissed by the Regional Court of C. as late. After the emergency ruling was imposed, the District court had to, by virtue of office, open a trial on the merits, and a judgment to detain the children in special treatment institutions was first issued in March 2001. The parents were discouraged from seeing their two younger



The petitioners complained about the extremely formalistic procedure adopted by courts in deciding a request to determine that approval from a child's parents was not required for its adoption, and they claimed that the unconstitutionality of such procedure was aggravated by the fact that it represented the gravest form of interference with the right to family life. At the time of their decision, the courts knew that the parents were fighting the proposal for detention of their children in a special (medical) treatment institution and asking for their children to be brought back home, and they also knew that the parents complained that the concerned institutions prohibited them from seeing their children. The parents referred to decisions of the European Court for Human Rights whereby maximum protection against arbitrariness was required when deciding about so grave an interference in the right to family life.

children placed in a children's home in K. because the children had difficulties adapting there. J.W. in particular was often crying and calling for his mother. The parents understood the instruction as a ban, and it cannot be excluded that this is how it was presented to them. Their last attempt to see their children there failed because of quarantine in the children's home.

Based on the mother's appeal, the Regional Court in C. revoked the judgment to detain the children. It concluded that the evidence proceedings by the District Court had been incomplete, and mentioned new facts about housing possibilities described by the parents. The District Court then terminated the proceedings in November 2001 and ruled that judicial supervision should continue. Again it found problems with the children's upbringing in that the parents had been unable to secure adequate housing for a family of seven; but referred to a new document presented by the mother and showing that housing had been secured. The District Authority in T. appealed against this decision, pointing to the parents' social and financial situation (and particularly, the nursing costs they owed to the children's homes after their children were placed there based on the emergency ruling. As regards housing, the District Authority pointed out that the lease contract presented by the mother was for a definite period, and therefore, the family's situation in the future was supposedly uncertain.)

In January 2002, the Regional Court reversed the previous judgment and referred the case to the District Court, noting new facts that had been established: The father had lost his job in the meantime, and owed his employer in telephone charges (later on, in different proceedings, it turned out that the under-aged children had made collect calls to their father at his workplace). The lease contract was due to expire in no more than a month. In the court's opinion, the facts of the case had changed significantly now that the family once again had nowhere to live, neither of the parents had any income from work, and the father owed his employer money for telephone bills. In April 2002, the District Court re-issued its judgment to detain all five children. The mother had registered with the Job Office and the father appeared to have a job, but the court believed the family were staying at their grandmother's place which lacked adequate room or hygienic standard to house the entire family. The parents appealed against the decision, but the Regional Court found their appeal unjustified and upheld the decision of the first instance in August 2002. According to the appellate court, where the family was going to live next was uncertain, and in the approaching winter time it would have been merely a question of time when the judgment to detain would have to be re-issued.

Already in November 2001, at a time when the proceedings for detention in a special treatment institution had been discontinued without final effect, the District Authority in T. filed a motion to determine that the parents' approval with the adoption of their two youngest children, J.W. and M.W., was not required, on the grounds that the parents had showed a consistent lack of real interest in their children, in particular, by not seeing them. Yet the petitioner did not deny that the parents had been advised to refrain from seeing their children, and their last attempted visit failed because the children's home was under quarantine. In March 2002, the District Court decided in its judgment that the parents' approval with an adoption was not required. The court agreed with the conclusion that the parents did not see their children regularly, but only enquired about them over the phone. They defaulted on their duty to support and maintain, and failed to take care of their family circumstances. The judgment was issued at a time when the proceedings for the children's detention in a special treatment institution were at the stage of a revoked decision on their discontinuation. The



parents appealed against the judgment on the grounds that they had been prohibited from visiting the children's home. The District Court's decision was upheld by the Regional Court in August 2002, on the same day that the Regional Court was deciding the appeal against the judgment to detain in a special treatment institution. It concluded that the appeal was unjustified.

Our Counselling Centre became actively involved in the case only at this stage, after final and conclusive decisions had been issued in both cases. The parents, represented by an attorney who has been our long-term collaborator, lodged a constitutional complaint against the two judgments, objecting primarily to the violation of the parents' and children's right to have their family life respected. They also argued that the general courts found the only reason for their intervention in the inadequate material provision for the children, and the intervention therefore failed to meet the requirements of adequacy and necessity that were valid in a democracy. The three older children were never asked about their opinion although they would have been able to express it (at the time of the decisions, the elder children were aged 16, 14, and 6).

In this connection, the complainants also pointed to the definitions of family life as contained in the decisions of the European Court for Human Rights; the essential element of family life is the right to live together so that the family relationships can develop normally and the family members could enjoy each other's company. Therefore, with a view to the great importance of family life, the burden of proving the necessity of taking a child away from its parents and placing it in public care had to be born by the government. Apart from the negative duty to abstain from interventions, positive duties may also exist, consisting in the effective respect of family life. The complainants admitted that their behaviour undeniably showed signs of a certain inconsistency or carelessness, but on the other hand, there were also other negative circumstances involved which further aggravated their social status. It was a well-known fact that the situation in the Czech housing market at the time was desperate, but all they received from town T. in response to their application was a letter informing them about the tendering procedure using the "envelope method", with the size of rent as the basic selection criterion. Such response from the municipality could not be regarded as material assistance or a housing support programme in accordance with Article 27 of the Convention on the Rights of the Child. The complainants therefore argued that the courts had made a rather inadequate assessment when they reproached them for taking part in only one such tender. From the very beginning, their chances of succeeding were minimal. Although the complainants understood that the public authority was under no obligation to provide them with a flat, they stressed that in their case, no positive steps had been taken, and they did not even receive any advice or help. But before the public authority decided to interfere with the complainants' family life, it ought to have applied alternative measures including positive ones. It could have provided assistance with removing formal defects from the family's application for social and unemployment benefits, or advice and help with the choice of adequate housing, which efforts surely would not have been costly. The complainants therefore believed that the public authority had failed to fulfil its positive duties in their case. Although the authorities were pursuing with their intervention the legitimate interest of protecting the children's right to live in an adequate environment with sufficient material provisions, it was not proved that the inadequate housing had a direct impact on the children's physical health or mental development. The deterioration in their school performance, which had been pointed out by the courts, was not so intense as to justify the children's placement in special medical treatment institutions. With regard to the risk of emotional deprivation in a materially well-provisioned environment of children's homes, the complainants concluded that detention in a special treatment institution could be imposed only where children were at risk of harm comparable in intensity to the damage caused to their personality by emotional deprivation, i.e. where they are put in jeopardy of life or limb, tortured, abused or seriously neglected. Neither of these circumstances had ever been proved in the complainants' case; on the contrary, the courts had always emphasised that their only problem was housing. Detention of their children in special treatment institutions therefore failed on the requirement of proportionality, and was unconstitutional.

The petitioners complained about the extremely formalistic procedure adopted by the courts in deciding the request to determine that parents' approval with their child's adopti-

on was not necessary, and they claimed that the unconstitutionality of such procedure was aggravated by the fact that it represented the gravest form of interference with the right to family life. They added that based on an intervention from the Ombudsman's Office, they were now in contact with their two youngest in the children's home in K. Moreover, at the time of their ruling, the courts knew that the parents were fighting the motion for their children's detention in special treatment institutions and asking to have their children back, and both the District Authority in T. which had filed the motion and the courts knew about the parents' complaint that the institutions prohibited them from seeing their children. In fact, a number of other circumstances were known to the courts which showed that there was no qualified consistent lack of interest on the part of the parents. In this connection, the parents made reference to decisions of the European Court for Human Rights whereby in deciding about such serious interference with the right to family life, maximum protection against arbitrariness was required. It was necessary for the relevant bodies to learn about the position and interests of the natural parents in great detail as these had to be reflected in their decisions. In order for these standards to have been complied with, bodies responsible for the legal and social protection of children would have had to make it known to the parents in a clear and comprehensible manner that they no longer needed to follow the initial advice and could start seeing their two youngest children in the children's home again, and later, it would have been appropriate to warn the parents about the risk that they might attract a judgment determining their qualified lack of interest in their children if they didn't start to see their offspring in the children's home. It would have been appropriate to discuss with them why they actually did not go and see their youngest when they were regularly visiting their older children in the other children's home. And a very loud warning should have preceded the motion for detention, especially since it was filed at a time when the proceedings were discontinued without final effect and the parents believed they could realistically expect to have their children back. However, neither the authority for the social and legal protection of children nor the adoption courts had taken any of these steps. From this the parents concluded that their right to family life within the meaning of Article 8 of the Convention on Fundamental Human Rights and Freedoms had not been respected. .

The case has not been decided yet.

VIII. ACKNOWLEDGEMENTS



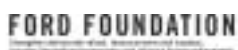
We would like to extend our thanks to all of our sponsors and organisations who offered us financial support in 2002-2003. They were (in alphabetical order):

- European Roma Rights Center, Budapest
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- Penal Reform International, London

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Nadace Terezy Maxové



TRUST PRO OBČANSKOU SPOLEČNOST VE STŘEDNÍ A VÝCHODNÍ EVROPĚ

MINISTERSTVO PRÁCE A SOCIÁLNÍCH VĚCÍ

PENAL REFORM INTERNATIONAL, Londýn

HUMAN RIGHTS ADVOCACY FUND OPEN SOCIETY INSTITUTE, Budapešť

IX. INCOME STATEMENT

● ● ● Financial Report for 2002

DIVISION OF MUTUAL INCOME AND MUTUAL EXPENSES AT 31. 12. 2002 (in thousands CZK)

LINE	ACCOUNT		MAIN ACTIVITY	ECONOMIC ACTIVITY
	NO.	SPECIFICATION		
1	501	Material	407	0
2	502	Electricity	14	0
5	511	Repairs	3	0
6	512	Travel Expense	92	0
7	513	Public relations	28	0
8	518	Other services	3.297	0
9	521	Salaries	27	0
14	531	Road Tax	0	
15	532	Real Estate Tax	0	0
16	538	Other Taxation	0	0
24	549	Other Expenses	32	0
25	55..	Write-off	0	0
31	58..	Financial Contributions	0	0
33	Total	(Lines No.1-32)	3.900	0
34	60..	Sales	0	0
37	61..	Changes of state of internal supplies	0	0
41	62..	Activation	0	0
48	644	Interest	12	0
50	648	Settlement of Funds	3.888	0
52	65..	Sales of property	0	0
59	68..	Financial Contributions Accepted	0	0
62	69	Operating support	0	0
63	Total	(Lines no.34-62)	3.900	0
64	Economic results before taxation		0	0
65	591	Income Tax	0	0
66	595	Additional Income Tax Payment	0	0
67	Economic Results after Taxation		0	0

BALANCE SHEET AT 31. I. 2002 (in thousands CZK)

Assets

Označení	Text	čís. ř.	Poč. stav k 1. I. 2002	Stav k 31. 12. 2002	
A.	Assets	Line no. 9+15+26+33+41	1	0	0
1	Immaterial Property	9	0	0	
2	Valuation Reserve	15	0	0	
3	Material Property	26	0	0	
4	Valuation Reserve	33	0	0	
5	Capital		41	0 0	
B.	Current Assets	Line no. 52+71+80+85	42	3.621	1.498
1	Supplies		52	0 0	
2	Debts	71	0	0	
3	Cash	72	210	182	
Capital	Stamps	73	0	0	
	Bank Accounts	74	3.411	1.316	
	Expected Funds	79	0	0	
	Total (Line 73-79)	80	3.621	1.498	
4	Temporary Active Accounts	85	0	0	
	TOTAL ASSETS	Line no. 1+42	86	3.621	1.498

Liabilities

Označení	Text	čís. ř.	Poč. stav k 1. I. 2002	Stav k 31. 12. 2002	
A.	Own Sources	Line no. 91 + 95	87	3.621	1.370
1	Own Property	88	0	0	
Jmění	Funds	89	3.621	1.370	
	Differences in Prices	90	0	0	
	Line 88-90 in Total	91	3.621	1.370	
2	Account of Economic Results	92	0	0	
Hospodář.	Approved Economic Results	93	0	0	
výsledek	Profit/Loss not dividend in past years	94	0	0	
	Total (Line 92-94)	95	0	0	
B.	Other Sources	Line no. 97+103+121+128+133	96	0	128
1	Statutory Reserve	97	0	0	
2	Long-term Obligations	103	0	0	
3	Short term Obligations – Suppliers	104	0	0	
	Total (Line 104-120)	121	0	0	
4	Bank Assistance, Loans	128	0	0	
5	Temporary Liability Accounts – Expenses for future period	129	0	128	
	Total (Line 129-132)	133	0	128	
	TOTAL LIABILITIES	Line no. 87 + 96	134	3.621	1.498