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REPORT

From : the General Secretariat
To : the Collective Evaluation Working Party

No. prev. doc. : 8070/01 EVAL 12 ELARG 75 RESTREINT

Subject : Draft revised country report on the Czech Republic

I. INTRODUCTION

In its analyses the Working Party has dealt with the progress made by each acceding country and has examined shortcomings which still have to be eliminated in order to catch up with the EU Acquis in the field of Justice and Home Affairs.

The first series of country reports pointed out the precise areas where the most serious shortcomings existed and where substantial efforts by the candidate country were still needed, while at the same time acknowledging progress already made and refraining from a final judgement, thus helping Member States in selecting programmes to finance (e.g. bilateral programmes, PHARE), as well as the Commission in adjusting the priorities and objectives of the accession partnerships and feeding the discussions on enlargement.

The point of departure for the present second series of country reports, whose structure has been refined, is to identify exactly where in the process of alignment the candidate country finds itself and what remains to be done, focussing on operational conclusions. The key elements of this new structure, reflected in each chapter, are :

- adoption of the “acquis”, including shortcomings,
- administrative capacity, including an assessment of structure, staff, resources etc. and
- implementing performance, covering issues such as quality, efficiency and independence.

The conclusions drawn at the end of the report are the result of extensive discussions within the Collective Evaluation Working Group on the basis of the information presented.

In line with this approach, all other relevant background information can be found in the thematic analyses-documents constituting the basis of these reports¹.

As the process of alignment and the collection of relevant data is a continuously evolving and ongoing process, the findings and conclusions in the present report cannot be considered final or exhaustive. Updates will therefore continue to be presented on a regular basis.

II. OVERVIEW OF DEVELOPMENT

A. Border Security

Due to its geographical position, the Czech Republic will in the future be bordered only by EU-countries. This means that at the final stage, the international airports will be the only external (Schengen) borders of the Czech Republic. This is clearly the main reason why the Czech Republic seems to be very slow in improving its border security system. This attitude has contributed to a situation where the Czech Republic's poorly controlled borders have been used as one of the main transit routes for illegal immigration towards the EU. Especially the Czech-Slovak border has been a very attractive one for illegal immigration and other forms of transnational crime.

¹ I.e. docs 6079/01 EVAL 4 ELARG 16 ; 6843/01 EVAL 7 ELARG 33 ; 7026/01 EVAL 8 ELARG 39 ; 7065/01 EVAL 9 ELARG 40 ; 8133/01 EVAL 17 ELARG 80 ; SN 3235/01

1. Formal acquis

Since the first country report, there has been some improvement in the field of border security in the Czech Republic. All major border crossings are e.g. equipped with on-line connections to relevant databases. It must however be said that the development process has been relatively slow despite some steps forward. Since summer 2000 there has been a state border concept which however still awaits implementation.

(...)

There is no special legislation covering border security issues in the Czech Republic. There are still many legal shortcomings causing several problems for the border authorities. The powers of the ABP are operationally¹ and territorially limited and it is not possible to carry out Schengen-like border checks. One of the most blatant legal loopholes is the fact that the smuggling of persons by organised criminal groups is not qualified as a crime under Czech criminal law. As a rule, gang members face the same (symbolic) punishment for illegal border crossing as the migrants themselves. Only exceptionally other penal regulations can apply (e.g. abduction, bodily harm etc.).

When it comes to border crossing procedures, the Czech-Slovak border may cause problems. According to the bilateral Treaty on Visa-Free Entry of March 30, 1993, citizens of both sides are allowed to cross the frontier not only through official crossing points but also through the more than 100 uncontrolled practicable cross-border roads and the green border in general. Illegal migrants currently also use the latter.

¹ The ABP is not allowed to search passenger's belongings without suspicion of criminal activity or an offence connected with a border crossing.

2. *Administrative capacity*

There is no independent and specialised border police organisation responsible for border security in the Czech Republic. The Aliens and Border Police (ABP) is part of the general police force and it is neither a centralised nor a nation-wide operating police force.

Administrative capacity suffers from fragmented organisational structures and the lack of a central border police command. Since May 2000, special mobile search units have been created in order to increase control in the hinterland. However, they do not report to the same authority as Alien and Border Police officers serving at official crossing points. Unlike the ABP, mobile units¹ can still be used for police duties not directly related to border control, such as – inter alia - traffic checks. The lack of a central border police command makes it impossible to engage in co-ordinated action exceeding the regional range.

Generally, co-operation within the Alien and Border Police has considerably improved thanks to the recently introduced common command at regional level. However, there is still an evident lack of co-operation between all other involved law enforcement agencies, in particular with other special police services. Co-operation with customs authorities at official border crossing points could be further improved. Communication between the Alien and Border Police and the Department of Asylum and Migration of the Ministry of the Interior has to pass through the headquarters of the police presidium. There is no legal basis or formal co-operation agreement between Ministries and authorities, or between the authorities themselves.

The transfer of the investigation task regarding combating illegal migration from the Alien and Border Police to UOOZ², is generally criticised. The Alien and Border Police's investigation unit was particularly valuable because of its network and its close co-operation with the authorities dealing with internal security. There was also close co-operation with foreign countries, e.g. Poland and Germany. Unfortunately this well working structure has suffered, notably in terms of efficiency, as a result of the described changes.

¹ Since 1 May 2000 the Czech Government has started to establish mobile search units in the North and South Moravian border regions (There are 14 administrative regions in the Czech Republic. However, the police and the judiciary are operating from 8 regional headquarters covering the whole country). Since 1 October 2000 the same was established at the North Bohemian border region. The Czech side is planning to finalise the establishment of such units in all other border regions by 31 December 2001.

² A special police unit responsible for combating organised crime.

There is a general demand for the reactivation of these investigation units as an operational element. The basic problem is insufficient funding, but also rivalry between different authorities and individuals. Budgetary shortcomings are aggravated by the fact that there is no independent overall budget for the Alien and Border Police. Funding is provided by the regional administration which often tends to give priority to other services.

3. *Implementing performance*

Poor communication as well as a poor training system have caused practical problems since the members of the Alien and Border Police are not always sufficiently informed of valid regulations, government initiatives on border control and even less of particular facts (e.g. lists of stolen documents etc.).

The Czech-Slovak border remains particularly problematic. Controls take place almost exclusively at official crossing points and in express trains. Local trains and the numerous field paths crossing the border are practically uncontrolled. Patrols at the green border are at random. This situation is very well known among illegal immigrants. Due to lack of manpower and equipment, the Alien and Border Police and the mobile units are not in a position to effectively control the green border with Slovakia. In addition to these tasks, the mobile units have to perform other duties, too. The green border with Slovakia is in fact by far the weakest point of all Czech borders, and the main entry for illegal immigrants. The situation is further complicated by the fact that responsibility for combating illegal migration lies with the special police unit responsible for combating organised crime (UOOZ). Co-operation between the UOOZ and the Alien and Border Police is generally poor.

The leading officers of the border police, especially the director of the Alien and Border police, do not have any influence on where the mobile units are used. This is the reason why there are no combined actions of green border and border crossing units on the one hand and mobile units on the other. The policemen at the border crossing stations and the green border must improve their co-operation in order to operate more efficiently. Their radios have different frequencies and there are too few patrols at the green border. There is a clear lack of a coherent and consistent approach to border security.

Due to a lack of funds, it is not possible to carry out enough expensive night and Sunday patrols and to provide enough staff at border crossing points. This has negative effects not only on the checking speed of passengers crossing the border, but also on the quality of the checks. Practical international co-operation is often hampered by technical and/or financial problems, such as incompatibility of communication systems and lack of funds for international phone calls.

4. *Summary*

Shortcomings generally occur in all fields: legal bases, manpower, adequate training, equipment, organisation and communication.

There is a need to develop a more coherent and concise border security system and to have one **chief organisation responsible for the planning and implementation of this system. A nationally operating, specialised and unified border police organisation is important for effective impementation.** The Czech Republic must still prepare and implement the exact organisation, structure, division of tasks and staff between the Alien and Border Police Units and the other regional directorates or units. The strict division of tasks and jurisdiction between the units responsible for border checks at border crossing points (Aliens police) and those responsible for areas between border crossing points (Border Police) jeopardises the efficiency of the organisation. Implementation of the border security system is still far from satisfactory in terms of EU-requirements.

There is a need to create a reasonable border security system along the Czech-Slovak border. This uncontrolled border is one of the main problems for the present EU-states, as it is one of the main routes of illegal immigration into the EU.

B. Migration

1. *Formal acquis*

Visa policy is almost fully aligned since the Czech Republic decided, in 2000, to require visas from citizens of Cuba, Russia, Belarus, the Ukraine, Kirghizstan, Moldavia, Kazakhstan and Turkmenistan. The only remaining difference with the EU negative visa list concerns Romania. In addition, several states, mostly South American, are still visa required in the Czech Republic whilst not in the EU.

Concerning admission rules, the Act of 30 November 1999 on Residence of Aliens¹, which entered into force on 1 January 2000, has noticeably contributed toward aligning Czech legislation, notably on border-issued visas which have now been restricted, and on the changing of status.² This new legislation does however need adjustments on family reunification and is still flawed on expulsion.

- (...) **Foreigners may apply for family reunification** after a minimum 10 year stay (...)³; **this length is debatable with regard to the "Right to respect for family life" (Art 8 ECHR)**. The cancellation of the residence permit in case the marriage terminates within 5 years without a child, is relatively severe. Provisions on Czech nationals also require adjustments.⁴

¹ As this recent Act has been analysed only by the experts of the General Secretariat, and as the available translation is far from perfect, the comments are made under reservation.

² The changing of status for holders of temporary permits is now entirely forbidden, which may however lead to practical difficulties.

³ **The right to family reunification is open to holders of permanent residence permits (only); this permit may be granted after a minimum ten year stay, except for family members of Czech citizens.**

⁴ The right to family reunification is recognised for the spouse, a single parent over 70 years of a Czech national over 18 years, a minor, a major child of a single Czech national over 70 years, whereas the Council Directive of 28 June 1990 on the right of residence speaks about dependency of parents (and not their age or singleness.) As a result, provisions on family reunification for Czech nationals are more restrictive than provisions to be applied to beneficiaries of free movement of persons-rules, whereas the draft directive on family unification states that provisions on nationals should be compliant with provisions applying to EU citizens exercising their right to free movement. In addition, sufficient resources are required from Czech nationals wanting their foreign spouse or child to come, which is debatable. Finally, as regards family reunification, asylum seekers and beneficiaries of temporary protection are better treated than Czech nationals or well-settled foreigners, which is also debatable.

- The following aspects of the expulsion mechanisms do not fully respect human rights. It is the police alone who ban entry, up to 10 years, without judicial appeal if the alien stayed illegally in the territory.¹ As far as detention before expulsion is concerned (up to 180 days), (...) **it is even possible that justice does not intervene at all.**²

Furthermore the 180 day detention deadline does not apply to illegal entrants who are to be readmitted. In addition police may finance the costs of the expulsion with "cash funds which the alien has at hand" (a practice which leads directly to corruption.) It is the police who "collect" the fines for carriers and may fix their amount: this kind of provision is very weak and directly incites corruption.

The Czech Republic has concluded agreements with third countries that on accession will be contrary to the principle of "Community employment preference". It stated that it would terminate the agreements with Poland, Vietnam, the Ukraine, Switzerland and Russia, according to which a yearly quota of workers is admitted without previously checking the situation with regard to the existing workforce. As far as Slovak workers (still exempted from a work authorisation) are concerned, the Czech position does not specify how it intends to "re-consider" this agreement in case of accession before Slovakia.³

Readmission agreements have been concluded with neighbouring countries but not yet with all Member States, the Ukraine (the most important country concerned), Russia, and remote countries of origin of illegals.

¹ The most common sanction against foreigners is an order to leave, issued by the police, establishing the period of time (3, 5 or 10 years) during which entry is banned. The sole appeal body is the Head Office of Foreign and Border Police and the Police Presidium, which scarcely constitute an "effective remedy" in the sense of EHCR or "an appropriate means to challenge expulsion decisions" as provided for in the Recommendation of 30 November 1992 regarding practices followed by Member States on expulsion.

² **Justice does not intervene automatically: police alone take the decision and it is up to the alien to initiate court proceedings and to bear the burden of proof.** Of course the Police have to "inform the detained alien, in a language in which the alien is able to communicate, of the possibility of having a court review..." But the Act adds that "if a language may not be determined or if such information may not be communicated in any other way, the Police shall not communicate the information and shall record it."

³ In its Additional position paper, the Czech Republic "once again declares its readiness to re-consider the Agreement with Slovakia on Reciprocal Employment of Citizens in light of the Council of Europe Resolution of 20 June 1994.... After the accession to the EU, such agreement must nevertheless be revised. The agreement with Slovakia on reciprocal employment of citizens fails to meet the criterion of limited validity and that of job localisation as provided for by the Resolution." In fact the agreement mainly fails to meet the condition of "Community preference".

As for document security, machine-readable modern passports are now being issued, but non machine-readable old passports will circulate until May 2010. The features of the visa sticker have improved, but identity cards and residency permits do not meet EU standards.

2. Administrative capacity

As for the issuing of visas, the on-line connection of Czech consulates is well on its way, and the staff has reportedly been increased in countries with which the visa regime was introduced recently. All consular visas are however decided on by the police at central level, which is not in line with the Acquis, and the decision on visa applications focus on security risks only and not on migratory risks.

As for the issuing of residence permits, practical implementation of the new legislation which entered into force in 2000 has proved to be difficult due to the low level of preparation of all involved authorities.

Co-operation within the Alien and Border Police has improved, thanks to the recently introduced common command at regional level. However, there is still a lack of co-operation between all other involved law enforcement agencies, in particular with other special police services. As for the fight against illegal immigration, the new competence (or monopoly) of the special police unit (within the National Criminal Agency) still has to prove its efficiency. Detention facilities are still insufficient. There is a lack of adequate legal powers for tackling illegal employment.

As for preparation for the SIS, legislation provides for several databases on aliens, which do not all seem to exist yet (except on visas and wanted persons). Alien police offices are connected, as all police stations, to the Intranet of the Ministry of Interior, but online access to police databases seems to be in an initial phase only. Fingerprints of crime violators only are stored. The available Czech positions papers ask more questions (irrelevant for the time being)¹ than they provide answers on how and when all police and border stations will have online connections to the required databases. In addition, the Government relies far too heavily on EU funding.

¹ The questions the Czech Republic asks are related to the technical requirement for connecting the N-SIS to the SIS and for the SIRENE bureau. These data are not essential for building the national information system.

3. *Implementing performance*

As regards the issuing of visas and residence permits, the only available information is on the practical difficulties of implementing the new Act and of issuing the new temporary permits. As issuance of visas to Ukrainians or Russians is rather recent, the situation will have to be monitored.

As regards expulsion and the fight against illegal immigration, the situation is better known. Czech authorities recognise the well-known importance of illegal immigration in their country, "one of the main transit points for organised illegal immigration to Western Europe" due in part to "friendly immigration laws".¹ But the fact is that the number of aliens readmitted to the Czech Republic is far **higher** than the number of aliens readmitted from the territory; the clear majority of arrested aliens are caught (often by foreign authorities) when leaving the country, instead of being caught upon entry or inside the country. In addition, when caught they are merely given an order to leave and an entry ban, if anything. (...) **Detention and forcible returns are insufficiently implemented.**

Smugglers are treated similarly. Sanctions are taken against those who commit a connected crime (e.g. abduction, bodily harm etc.²) The others are fined, and the police collect the fine in an undefined way. Organised rings promoting illegal employment abroad operate with impunity, freely advertising their services.

As regards illegal work, there are some data on workers checked (4000) and found illegal (1600, whereas reportedly from the Ukraine alone there are already 150.000 - 200.000 illegal workers) but no data on sanctioned employers.

4. *Summary*

Visa policy has been almost fully aligned since 2000.

The same goes for provisions on admission, except for family reunification, for provisions on expulsion which do not fully respect human rights, and for the agreements on admission of workers concluded with various countries.

A number of necessary readmission agreements are still lacking.

¹ Czech statement made in 1999 before the adoption of the Act on Residence of Aliens.

² 700 yearly judicial expulsions.

Not all documents meet EU standards of security. Consulates seem equipped and staffed, but all consular visas are decided on by police, who focus on the security risk only. Inside the territory, the establishment of the necessary databases and of online access by police and border stations is only ongoing, and therein too, the Government relies too much on EU funding.

Co-operation within the Alien and Border Police has improved, but not with other special police services, notably the new unit in charge of the fight against organised illegal immigration.

The immense majority of arrested aliens are caught, often by foreign police, when leaving the country, instead of being caught at entry or inside the country. In addition, when caught they are merely given an order to leave and an entry ban. Police collects fines, which may incite to corruption. Even smugglers are weakly prosecuted. There are no data on sanctioned employers, whereas reportedly there are 150.000 - 200.000 illegal workers from the Ukraine alone.

C. Asylum

1. Formal *acquis*

Since the Act on Asylum of November 1999, which entered into force on 1st January 2000, Czech legislation on asylum may be considered as fully compliant with the *acquis*, with the following exceptions:

- The appeal procedure is still unsatisfactory. The administrative appeal body is not independent while the judicial appeal does not deal with the substance. The Czech authorities have committed themselves to solve this question, but are still debating on how to do it.

- Family reunification for spouses may be deemed too restrictive insofar as there is a condition of continuous marriage in the country which the refugee has left.

In addition, the obligation to file the application within 24 hours of entry is provided for without consequence in case of failure, which is contradictory and leads to uncertainty. Finally, although not obligatory according to the acquis, accelerated procedures should be introduced, in light of the Czech context (See below, implementing performance.)¹

2. *Administrative capacity*

The accommodation system has proved flexible enough to receive varying numbers of applicants, bearing in mind the outburst of asylum seekers since 1997 and the trend to "escape" before the end of the procedure.

Staff resources at Ministry level raise less concern than the situation at the judicial level, where appeal procedures are very long. This may explain why the applicant, once inside the judicial appeal procedure, is granted a one-year permission to remain, furthermore extendable.² This period is much too long and it will have to be taken into account when setting up the new appeal procedure.

As regards future implementation of the Dublin Convention, the Czech authorities have given little information on the degree of technical preparation (fingerprinting, computerised files on applicants and on foreigners in general. See above, Migration.)

3. *Implementing performance*

All potential applications seem duly processed. The low recognition ratio is due to applicants' disappearance before the end of the procedure, rather than anything else. Reception and accommodation of asylum seekers, legal assistance, interpretation and accompanying measures in general are on the whole satisfactory. The same goes for integration programs for refugees, considered generous. Finally, the principle of non-refoulement is implemented in practice.

¹ The only "acceleration" occurs in respect of the time limit for submitting an appeal: 7 days in case of a manifestly unfounded application instead of 15 as in normal cases. This isolated provision cannot be seriously seen as an accelerated procedure.

² Of course the Act provides that "The visa shall expire when a court decision on the complaint becomes valid", but whether or not courts speedily inform the police of their decisions is another matter.

The previously outlined satisfactory implementation of the Geneva Convention is in stark contrast with the lack of proper measures to deter the abuse of asylum procedures, as cases of abuse are particularly frequent and blatant in the Czech Republic.¹ This passiveness runs parallel to the insufficient fight against illegal migration (See Migration.) Czech authorities are reportedly trying to find solutions.

Legal tools should be created (notably, accelerated procedures during detention in case the application is "submitted in order to forestall an impending expulsion measure"²), the concepts of safe third country and safe country of origin, already legally created, should be implement in practice and preparations for the Dublin Convention should be stepped-up. (contrary to Schengen, the Dublin Convention will a priori have to be fully applied upon accession).

4. *Summary*

Since 2000 Czech legislation on asylum may be considered fully aligned on the *acquis*, except for the appeal procedure, essentially.

The administrative capacity seems well adapted, except for the worrying length of judicial appeals, and for the step of technical preparation for implementing the Dublin Convention.

The Geneva Convention is properly implemented in practice. However, no measures are taken to deter the abuse of asylum procedures by applicants using it only for easing their travel westwards. It is the reason why legal tools should be introduced (accelerated procedures) or effectively implemented (safe third country).

¹ Many applicants request asylum only when caught trying to cross the border to Austria or Germany or when detained after readmission. 80% of the 9000 applicants of 1999 disappeared during the procedure, most probably in an attempt to go westward. The centres are sometimes described as places of rest for illegal immigrants before continuation of their travels westward. The readmitted persons who ask for asylum are not taken into custody but are invited to go to a reception centre by their own means, as all other applicants.

² Resolution on manifestly unfounded applications, 9 e.

D. Police and Customs

a) Police

1. *Formal acquis*

The main legislation is sufficient for the combat of all crimes, except money laundering where gaps exist (**the Criminal Code does not recognise money laundering as a specific type of crime and existing provisions are too narrow**). The existing legislative framework regarding the fight against corruption can be considered as adequate, not only in comparison to other candidate countries but also to EU Member States.

Police co-operation has its legal basis in the Act on Police and the Code of Criminal Procedure, both amended in 1998. The current legislation in this area still does not assure effective action. A new Police Service Act was planned to enter into force in 2001, providing for alignment with the Acquis.

None of the foreseen acts on Police, State Prosecutors or the amendment to the Criminal Proceedings Code entered into force due to the setback of the Reform of the Judiciary. The amendments to the Criminal Proceedings Code and the Act on State Prosecutors were rejected by Parliament in May and September 2000. The draft Police Act was based on these two drafts. Consequently the Government withdrew its draft Police Act from the Parliament's agenda.

Following the cancellation of the draft Police Act, the Ministry of Interior decided to cover some aspects of the old draft in a special amendment to the Police Act. The Parliament passed the amendment on 19 February 2001, which must now be discussed in the Senate. This amendment should enter into force by 1 January 2002. The Government still has to prepare all necessary acts enabling the Czech Republic to participate fully in the Schengen system, e.g. hot pursuit and other areas of police co-operation.

The current draft proposal for amending the Criminal Proceedings Code will not affect the dominant position of the Office of Investigation and will not result in any acceleration of the lengthy and complicated criminal procedure. Therefore, this draft cannot be considered as a real improvement in making the combat of economic and organised crime more efficient.

The Czech Republic continues to enhance the organisational framework for efficient policing. Specialised units and agencies have been established corresponding to the national organisational needs in the fight against organised crime, corruption, economic crime and money laundering.

2. *Administrative capacity*

The Czech National Police currently have 44.343 police officers, which means approximately 431 police officers per 100.000 inhabitants. The police also have 12.633 civil servants.

There has been no improvement in the co-operation between different law enforcement agencies since the first country report. There is still no comprehensive strategy for co-operation between the different institutions involved in combating economic crime and corruption.

Improvement of the National Drug Information System is needed. The Czech Republic intends to create a National Focal Point on Drugs in order to be able to participate in the European information network on drugs and drug addiction (Reitox) of the EMCDDA. Its establishment is currently under preparation by the Inter-ministerial Drugs Commission in the context of the new concept of the anti-drugs policy for the years 2001 – 2004. It still has to decide which one will be the main responsible.

The Office of Investigation is independent and hierarchically administered by the Ministry of Interior. The Director of the Office of Investigation reports directly to the Minister. The members of the Office of Investigation are formally police officers, but they are not part of the Police Presidium. The Office of the Investigation is structured like the Police and has a staff of 3000 Investigators.

According to the Criminal Proceedings Code, the Office of Investigation takes the final decision on the start of the investigation process concerning the cases on which the police informed it. Only the Investigators can decide to transfer a file to the State Prosecutors and hence start criminal proceedings.

The existing complicated multi-stage criminal procedure (police, investigator, prosecutor and court) contributes significantly to the problem of the lack of co-operation between all involved law enforcement agencies and other institutions and is one of the major problems concerning combating serious crime. The slowness of the investigative system puts the entire justice system in serious danger. The evident risks are represented by useless and expensive overlaps among the authorities involved, by a confusion of roles, and above all by an extreme slowness of the entire judicial system.

Due to the low wages within the police it is extremely difficult to have/keep qualified and experienced staff. The specialised police services and the Office of Investigation are hampered by the lack of adequate trained personnel. The current budget deficit limits the financial possibilities and the Government still relies on EU and Member States assistance to meet its accession-related needs. Moreover, even when foreign funding is available, the administration often lacks the capability of absorbing it within a reasonable time.

All services are affected by the lack of a training and human resources policy. The recruitment and training of qualified staff is still hampered by budgetary constraints and working conditions. The Czech Republic has to develop a comprehensive strategy for addressing all qualification and human resource problems.

In areas like organised and economic crime and management support, there is still a lack of the necessary professional experience and adequate training. There are not enough programmes for specialised training in the area of international co-operation and the fight against organised crime. There is a need for training of all institutions involved in the fight against drug-related crime.

There is still a lack of an integrated computer-based investigation system, which can be used by all law enforcement agencies. A central information system, which will allow the sharing of data between the Organised Crime Department, the National Anti-Drug Headquarters and the regional offices has already been developed, but is still not approved by the National Security Authority.

The lack of technical equipment is manifold throughout all services, starting from ordinary computer equipment up to specialised information technology. The specialised services lack the necessary specialised equipment. The situation here is the same as **previously** mentioned under training: the Government relies too much on EU funding **instead of accepting its own responsibility**. The envisaged allocation of the State budget for combating economic crime, organised crime and introduction of the Schengen system, is not sufficient.

3. Implementing performance

In the past years there has been a dramatic increase of the impact of economic and organised crime, corruption and money laundering on the Czech Republic. In particular corruption and economic crime are damaging the Czech administration, society and economy.

Organised crime in the Czech Republic concentrates on trafficking in human beings (prostitution, illegal immigration), drugs, stolen cars and money laundering. There is evidence of increasing specialisation regarding the activities of criminal groups. Particularly those coming from the former Soviet Union or from Kosovo give rise to concern. The Government agreed on a new programme for combating organised crime on 23 October 2000. So far no decisive results can be reported.

Drug-related crime remains a significant problem and combating narcotic crimes and tackling the drug problem have a high priority in the Czech Republic, which continues to be a transit country for heroin, cannabis and increasingly cocaine. The number of drug users has increased consistently over the last five years. However, the problem of drug abuse is, in comparison with western European countries, still rather low in general. The National Drug Strategy for the years 2001 - 2004 does not mention any timetable and deadline concerning the fulfilment of envisaged measures. Therefore, it is difficult to describe further progress.

Only a few cases of money laundering have been prosecuted to date. The Criminal Code does not recognise money laundering as a specific type of crime. The Sections 251 and 251a, which tackle general participation in committing a crime or in the preparation of a crime, are generally used for prosecuting money laundering. However, these provisions are considered too narrow. This has led to virtually non-existing legal proceedings for this type of crime.

b) Customs

1. *Formal acquis*

With regard to Customs, a high level of compatibility has been achieved between the customs legislation of the Czech Republic and the Community acquis. In order to complete full alignment with EC legislation, a further set of amendments to the Czech Customs Code is required.

As regards administrative and operational capacity to implement the acquis, the Czech Republic has made good progress and has managed to develop its services in areas that are important for efficient customs co-operation.

2. *Administrative capacity*

The Czech Customs Administration filled most of the posts according to the limits it was given by the Government. In 1998, it had 9267 employees out of 9442 planned posts. Since 1999, the Customs Administration was given 9440 posts of which it filled 9316. In 2000, the staff number decreased to 9288.

The Czech Customs Administration comprises a General Directorate, 8 Customs Directorates which co-ordinate the 74 Customs Offices and 17 Inspectorates operating as Surveillance and Investigation Services. The Inspectorate of Customs and Financial Guard inquires concretely into fraud with same jurisdiction and powers of those of the Criminal Police, and is authorised to use such legal institutions as surveillance of persons and things, use of informants, wiretapping etc.

Co-operation with the Police is based on legal provisions elaborated in detail in the Agreement between the Ministry of the Interior and the Ministry of Finance and in the Implementation Protocol signed by the Presidium of the Police and the General Directorate of Customs.

An information system, which ensures computer processing of all procedures, and an Intelligence Information System have been completed. Provisions for risk analysis, targeting on suspicious subjects and profiling and a pilot computer system have been developed. The number of the customs offices where this system is used increases constantly and this year it may be decided to implement it at all customs offices in the Czech Republic.

The contact for mutual administrative co-operation or for co-operation in criminal matters, playing the role of a central place for these purposes in accordance with the Convention of 18 December 1997 on Mutual Assistance and Co-operation between Customs Administrations, has been established and the Czech Customs Administration has prepared the Programme for Conclusion of Memoranda of Understanding that covers co-operation between the customs authorities and business organisations in combating drugs trafficking.

However, in priority areas like the Czech-Slovak border, there is still a lack of qualified staff, in particular there is a lack of needed technological equipment.

3. *Implementing performance*

In 1999, the detected violations in the customs area reached the total number of 30.458 of which 14.239 (46.7%) were customs delicts and 14.361 (47.2%) were customs offences. Fines of 125 million crowns were inflicted. In the same year, 2.851 post clearance audits were undertaken, resulting in 2.298 customs breaches (with a rate of 80,6%), manifesting a high grade of efficiency in control procedures.

The number of detected criminal offences that are submitted to the Office of Investigation increased.

4. *Summary (Police and customs)*

One of the main problems, which must be addressed by the Czech Republic with regard to police, is the implementation of existing legislation. The lack of co-operation and co-ordination of law enforcement agencies and other institutions hamper the efficient fight against economic crime and corruption. There are still some gaps in the legislation especially concerning money laundering. Moreover, there is a lack of adequate trained staff and material resources.

The existing complicated multi-stage criminal procedure (police, investigator, prosecutor and court) contributes significantly to the problem of lack of co-operation between all involved law enforcement agencies and other institutions and is one of the major problems concerning combating serious crime. The extreme slowness of the investigative system puts the entire justice system in serious danger. The evident risks are represented by useless and expensive overlaps among the authorities involved and by a confusion of roles.

The Customs Administration and the Ministry of Finance should continue to implement the Action Integrity Plan, which aims to reinforce customs ethics, to develop the training system for personnel, to improve co-operation between the units and to implement the computerised information technology, necessary for the adoption of the relevant acquis. With respect to border control and enforcement, particular attention should be paid to the implementation of measures to reduce waiting times at the border.

E. Justice

1. Formal *acquis*

Czech law -both civil and criminal- has been profoundly modified since 1989. However, the ambitious undertaking of recodifying the different -Civil and Criminal (Procedure)- Codes has not been achieved. The re-codification of these Codes has been postponed to 1 January 2005. However, the Czech government has committed itself to having the Parliament approve -and let enter into force- those modifications which are essential for integrating the *acquis*¹. This commitment should be held. In any case, the delay of the reform raises doubts about the capacity of the Czech Republic to ensure the necessary coherence of its (civil and criminal) legislation.

In the civil field, numerous reforms undertaken since 1989 have improved the situation. Changes to the Civil Procedure Code -which entered into force in 2001- have simplified procedures and accelerated the settlement of disputes. The Czech Republic has almost entirely aligned itself with the relevant **civil and commercial** *acquis*.

In the criminal field, positive aspects include the right to defence (constitutionally guaranteed and respected in practice), the presumption of innocence and the right to appeal first instance decisions. However, the criminal procedure is heavily formalised; repetition of the same procedures at different levels of a case causes delays. Since 1989, the Criminal Code and Code of Procedure have undergone several changes. In January 2001, a law entered into force abolishing the previous possibility for appeal courts used to return a case to the courts of first instance on the basis of a legal problem and without thorough examination. The main problem concerns the relation between the public prosecutor and the investigating services; the Public Prosecutors Office does not sufficiently control their work. The 1999 Reform project included provisions to improve this situation, but has been rejected by Parliament notably on this point, partly because of opposition from investigators fearing a reduction of their prerogatives.

¹ The authorities have announced that Czech legislation will be aligned with the entire Chapter 24 JHA *acquis* -through amendments to the Codes- by the end of 2001 with an anticipated entry into force by January 2002. These amendments should implement the *acquis*. However, it should also be monitored that the Czech legislation continues to be aligned with new instruments that may have been adopted by the date of accession.

In May 2000, the Parliament sent the Reform project concerning the Criminal Code and Code of Proceedings back to the government.

The Czech Republic is party to a large number of Criminal law Conventions and has aligned its legislation to a considerable part of Joint Actions. It has not yet signed the European Convention on the International Validity of Criminal Judgements (The Hague 1970) but intends to do so in the near future.

(...)

The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data has been signed, **and is due to be ratified in 2001. The Data Protection Law which entered into force in 2000 is based on the 1995 Community Directive. It should be monitored whether its implementation is satisfactory. Provisions ensuring personal data protection with regard to police files should enter into force in 2001.**

2. Administrative capacity

Since 1989, the administrative capacity of the judiciary has improved and the organisation of the judiciary (1991) has undergone a reform. The military courts have been incorporated into the judicial system. The Ministry of Justice has been reorganised and reinforced. The relations between the Ministry and, respectively, the Association of Judges and of Prosecutors have improved. However, the administrative capacity of the judiciary is severely hampered by **traditional problems such as** absence of general court management, the lack of adequate administrative support (e.g. **sufficiently qualified staff to take over some of the judges' tasks**), delays, backlogs (...) and difficulties in enforcing **civil** judgements. (...)

The relative inexperience, poor knowledge of languages¹ and (therefore) **so far** insufficient specialisation (...) of mostly young judges is worrying. Training is not yet well organised. The Institute for Further Education has not been reformed after 1989, its training is insufficient, does not cover all judges, is not systematic and lacks long term concepts and planning. Training of judges in international/EU law (in principle mandatory) is still insufficient and only provided for through bi- or multilateral projects.

¹ However, intensive language training focused on the legal terminology for respectively judges and prosecutors started in 1999 and 2000.

Beneficiaries of special training, supposed to pass on their acquired knowledge to colleagues, sometimes leave the judiciary for more profitable employment elsewhere. (...). The performance of the judiciary in the fight against organised and economic crime is not yet satisfactory.

Many courts still continue to suffer from a lack of **adequate** equipment (...) **and buildings are also inadequate**. While considerable efforts are being made, there is still a lot to be done in this area. There is still no regular publication of case-law except the jurisprudence of the Constitutional Court, nor is there easy (...) access thereto.

Judges' salaries are among the highest in the public sector. Public prosecutors receive similar salaries, albeit around 10% less than judges. Although this gap used to be much wider a few years ago, it is reported that the prosecutors' inferior employment conditions may have a negative impact on their motivation and performance and that these should be redressed.

(...) **The situation regarding commercial cases remains unsatisfactory**; the commercial disputes -taking the greatest amount of time- of a market-economy country are relatively new, especially in terms of their size and complexity. Training of prosecutors and judges is needed in this area.

In general, although diminishing, the backlog in **criminal**, civil and commercial cases still seriously hampers the effectiveness of the judiciary.

With regard to criminal procedures, (...) there is a lack of drive and involvement on the part of prosecutors when it comes to the everyday-day-court-life. Their contacts with the public are limited to non-existent and they are not well-integrated into the judicial process. There is a clear need to provide them with training and to extend and clarify their tasks so that they can play a part in ensuring citizens' access to justice. (...)

The main aims of the current Reform of the Judiciary -a first document was adopted by the Government in July 1999- are alignment with the acquis, increase of the number of judges, prosecutors and court officials, set up life-long training for the judiciary and their trainees, specialisation in administrative and commercial matters, the introduction of court clerks and a computer-network linking the courts, the abolishment of the four-tier system, the creation of a Supreme Council of Magistrates, the acceleration of proceedings, better access to justice and to court rulings and the suppression of investigators in preliminary criminal proceedings.

So far, the progress of the reform has been limited.

The amendments to the Commercial and Civil Proceedings Code entered into force on 1 January 2001. In addition, several acts and pieces of secondary legislation necessary for the implementation of the reform have been adopted. The amendments should simplify and accelerate the civil procedure (with regard to interim measures, taking of evidence, appeals and a simplification and greater efficiency of the enforcement of judgements) and the proceedings of the Commercial Register. The ineffective Regional Commercial Courts have been abolished from January 2001 as part of a move from the four- to a three-tier system.

However, in May 2000 the Parliament rejected the draft amendment to the Criminal Proceedings Code and Criminal Code, which should reform the criminal justice system in a substantial way by inter alia attributing a greater role to the prosecutor and by strengthening the rights of the defence in all stages of the criminal proceedings. The important and specified role of the investigator in preliminary criminal proceedings is still a weakness (viz. Police). The Parliament also rejected the proposed amendment to the Constitution that should strengthen the independence and autonomy of the Judiciary by creating a self-governing organ (the Supreme Council) that limits the current power of intervention and interference by the Ministry of Justice. (...) The new draft amendment to the Criminal Proceedings Code and to the Act on State Prosecutors is a compromise. It should strengthen the role of the State Prosecutor and the accelerated procedure would be applied only in the area of prosecution of minor offences¹. Moreover, the possibility for a judge to reject the start of a court procedure in case he considers the material not to be enough to establish a case, will disappear under the new procedure. Although this would shift the burden of proof to the court and increase the prosecutor's role, it might also result in capacity difficulties at the District Court and State Prosecutor levels as there is a current lack of adequate training and equipment.

Confidence -although still not very high- of the citizens in the courts² seems to have increased during the period of debating the reform plans in Parliament.

The date of completion of the reform has been postponed to 1 January 2005. **A positive change of the Czech judicial system and its administrative capacity, depends on the outcome of the entire reform project - currently being discussed by Parliament.**

¹ i.e. cases with sentences less than 5 years

² 35% favourable opinions, 25,7% negative, 32% neutral and 6,4% no opinion

3. *Implementing performance*

The replacement since 1989 of old by new judges and prosecutors, which in itself has been a positive development, has caused a lack of experience of the judiciary. For the time being the judiciary is not yet sufficiently informed about (application of) the new legislation, and the performance of the judiciary in the fight against organised and economic crime is not yet satisfactory. (..) Lengthy procedures, especially in criminal cases, the poor enforcement of (civil) judgements and the considerable case backlogs in both civil and criminal fields need improvement. The same goes for the effective implementing capacity in the field of fraud, corruption and money laundering.

Independence of judges vis-à-vis the executive is constitutionally guaranteed and effectively carried out in practice. In particular, appointment of judges is satisfactory. As to *guarantees on the impartiality of judges and prosecutors*, the existing legal provisions comply to the requirements of the acquis and the salaries of judges and prosecutors are relatively high. However, corruption is perceived as a serious problem and the institutions established to prevent and curb it have so far not been effective.

As to *access of citizens to justice* - although a provision on legal aid exists, the system has restrictions in civil matters, and does not exist at all in administrative matters. In practice, legal aid is not yet sufficiently developed. However, the situation is developing in a positive way (i.e. the number of lawyers providing free legal aid is on the increase).

Where the *quality of civil and criminal procedures* is concerned, the main problem is the criminal procedure: the insufficient role of the Public Prosecutor and the repetition of procedures weaken the guarantees for citizens and cause delays. *Dealing with cases within reasonable time* in practice takes quite a long time. However, since a few years the number of cases pending is decreasing. Moreover, on the point of *existing mechanisms to control and inspect the activities of judges and prosecutors*, in 2000, the Czech Government set up a General Inspectorate. Within the Ministry of Justice, a department supervises the delays in the handling of cases by courts. Several checks have been made so far which have led to sanctions in case the explanations provided for the delays were not satisfactory.

The situation regarding *enforcement of judgements* is clearly unsatisfactory for civil matters. In 2000, a law introducing the profession of bailiff entered into force and its implementation - planned for 2001- should improve the situation.

With regard to the *quality of the training system of judges, prosecutors and other judicial professions*, in general, the replacement of the old by new (and young) judges and prosecutors has caused lack of experience and requires a significant training effort, which the Government has started to make (by setting up inter alia a training centre/system for judges and prosecutors). There remains a lot to be done however, especially concerning the new tasks of the prosecutor, specialised training of judges in economic and financial crimes, languages etc..

Practical judicial co-operation -both in civil and criminal matters- reportedly works well. **The services in charge of judicial co-operation are sufficiently qualified, but problems related to bureaucratic slowness and lack of material and human resources remain.** These issues (necessary language training, shortage of personnel and slowness with the handling of requests) will be dealt with in the near future by the Ministry of Justice.

Concerning the existence of effective provisions in the area of the Registers, the functioning of the Czech cadastre is not satisfactory. The Commercial Register has been computerised and can be consulted on the internet, but its functioning has been criticised and needs improvement. Its slowness causes suspicion about the existence of corruption in this area.

4. Summary

(...) **Although the recodification of several Codes has not yet been achieved, the Government is making efforts to realise the alignment of Czech legislation with the Chapter 24 JHA acquis through amendments to the Codes. The various reform changes made so far have improved a number of issues, but a thorough improvement of the judicial system (especially criminal law and procedure) and the judiciary will depend on the outcome of the significant reform project which is currently being debated by Parliament.**

The administrative capacity as well as the training of the entire judiciary is weak, **partly due to the inexperience of the relatively new and young judiciary**. There is a current lack of **sufficiently qualified** administrative support staff, equipment and access to case-law. Judicial procedures are (...) slow (especially in criminal matters) and the (...) case backlogs hamper the efficiency of the system. The role of the prosecutor in criminal proceedings is still too weak, as is its relation to the public. Access to justice is not satisfactory. The (...) creation of a self-governing body has not yet taken place.

The fulfilment of the conditions for a proper functioning of the judiciary are a *sine qua non* for the effective implementation and enforcement of the acquis. Its current implementing performance -in various fields- needs to be improved. Judicial co-operation **-despite the current lack of resources and its slowness- reportedly** works well in practice.

F. Human Rights

1. Formal acquis

The Czech Republic is member of the Council of Europe and has ratified most of the acquis in the area of human rights. A number of instruments still need be ratified (Revised European Social Charter, Protocol 12 to the EHRC, the Additional Protocol to the Convention on the Transfer of Sentenced Persons) or signed (the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints). Amendments to domestic law that are considered to be necessary concern inter alia the Law on Prisons, criminal law and legislation on discrimination.

2. Administrative capacity

There is a lack of (qualified) judges, prosecutors and administrative staff to support them. Moreover, the Reform of the Judiciary which deals with its Statute, its Code of Conduct and the role of the Public Prosecutor is still ongoing. The police investigators lack experience. The necessary institutions protecting the rights of the citizens such as the Ombudsman and Human Rights Commissioner have only recently been set up (in 2000). Legal aid is still restricted, and the number of lawyers designated to provide free legal aid -despite an increase in the past few years- is still low.

There is a lack of funding which is needed to develop the current legal aid system.

3. *Implementing performance*

The fairly recent establishment of the Human Rights Commissioner should make a substantial contribution to the monitoring of the Judiciary Reform process, to streamlining the lengthy judicial procedures and to the introduction of alternatives to custodial sentences.

The Law on Mediation and Probation for Imprisonment and Rehabilitation has only entered into force early 2001, so it is too early to assess its implementation.

Access to justice poses difficulties in practice and the system of legal aid needs to be improved and provided with the necessary budget.

With regard to asylum-seekers, despite the introduction in January 2000 of a new law which allows failed asylum applicants the right to full appeal, the current system is still extremely slow and cumbersome.

With regard to the (respect of human rights demands regarding) treatment of minors, provisions are currently unsatisfactory. More information is needed on this point.

There are reports of ill-treatment, excessive force and misbehaviour by police officers who still have to come to terms with their new role of serving the people as opposed to their previous role under the old regime. There has been criticism on the Unit for Control and Complaints which has to investigate complaints on non-criminal matters but which is not independent from the Police.

A number of steps have been taken to fight discriminatory attitudes and the spread of racism. The 2000 Report on Extremism stressed the improved effectiveness of the police and the increase in the number of crimes reported. However, there are still reports on racially motivated and extremist crimes and on the failure by the police to effectively protect, investigate and/or prosecute. **Racially motivated violence -a most pressing and dangerous expression of racism/intolerance- particularly threatens Roma but also other members of minority groups.**

Despite criminal code sections directed against racist speech and propaganda, such groups are rarely prosecuted. Despite awareness of the (state and local) authorities of the seriousness of the problem and their steps taken to address it, further efforts are still needed to counter the (skinhead) movement. Moreover, there are reportedly links between the police and skinhead-groups; especially in small towns skinhead sympathies are widespread in the local police.

Increased and, in some areas, significant efforts have been made since last year regarding the situation of the Roma community, notably with regard to the education system but also regarding housing, relations with the police etc. However, a lasting improvement in the situation of the Roma requires sustained effort over time. The situation regarding other minorities is more satisfactory. Workshops aiming to educate police officers on minority policing have been organised.

Despite the laws prohibiting trafficking in women and children and co-operation between the authorities and third countries to enforce them, the situation in this area still requires improvement.

(...)

The prison system is being improved; the budget for the prison service was increased and the new Prisons Act -which came into force in January 2000- should improve the rights and conditions of prisoners and their relation with prison services. However, certain aspects are contested, in particular the introduction of a financial levy on prisoners.

The Custody Law has been amended to improve the conditions of suspects in custody (e.g. women and men are housed separately, attorney and family visits are permitted).

Whilst generally meeting minimum international standards, prisons remain chronically overcrowded (in some areas up to 180% occupation!). This situation -which is partly explained by the fact that there is currently too little use of alternative sentencing- has caused riots (protests about deteriorating facilities, insufficient food and clothing etc).

With regard to police detention, police may hold persons without charge for up to 48 hours, during which they have the right to counsel. However, they are frequently unable to notify a third person of their situation. Pre-trial detention for crimes considered exceptionally grave under the Criminal Code may last as long as 4 years and for other crimes as long as 2 or 3 years with mandatory judicial review intervals beginning at the end of the first 6 months in detention. In practice, few pre-trial detainees are reportedly held longer than 2 years; in fact the current average length of pre-trial detention is just under 6 months. In November 2000, the number of pre-trial detainees was about one third of the prison population.

G. Corruption

1. Legislation

The Czech Republic has ratified the Council of Europe Criminal Law Convention on Corruption¹ and signed the Civil Law Convention on Corruption. After the amendment of the Civil Code² (expected entry into force 1 January 2002) the Convention will be submitted to Parliament. Provisions on corruption that provide for full alignment with the EU *acquis* will be contained in the new Criminal Code and the new Criminal Proceedings Code. The OECD Convention came into force on 21 March 2000.

As to legislation on the fight against corruption, all the most important forms of the phenomenon are disciplined in the Criminal Code (arts. 160 - 163), including provisions on falsified accounts, fraudulent manipulation of public tenders and public auctions and conduct that can be traced back to the notion of money laundering.

¹ However, the Czech Republic is not (yet) a member of GRECO. Therefore, an examination of the implementation of new rules has so far not yet taken place.

² Amendment to Section 106 (1) of the Civil Code (extension of the subjective prescription period concerning compensation of damage caused by corruption).

Convention on the Protection of the EC Financial Interests and its Protocols

The Criminal Code contains regulations imposing criminal sanctions on different forms of conduct that are traced back to the notion of fraud. With regard to the Convention, the general provisions on fraud have been extended to cover subsidy fraud and a 1997 amendment introduced a more precise definition of fraud. The Criminal Code meets the provision which requires Member States to criminally sanction any conduct constituting fraud against the EC. The Criminal Proceedings Code meets the requirements concerning jurisdiction and co-operation of individual countries in the course of criminal proceedings. The Criminal Code complies with the first and second Protocol.

Convention on the Fight against Corruption Involving EC or EU Member States' Officials

An amendment to the Criminal Code gave equal rights and duties to Czech and foreign public officials and also broadened the definition of a public official - which currently includes also persons holding office abroad or in an international organisation. One provision has yet to be met: the issue of liability of legal persons for bribery of a foreign public official. The issue will be taken care of in the process of re-codifying criminal law.

According to Czech authorities, operational co-operation with OLAF is running smoothly. The Ministry of Justice is preparing a decree that would extend the jurisdiction of the specialised units of the High Public Prosecution Office in Prague and in Olomouc and of the Supreme Public Prosecution Office to the area of protecting the EC financial interests. These specialised units -which started in October 2000- are competent in serious economic and financial crime cases.

2. National programmes and strategies

The "Clean hands campaign" launched in 1998 has been replaced in 1999 by the "National Programme of Combating Corruption", thereby shifting the corresponding responsibility to usual law enforcement agencies. The real impact of this shifting will need further assessment. The required legislation is drafted. In addition, a lot of technical measures are left to each Minister (hot line for corruption victims in the customs administration, "manual for citizens" containing prevention information, special e-mail address/web site...). A special educational programme was launched for state administration authorities.

In addition, the "Czech Anti-Corruption Agreement" is drafted in connection with political parties and representatives of the "civil society".

3. Current trends

3.1 Border Management

There is not much information about corruption among the staff of the Aliens and Border Police; which by no means proves that this organisation is free of corruption. Since the borders are generally poorly guarded, there is no need for illegal immigrants to use bribes in order to organise their illegal border crossings.

According to the Czech Government's Report on Corruption, the Alien Police (part of the Alien and Border Police) is one of the police services which performance is mostly hampered by corruption. The Report mentions particular problems concerning the issuing of residence permits.

3.2 Migration and asylum

According to the Government ("Report on Corruption, February 2001") the Alien Border Police is one of the police services whose performance is most hampered by corruption. The Report mentions particular problems concerning the issuing of residence permits ("organised stage of corruption").

The State itself gives the wrong example in legislation: the legal practice of fining illegals and even smugglers instead of implementing expulsions and other appropriate sanctions directly leads to corruption. It is the police who "collect" fines and may fix their amount within fixed limits. In addition, according to the Law, "If the costs of the expulsion cannot be paid out of the deposit, they may be paid out of, at least in part, cash funds which an alien ... has at hand."

3.3 Police and customs

The police are affected by corruption to the same degree as the other parts of the Czech administration. The absence of a civil service law (or its counterpart for the police) and of comprehensive career development as well as a low-income rate certainly supports this negative development. In particular the traffic police and administrative police services, which are dealing with permissions, registration of official documents etc. have a bad reputation in this respect. The whole system of registration, examination and publication of complaints against the police needs more transparency.

38% of the total of crimes committed by police officials are crimes of abuse of power (166 cases in 1999). In the same year, the courts convicted 102 members of the police for various offences. Specific figures on corruption and bribery are not available.

Since October 2000, the Ministry of Interior has established specialised departments in the Office of Investigation corresponding to the structure of the specialised departments for combating economic crime and corruption in the State Prosecutor Offices in Brno, Prague, and Olomouc. The police already have its specialised service for combating serious economic crime and corruption (SPOK).

An Internal Inspection Department exists within the Customs Administration, which detects corruption among Customs Administration officers. It operates closely with a specialised department of the Police of the Czech Republic dealing with detecting corruption – the Service for Revealing of Corruption and Major Economic Crime.

3.4 Justice

The Czech Government stated in 1999 that it was disturbed by the corruption among *inter alia* judges and state attorneys. The main areas of concern are the civil judiciary and commercial registers. There are some complaints of corruption; most of them concern the keeping of the companies register. However, since the creation of the Ministry of Justice's inspectorate none of these complaints has resulted in enough evidence to institute criminal proceedings and establish the truth in the accusations.

4. International organisations

Recent work by the World Bank, the IMF and the EBRD¹ stresses the general concern about corruption and its negative effects on competition, notably where paying kickbacks for public procurement are concerned.

According to the Commission Regular Report 2000, little progress had been made in the fight against fraud and corruption. Problems lie in poor implementing capacity, lack of qualified staff and poor inter-institutional co-operation.

OECD's AnCorWeb reports 67% of the population to consider that all / most officials engage in bribe-taking and corruption. Corruption is most apparent in the army, followed by privatisation agencies and business. The accent is on economic corruption.

Freedom House too alleges that the system of military contracting is the area most prone to corruption and provides some reports on top-policy-makers' (illicit) ties to business.

Transparency International ranked the Czech Republic no. 42 on the CPI in 2000 with a score of 4.3. This puts the Czech Republic alongside Lithuania and Poland (rank 43).

III. CONCLUSIONS

A. Border security

Czech Republic has still several shortcomings in the field of border security. The current border regime at the Czech-Slovakian border does not cope with EU requirements. Implementation of the border security system is still far from satisfactory in terms of EU-requirements. Insufficient or in some cases non-existing co-operation between authorities causes several practical problems.

The legal bases do not yet cover the requirements of the formal acquis. The legal framework is fragmented and the powers of border authorities are too limited and sanctions for border related crimes are too soft. However the main problems lay with the administrative capacity as it is suffering from the fragmented administrative structures and the lack of integrated approach towards the border security. There is no one chief organisation responsible for border security strategy and development of the national border management concept.

¹ Oxford Analytica Brief- EASTERN EUROPE: FDI Effects (September 2000)

Budgetary shortcomings are aggravated by the fact that there is no independent overall budget for the Alien and Border Police. The strict division of tasks and jurisdiction between the units responsible for border checks at border crossing points (Aliens police) and those responsible for areas between border crossing points (Border Police) jeopardises the efficiency of the organisation.

There is a need to develop a more coherent and concise border security system and to have one nationally operating border police organisation. The Czech Republic must still prepare and implement the exact organisation, structure, division of tasks and staff between the Alien and Border Police Units and the other regional directorates or units. Lack of specially trained officers for border security tasks lowers the level of national border security and reflects also to international co-operation. Practical cross-border co-operation with neighbouring countries border authorities needs to be enhanced. Ability to recognise, to react and to investigate border related crimes is far too low.

B. Migration

Legislation has been aligned on the acquis in 1999, but provisions on family reunification and expulsion still require amendments. A number of necessary readmission agreements are lacking. Practical implementation of the new legislation has proved to be difficult. The decision-taking process for issuing consular visas still differs from the EU one. Overall, there is no significant fight against illegal immigration transiting or staying in the territory.

The main reasons are the low level of technical preparation of all involved authorities, excessive reliance on EU funding, the low level of co-operation between Alien and Border Police and the new unit in charge of combating organised illegal immigration and the lack of appropriate sanctions.

It has to be understood that even after having been entirely surrounded by EU/Schengen members, the Czech Republic will still have to control its migratory fluxes. Therefore, in addition to the last formal alignments required, it should establish a National Information System and co-operation within concerned bodies, search, prosecute and sanction the smugglers of persons in another way than by mere fines, increase readmission and expulsion and act therein not only at the (western) borders but also inside the territory.

C. Asylum

The appeal system within the asylum procedure is still not compatible with the *acquis*, the length of judicial appeals is worrying and as far as the Dublin Convention is concerned, the step of technical preparation is still low while its implementation will have to start the very day of accession. In addition, no measures, be they legal or administrative, have been taken in order to deter applicants from abusing the asylum procedures only for easing their travel westwards.

The flawed appeal procedure is due to deficient legislation, whereas the rest of the shortcomings are due to insufficient administrative capacity, in connection with the relative novelty of asylum issues in the Czech Republic. The insufficient fight against illegal immigration (see Migration) may also explain the lack of deterrence of abuses.

The Czech Republic should therefore set up an appropriate asylum appeal procedure (as it has committed itself to do) and accelerate the preparation for implementing the Dublin Convention. It has also to introduce and/or implement legal tools (e.g. accelerated procedures, safe third country) in view of tackling the problem of abuse of asylum procedures.

D. Police and customs

The Czech Republic continues to enhance the organisational framework for efficient policing. Specialised units and agencies are established corresponding to the national organisational needs in the fight against organised crime, corruption, economic crime and money laundering. The main legislation is sufficient for the combat of all crimes, except money laundering where gaps exist.

However, the current legal basis in the area of police co-operation, the Act on Police and the Code of Criminal Procedure, both amended in 1998, still does not assure effective action. The Government has still to prepare all necessary acts, which would enable the Czech Republic to participate fully in the Schengen system, e.g. hot pursuit and other areas of police co-operation.

The current draft proposal for amending the Criminal Proceedings Code will not affect the dominant position of the Office of Investigation and will not result in any acceleration of the lengthy and complicated criminal procedure.

Lack of co-operation and co-ordination of law enforcement agencies and other institutions hamper efficient fight against economic crime and corruption, which together with the complicated multi-stage criminal procedure (police, investigator, prosecutor and court) are major problems concerning combating serious crime. The extreme slowness of the investigative system puts the entire justice system in serious danger.

One of the main problems, which must be addressed by the Czech Republic with regard to police, is the implementation of existing legislation.

The Czech Republic should develop a comprehensive strategy for co-operation between the different institutions involved in combating economic crime and corruption as well as considering the role of investigators in the criminal procedure. Stronger action against drugs, organised crime (especially money laundering and trafficking in human beings) and corruption is required, with adequate resources allocated to enable the police and courts to operate effectively and receive the training they need to cope with the challenges facing them. The National Drug Information System should be improved and a national Focal Point on Drugs should be created. A comprehensive strategy addressing all qualification and human resource problems should be developed.

With regard to customs, the implementation of reinforced customs ethics, a further developed training system, improved internal co-operation and implementation of the computerised information technology are necessary for the adoption of the relevant *acquis*.

E. Justice

The Czech government is making efforts to have its legislation aligned to the *acquis stricto sensu* by the end of 2002. However, re-codification of the different -Civil and Criminal (Procedure)- Codes has not yet been achieved and has been postponed to 2005. Progress of the judicial reform project has been limited so far. The rejection by Parliament of the first reform project in 2000 and its postponement to 1 January 2005, are major sources of concern.

One problem concerns the roles of the police investigator and the public prosecutor in the criminal procedure.

The legal system faces the 'traditional' problems of a country in transition; its laws are changing rapidly, posing a challenge to the often young judiciary, the courts are not sufficiently equipped and suffer from a lack of qualified administrative staff, and prosecutors have to get used to their new tasks. The main problem is the gap between on the one hand the ambitions of the government -the entire reform of all aspects of the judicial system and of civil and criminal law (and procedures) which is necessary in the light of accession- and actual realisation of these intentions on the other.

The developments of the reform, the efforts that need to be made to improve effective access to justice and the judiciary's administrative and implementing capacity should be closely monitored.

F. Human rights

As to the formal acquis, some instruments have not yet been signed or ratified and a number of amendments to domestic law (prisons, discrimination, criminal law) may (still) be necessary.

The administrative capacity of the judiciary is poor, the number of lawyers providing free legal aid is low, there is a lack of means and experience and institutions protecting citizens' rights are relatively new.

The ongoing reform of the Judiciary should improve its situation and a number of measures have been taken and new institutions set up to deal with and improve the human rights situation. However, as regards legal aid, clearly funding is needed to develop and improve the system. A number of important issues can only (and must) be evaluated at a later stage, e.g. the effective protection of citizens' rights, proper access to justice, the (new) role of the police, the situation of Roma, the (new) legislation on imprisonment and pre-trial detention, problem of overcrowding in prisons and the enforcement of legislation to tackle trafficking in women and children.

Despite existing legal provisions directed against racist speech and propaganda, practical implementation (i.e. protection, prosecution) by police/local and state authorities must improve.

G. Corruption

Corruption persists as a serious problem in the Czech Republic. The Government is aware of the problem and has put in place a comprehensive legislative anti-corruption framework and has elaborated a National Programme of Combating Corruption. Despite these efforts, implementation in this area is still far from satisfactory.

At present, the fight against corruption suffers from inadequate staff, lack of specialised training and lack of effective co-operation among the law enforcement agencies involved. Insufficient police powers to investigate offences continues to seriously hamper the prosecution of corruption-cases.

The Czech authorities should continue to strengthen their activities against corruption. A comprehensive anti-corruption programme, constituting the base of all anti-corruption activities and involving all relevant law enforcement agencies as well as other institutions, should be created. Inter-agency co-operation and adequate training of staff at all levels must improve.