



Council of the  
European Union

012151/EU XXVII. GP  
Eingelangt am 19/02/20

Brussels, 5 February 2020  
(OR. en)

9765/2/99  
REV 2 DCL 1

EVAL 41  
ELARG 82

#### DECLASSIFICATION

---

of document:	ST 9765/2/99 REV 2 RESTREINT
dated:	13 October 1999
new status:	Public
Subject:	Preliminary draft country report on the Czech Republic

---

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

---



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 13 October 1999**

**9765/2/99**

**REV 2**

**RESTREINT**

**EVAL 41**

**ELARG 82**

**NOTE**

---

From : General Secretariat

to : Collective Evaluation Group

---

Subject: Preliminary draft country report on the Czech Republic

---

Delegations will find attached the preliminary draft country report on the Czech Republic.

The previous document (9765/1/99 REV 1 EVAL 41 ELARG 82) has been amended on a number of points, taking into account the comments made by the delegations and by the Commission.

Without changing the structure of the document, some subtitles have been added and some paragraphs have been moved.

To facilitate the reading, the amendments have been drafted in **bold**.

## Preliminary draft country report on the Czech Republic

### A. Introductory remarks:

In its surveys and assessments the Working Party has dealt with the progress made by each acceding country and also examined shortcomings which still have to be eliminated in order to link up with the EU Acquis in the Justice and Home Affairs sphere.

On the basis of the information available it is not yet possible to make a definitive judgement, which means that only provisional and, to some extent, non-exhaustive findings can be established at present.

The data collected by the Collective Evaluation Working Party are being constantly added to and updated, mainly through the information network set up at the foreign representations using the structured checklist adopted under the German Presidency, so that a sort of "evaluation library" is gradually being built up. However, it will not be altogether possible to avoid a situation where the amount of information produced on individual subjects varies. Certain imbalances cannot therefore be completely ruled out.

The main aim of the report is to make clear where measures are still needed before the EU standard can be achieved in the applicant States. The list of improvements required cannot however be considered exhaustive at present.

### B. Alignment with the Acquis in certain areas

**The Czech Republic made efforts to align itself to the EU Acquis in individual areas.**

**It has prepared a raft of new legislation covering Foreigners and asylum. Besides, there has been an increase in the capacity of accommodation of asylum seekers: more refugee- centres have been constructed, in order to be able to deal with future influxes (100% increase in asylum applications in 1998). Efforts have been made to improve staff efficiency and number.**

**Regarding the police, the central criminal intelligence units were re-organised in the spring of 1995, thus**

**ensuring greater continuity in police work, especially in the higher echelons. This went hand in hand with a gradual improvement in technical training and equipment. However, the process is by no means complete. The Czech Republic will still need to make considerable efforts if it is to come up to EU standards in the medium term.**

**Active and passive bribery of public officials is punishable according to provisions in the Czech Penal Code.** The Czech Republic is well aware of the problem of corruption and measures to combat it have been stepped up accordingly. **In February 1999, the government adopted a programme for the fight against corruption, which focuses on corruption in the public sector and gives concrete instructions to various ministries, with deadlines mostly set for the end of 1999 or 2000.**

Numerous legislative measures have been taken in the field of justice. The Constitution, which came into force on 01-01-93, lays down the principle of the rule of law and autonomy of the judiciary and creates the main formal guarantees for independence of judges. Acts of 1991 have regulated the administration of courts and judges. The re-incorporation of military tribunals into the unitary judicial system has now been carried out. Act No. 152/1995 has amended the Criminal Code in order to combat organised crime. Act No. 61/1996 against Legalisation of Proceeds of Criminal Activity ("money laundering act") is wide-ranging. There has been a strengthening of sanctions provided for in cases of race-related crimes (These sanctions are seldom used in practice, but particular attention in this field is drawn to the role of local public prosecutors). After long debates, criminalisation of mere possession of drugs was decided on and entered into force on 1 January 1999.

The European Union and its Member States are supporting the Czech Republic in its progress towards attaining EU standards with numerous aid projects.

C. Shortcomings

I. Securing external borders

1. General description

**The current legal basis for the border management in the Czech Republic is the Act on Residence of Aliens and the Act on Police .** The Czech Border Guard is not an independent organisation, but part of the "Foreigners Police and Border Guard Department" located at Czech police headquarters. The police headquarters are themselves subordinate to the Ministry of the Interior.

Border controls are carried out by the Aliens Police, which is responsible for a total of 122 international border crossings, including 86 road crossings, 25 rail crossings, one river crossing and 10 airports. In addition there are officially 37 border crossing points for minor border traffic and 65 crossing points on footpaths and lakes.

Surveillance of the "green" border is the responsibility of the Border Guard Police, which has 154 Border Guard units for the purpose. 47 are located on the Polish border, 59 on the German border, 30 on the Austrian border and 18 on the border with Slovakia.

**In January 1999** 6 334 people were employed in the Foreigners Police and Border Guard, 2 640 of whom are on duty at border guard units. 2 748 Foreigners Police staff work at border crossing points, 454 in the 76 Foreigners Police district divisions and 492 in the eight regional divisions of the Border Guard and Foreigners Police.

**The borders of the Czech Republic measure some 2 290 km. The borders with EU Member States account for 1 276 km long (the German border is 810 km long, the Austrian 466 km) while the borders with the candidate countries Poland (762 km) and the Slovak Republic (252 km) total some 1014 km. (Source: Czech Central Bureau for Statistics.)**

Officers earn on average around 16 500 koruna (approx. EUR 470) per month (slightly lower than the average monthly wage in the Czech Republic, around EUR 500).

**The Czech Republic has bilateral agreements on border co-operation with all its neighbouring countries.**

**Adoption of a new Act on Residence of Aliens is foreseen in 1999, with entry into force on 1 January 2000, and a new act on police will enter into force in 2001.**

## **2. Need for administrative reorganisation of border security**

**Czech border security is in need of immediate reform. Border protection duties are divided between two separate authorities who do not co-operate, resulting in dysfunction and reducing the effectiveness of border security. Although the Czech Republic is aware of the problem, it has so far been unable to work out a solution, probably because there are differences within the Ministry of the Interior itself on how to approach the restructuring. However re-organisation is planned in order to reinforce the control of the external borders. It is not yet decided whether an organisation separate from the police will be set up or if a division within the police force responsible for border control will set up a new managing and reporting system and no longer be responsible for other police tasks.**

## **3. Shortages of staff and funding**

The Czech border is **arguably** understaffed. One of the main reasons for this is the failure to set the right budget policy priorities. The budget estimates for border security staffing seem inadequate.

In an effort to combat the steady rise in illegal migration, the Czech Republic has again assigned troops to border duties, although a government decision ending military border surveillance was issued as recently as January 1999. However military forces are not regularly used for border control since the creation of the Czech Republic. An evaluation of the potential usefulness of the army's recent border "manoeuvres", in which soldiers had no executive powers and were merely allowed to report illegal immigrants to the border protection authorities, **was** to be completed by mid 1999. A decision will then be taken on continued use

of the military.

#### 4. Inadequate equipment

The technical standard of the equipment used by the Foreigners Police and Border Guard seems insufficient. **The Czech authorities see an urgent need for improved technical equipment for use in detecting illegal immigration.** Internal communications structures especially still fall quite short of EU standards, particularly as regards electronic data transfer. **At present there is no system whereby a national data network can be accessed on-line from all border crossing points and there is no uniform computer system within the Czech police force.** The only on-line link is between the headquarters of the Foreigners Police and Border Guard and Prague's Ruzyne airport. Investigative checks at border-crossing points are based on data, which **are** updated at regular intervals.

There are only telephone links to the border crossing-points on the Slovak border. According to the Czechs themselves, thermo/infrared cameras are virtually non-existent, or obsolete. At the moment there is only one CO-2 device available for operations, and only one police helicopter with thermo-camera equipment for all the police services put together.

#### 5. Inadequate security on Slovak border

**The control at the Slovak border is clearly insufficient. During the screening exercise the Czech Republic has recognised a need for improved checks on entry and exit land routes and passing points on the Slovak border. To treat its border with Slovakia as an external one is however a politically sensitive issue.**

Controls are confined almost entirely to official border crossings, although there are still nearly 100 tracks leading across the border (some of which are accessible to traffic). **Therefore the main problem is people crossing the uncontrolled borders.** The border between the two countries, regarded chiefly as a political dividing line, runs through wooded territory which is difficult to keep under surveillance; patrols tend to be the exception. As a result of the historical development of the two States, the local population still maintains close personal and commercial ties and would have little understanding of tighter border



surveillance.

Nevertheless, the Czech Republic is preparing for the Czech/Slovak border to become an external border should the two countries not accede to the EU simultaneously. Following the change of government in Bratislava, the Czech Republic has opened negotiations with Slovakia on improving border security. In addition Resolution 54/99 of 20 January 1999 envisages a new concept of border control, which contains provisions for the Slovak border. It will be necessary to monitor the results of this resolution.

#### 6. Backlog of building work at Prague's Ruzyne airport

Prague's Ruzyne airport does not allow for the physical separation of passengers flows. Passengers are channelled to a central passport control upon arrival. The Czech Republic is aware of the fact that strict separation of passengers flows will have to be introduced on accession and that sizeable investments will be required.. It is against this background that an inter-ministerial group was created at the end of the year 1998, and that, at the Czech Republic's request, an exchange of information was held at Prague airport on 29 April 1999; a representative of the German Presidency of Schengen was also present.

Adaptation of the airport to the Acquis on border controls of passengers will require continuous monitoring.

## II. Migration (visas, deportation/expulsion)

### 1. General description of legal provisions

The legal basis for the right of aliens to enter, stay and work in the Czech republic is the Law on Stay of Foreigners of 1992 and the Law on Administrative Procedure of 1967. The provisions on expulsion are in the Law on the Stay of Foreigners and in the Law on Police of 1991.

Under present legislation visas can be issued at the border. Besides, all types of residence permit can be applied for **not only** at a Czech embassy abroad **but also** directly on Czech territory. A foreigner awaiting expulsion is placed in a detention centre for a maximum of 30 days.



The Czech Republic has concluded readmission agreements **with neighbouring States (Germany, Poland, Slovakia, Austria) and with Hungary, Romania, Bulgaria and Canada ; agreements with France and Slovenia have been signed. An agreement with Croatia is under preparation.**

**Regarding migration, the Czech republic is in the process of reforming its legislation. According to Czech authorities a new act on Residence of Aliens is foreseen to enter into force on 1 January 2000. The new law will be the main legal instrument for alignment with the Acquis in the field of migration. However, the new draft law does not specify the responsible Czech institution for issuing residence and work permits, due to conflicting opinions between the Ministries involved.**

## **2. Worrying increase in illegal immigration**

**The Czech Republic is increasingly becoming both a target and a transit country for legal and illegal immigration.**

While the number of people entering the Czech Republic has gone down from slightly over 70 million in 1996 to 55 million in 1998, the number of illegal migrants has more than doubled since 1995, reaching nearly 45 000 in 1998. The **yearly** number of estimated illegal immigrants **is almost a quarter of the current stock of legally resident foreigners, (approx. 220 000)** most of whom trying to move on to Western Europe. The Czech Republic has become the major transit country for illegal migration and for smuggling people into the European Union via the Balkan route or the Eastern route. At the same time, it is itself becoming an ever more popular destination for illegal immigrants.

## **3. Adjustments to visa policy required**

**Czech visa policy is not fully harmonised with EU visa policy. The EU requires visas for nationals of Belarus, Bulgaria, Cuba, Kazakhstan, Kyrgysztan, Moldova, Romania, Russia, Turkmenistan and Ukraine with which the Czech Republic has visa-free agreements. The Czech Republic is ready to take over the Acquis in this respect; however,**

owing to its particular traditional ties and economic links with the successor states to the former Soviet Union and other former socialist countries it will proceed only gradually with regard to these countries, until such time as it joins the EU.

**The “new visa concept” adopted by the government in Resolution 843 of 25 August 1999, setting deadlines for the Ministry of Foreign Affairs to submit proposals to the Government regarding the abrogation of visa-free agreements, will have to be monitored as it is unclear when it will enter into force. The concept can enter into force through an administrative procedure and does not need to be submitted to parliament.**

There are no rules on airport transit visas at present.

#### 4. Shortcomings in visa-issuing procedure

Data transfer is to be improved. Foreign representations and border guard units do not have on-line access to central databases for issuing and checking visas; updating takes place twice daily.

The Czech Government has launched a project to modernise the visa-issuing procedure.

Depending on the financial resources available, foreign representations should have on-line access to central databases by the year 2002.

Current visas including visas "on humanitarian grounds" can be issued at the border at four crossing points. However, nationals of certain high-risk countries are not covered by these arrangements. **According to the draft legislation on the Residence of Aliens foreseen to enter into force in the year 2000 visas at the border are to be confined to special cases.**

5. Weaknesses in document security

**Czech passports are prone to forgery in that the photos can be replaced without too much technical difficulty. The easily forged Czech passports are well-known by more than one Member State. The passports are not machine readable**

**The visas issued are not machine readable and not equipped with kinegrams. Only about 60 to 80 cases of visa forgery are discovered each year, which is due to the lack of technical equipment for detecting forgeries.**

6. Problems related to the immigration control

Expulsion, entry and residence bans and fines are not applied in a consistent fashion, owing to political reasons (bilateral relations with neighbouring countries, especially Bulgaria and Romania), to technical problems (lack of detention centres for deportees, equipment for fingerprinting, adequate data collection, electronic data exchange, etc.) and to lack of cooperation with foreign representations of the countries of origin. In addition administrative structures are inadequate and there is a lack of communication between the responsible authorities.

It is also quite easy for people who have entered the country illegally to obtain legal residence status by founding a commercial enterprise or investing a small amount of capital.

**The present law on Stay of Aliens provides for liability for airline carriers to return aliens trying to enter the Czech Republic illegally via air travel but does not provide for fines. The**

**planned new law on the Residence of Aliens will extend this provision to all carriers and provide not only for the return of illegals but also for fines.**

7. Shortcomings in readmission

**Persons transferred from Schengen States to the Czech Republic are not removed from the country "under supervision" but set free after a short period and simply asked to leave the country (most people make a renewed attempt at illegal entry into a Western European State).**

8. Differences from EU Resolutions on immigration (admission)

At the moment Czech practice differs from EU Resolutions on immigration (admission) in the following respects:

- Slovak nationals do not need a work permit; they are simply registered. In 1998 there were some 60 000 Slovaks employed in the Czech Republic.
- Under family reunification rules, parents, grandparents and grandchildren are entitled to join their relatives in the Czech Republic, in addition to spouses and children. Moreover, in individual cases, other family members may be included on humanitarian grounds. Under the new legislation under preparation, only spouses, under-age children and elderly persons (grandparents) will be allowed in.
- Under Czech law, students are entitled to remain in the Czech Republic on completion of their studies and to take up employment, although, under the relevant Resolution, they are required to return to their home country when they have finished their studies.

## 9. Citizenship

For several reasons, the Citizenship Act of 1992 created stateless persons and misunderstandings among certain former "Czechoslovakians" living in the present Czech Republic. Amendments of 1996, and their day-to-day implementation, have only partially solved these complex problems.

### III. Asylum

#### 1. General description of legal provisions and the asylum procedure

**The Act on Refugees, which has been amended several times in recent years, covers asylum matters. The Czech Republic is, since 1991, a contracting party to the Geneva Convention relating to the status of refugees and the New York Protocol.**

**An asylum seeker should apply for refugee status within 24 hours of his arrival. A decision on an application must be taken within 90 days. The applicant may appeal to the Minister of Interior within 15 days of receiving a negative decision.**

The administrative procedure is divided into two levels, a first and a second instance. At first instance, asylum applications are considered by a department of the Ministry of the Interior.

On 1 April 1999 an "appeals commission" was set up, with representatives of the authorities and non-governmental organisations; this is a further administrative body for hearing appeals. The appeals commission submits the applications to the Minister of the Interior, with recommendations on the action to be taken. However, these recommendations are not binding on the Minister. A refused applicant can appeal to the administrative court, which examines the legality of the decision ; it does not inquire into the facts of the case. If further investigation of the facts is required, the case is referred back to the original authority, which is then obliged to establish additional facts. **The final authority in the appeal process is the Supreme Court, which judges also exclusively on points of law.**

The Constitution provides the right to legal assistance. UNHCR has full and free access to all

steps of the asylum procedure and other NGOs may also be consulted.

**A new Asylum law should enter into force on 1 January 2000. It will include the basic principles contained in the Acquis including safe third country and safe country of origin. The new law will also provide the necessary legal basis to incorporate the provisions of the Dublin Convention once the Czech Republic becomes a member of the EU. According to Czech sources no additional structures will be required for implementation of the legislation. The group will have to look again at the final Asylum Act once it has been adopted and some experience has been gathered on its application. It is to be noted however that the draft law does not foresee the establishment of an independent instance of appeal for rejected applicants (i.e. this is not in line with the Acquis).**

**2. Lack of independence of the appeals structure**

**The appeal procedure is not in line with the Acquis on asylum. The lack of independence of the appeal structure, in an appeal procedure against a first instance decision, is a cause for concern. Whether or not full alignment is achieved, depends upon the reform of the judiciary, along with a reform of administrative law, which should be achieved in 2002. Czech administrative courts will be entitled to judge on points of fact and on points of law.**

**3.. Shortcomings in asylum law and asylum procedure**

**For applicants who without objective reasons failed to present their case within the required time limit, the situation (as regards asylum) should be clarified.**

The principle of a safe third country as a reason for ruling out an asylum application is unknown in Czech law. Every asylum application lodged at the border is therefore considered in substance. Asylum applications from people from safe third countries or countries of origin are rejected as being manifestly unfounded. However, it is still open to the applicant to prove that the state is not safe in his particular case.

**The Czech Asylum law does not provide for a suspensive effect of the appeals procedure, something which will have to be introduced in order to comply with the EU Aquis. In practice however, an appeal has suspensive effect.**

**4. Preparation for accession to the Dublin Convention**

**The Czech Republic has embarked upon the necessary preparations for application of the Dublin Convention as soon as it accedes to the European Union; as a result, as matters now stand, it may be assumed that joining the Dublin Convention system should not pose any difficulties.**

**IV. Police (including customs)**

**Police**

**1. Organisation and legislation concerning the Police**

**Police co-operation has its legal basis in the Law on Police and the code of criminal procedure, both amended in 1998.**

**Formal recruitment criteria are laid down in the Czech Police Service Act and correspond more or less to the rules in most European countries.**

**The Minister of the Interior is responsible for the police through the Police Presidium, headed by the Police President who is appointed and recalled by the Minister with agreement of the Czech Republic Government.**

**The Police are composed of the services for Public order, the Criminal Police, the Traffic Police, Administrative Affairs, the Protection service, and the Service for combating Corruption and Serious Economic Crime. The nation-wide responsibility for the fight against organised crime lies with the Organized Crime Division, which forms part of the Czech Criminal Police. The Ministry of Finance is responsible for the fight against money laundering.**



**‘The investigation service’ is a separate service in the police force dealing exclusively with investigative work. It functions as an intermediary between the regular police and the courts. The Minister of Interior appoints the investigators and their competence is restricted by the Constitution.**

**There are currently about 42.000 policemen in service which means 400 police officers per 100.000 inhabitants.**

**The average wage of a police officer is 18 271 Kc (app. 520 EUR, 1999 figures), which is slightly above the national average.**

**A new Police Service Act is foreseen to enter into force in 2001, providing for alignment with the Acquis.**

**The new Police Service Act should provide for better integration of the police into society. It also provides for an extension of training from 12 to 18 months.**

## **2. Staffing and equipment problems**

**The police is in low esteem and there is, generally, little interest in joining the police. The recruiting and training of qualified staff is also hampered by budgetary restraints and working conditions. The selection process seems to be quite severe and more than 40 % of the applicants fail. There are about 7.000 applications a year.**

**While there has been a slight improvement in police working conditions and in the standard of equipment in recent years, chiefly as a result of donated equipment, much remains inadequate. In particular there is not enough modern technical equipment or suitable premises.**

3. **Inefficient police forces and bureaucratic obstacles to police duties**

The police structure seems to be insufficient to combat organised crime, including corruption and illegal immigration.

Police efficiency is undermined by the sometimes highly bureaucratic manner in which police investigations are conducted.

Police officers have to accomplish too much time –consuming administrative tasks, which could be taken over by administrative personnel.

There is also a lack of co-ordination and clear distribution of work between the various law enforcement agencies.

The status of the peculiarly Czech institution of the "investigation service" needs to be clarified. The intelligence service seems to take over investigations from the police if there are grounds to suspect that a criminal offence has been committed. The investigations already undertaken by the police are often carried out all over again.

The Czech authorities announced that the new legislation, foreseen to enter into force in 2001, will have a significant effect upon police, investigators and judicial powers. Abolition of the notion of 'investigators' is foreseen in order to simplify procedures within the police. The judiciary will subsequently take on more responsibility.

4. **Problems in combating organised crime and corruption**

**General remarks on Organised crime**

Pursuant to the Czech Penal Code, a criminal organisation is defined as: "an association of more persons having an internal structure, distribution of functions and division of labour, activities and pursuing the aim to gain profits by regular committing intentional criminal offences".

The Government's strategy in the fight against organised crime is still based on the principles laid down in the Government's Report on Safety in the Czech Republic, dating back to 1993. The first national programme on Organised Crime was adopted 29 October 1997. It principally aims at taking adequate measures in the field of illegal migration and visa policy, illegal trafficking in drugs, 'serious economic and financial crime' and money laundering. It covers the period 1997-2000. Since its adoption, [internal review on 30 June 1998], little progress has been made as far as implementation is concerned, mainly due to conflicts of competence, organisational problems, lack of means and most of all of communication.

The main activities of organised criminal groups within the Czech Republic in 1998 concentrated especially on the following fields:

- bank and financial fraud
- illegal trafficking in drugs
- car theft and illegal transit of stolen cars
- illegal immigration and trafficking in humans
- racketeering and violent crime.

The Czech Republic has signed a number of international agreements and has a good level of co-operation with the EU in the area of organised crime. It has concluded bilateral agreements on police co-operation in combating organised crime with i.a. Hungary, UK, Germany, Turkey, Slovakia, Russia, Romania, Cyprus, Latvia, Poland, Egypt, Kyrgystan and Uzbekistan. More agreements are being negotiated.

The Czech Republic is experiencing a steady increase in all types of recorded crime. **The overall clear-up rate has increased and according to the information given by the Czech authorities it was 41 % in 1998 (property crime 27 %, murders 85 %, violent crimes 81 %).** Czech statistics for organised crime show that criminal syndicates have a certain degree of influence on politics, the economy, the media, the judiciary and the police, especially at local level.

Reforms are needed in order to make the fight against organised crime (especially money laundering, drugs, trafficking in human beings) and corruption more efficient. Amendments to the penal code will be necessary. The legislation against criminal organisations should be extended to cover those organisations which do not operate for profit. Provisions against trafficking in human beings and sexual exploitation of children should be extended. In addition criminal liability of legal persons should be introduced as well as criminalisation of private sector corruption. The protection of witnesses should be improved.

#### 4.2. Motor vehicle thefts and trafficking

The number of stolen vehicles has been rising continually over the past five years. The Czech Republic now plays a major role in vehicle smuggling as well, both as a transit and source country, but also as a market.

#### 4.3. Drug –related crime

In terms of narcotics crime, the Czech Republic is chiefly significant as a transit country, but is also increasingly becoming a country of origin of synthetic drugs.

Czech drugs legislation is now broadly in line with EU standards and anti-drugs policy is now a much more balanced mix of punishment and prevention., the low prices and easy availability of drugs have led to a major increase in the number of Czech drug users and in "drug tourism". **Drug trafficking organised by in particular Kosovo-Albanian and Nigerian groups is centred in the Czech Republic and is a recognised problem.**

#### 4.4. Trafficking in human beings

**The most widespread form of illicit trafficking of human beings in the Czech territory is organised prostitution. Sometimes kidnapping and violent means are used. The number of cases prosecuted has increased.**

**Because of its geographical location in Central Europe and the fact that it borders on two EU countries the Czech Republic is one of the main transit points for organised**

**illegal immigration to Western Europe. Alien smuggling is a highly profitable and safe business in comparison to drugs trafficking, because the maximum prison sentence is only three years.**

#### 4.5 Corruption

The Czech Republic has recognised that corruption is a real problem. Since 1997 measures to combat it have been stepped up accordingly. **However, the Government's 'Clean Hands' campaign, aimed at fighting corruption regardless of political implications, lacks a convincing administrative background and meets delays, resistance and even obstruction from the side of most political and governmental institutions.**

The Inter-Ministerial Committee set up in 1998 has a special Analytical Commission, which has examined over 300 cases. 70 complaints have been filed, but no criminal proceedings have been initiated yet. The Committee's activities are hampered by the fact that it has no staff and that implementation of its recommendations depends on the co-operation of other ministries. The division of tasks between the 10 member institutions of the group was still unclear in early 1999.

The powers of the police to investigate offences are insufficient. The lack of personnel, equipment and lack of co-ordination between the agencies involved and insufficient legislation hamper government policy. The lack of concrete progress in the reform of the statute of the civil service means that low pay for state employees, insufficient manpower and equipment continue to be serious obstacles to an effective fight against corruption.

According to information from the Czech Ministry of the Interior, only a few isolated cases of corruption have come to light in police ranks. Nevertheless, corruption does play a role in the traffic police and in administrative areas of police work, for example when issuing permits.. Corruption cases, which have become public knowledge, have led to a loss of authority on the part of the law enforcement agencies.

**Provisions on corruption that will provide for alignment with the EU Acquis will be contained in the new criminal code and the new criminal proceedings code, foreseen to enter into force in 2002. Partial alignment is foreseen already in 1999 through the amendment to the**

**criminal code.**

5. International co-operation

In the experience of at least one Member State, international police co-operation with the law enforcement authorities of the Czech Republic works smoothly, for instance with the central unit in charge of narcotics. Even in matters involving lengthy correspondence, inquiries are usually answered promptly and fully. As regards international contacts, however, the various Czech law enforcement agencies sometimes find themselves in competition with one another, as a result of demarcation disputes between the various specialised units.

6. Lack of data protection provisions

The Czech Republic has not yet ratified the Council of Europe Convention on the protection of individuals with regard to automatic processing of personal data (Strasbourg 1981), nor has it adopted a law on the protection of personal data.

Customs

1. Description of organisation and legislation

Pursuant to the Czech Customs Act "the Customs Offices shall uncover criminal offences as established in special legislation (i.e. Penal Rules) and shall identify persons suspected of having committed them."

The investigation powers and operative means of Customs are in line with the European standards, and for Customs control purposes the powers of the Customs officers are said to be adequate and sufficient at the moment. Permission for application of special operative means shall be issued by the judge of the District Court.

The Czech Customs is part of the Ministry of Finance. The General Directorate has a staff of 400 and regional/local administration has a staff of 9300.

**The working relations with other enforcement agencies, in particular, with the Czech Police and State Attorney Offices are said to be good. Cooperation with the Police is based on legal provisions elaborated in detail in the Agreement between the Ministry of Interior and the Ministry of Finance and in the Implementation Protocol signed by the Presidium of the Police and the General Directorate of Customs.**

In the experience of at least two Member States there are no problems either with general legal and administrative assistance, where most requests concern problems of customs valuation, or co-operation in the field of narcotics.

## 2. Shortcomings

With controlled consignments, problems are caused by the fact that carriers cannot be granted exemption from charges on highly taxed goods entering in the Czech Republic. This makes it much more difficult to obtain important intelligence on the structures of smuggling networks: observations cannot be carried out, because third parties that are assisting the customs administration cannot be offered protection.

The Czech customs legislation will need amending in order to provide for customs services to be able to follow the movements of persons and consignments across the borders.

The current risk analysis system is not considered sufficiently developed.

The existence of corruption within the Customs Services has been admitted as an existing problem.



**An important cause for concern relates to data protection. (see Police, paragraph 6)**

## V Justice

### 1. Judicial system.

There are five levels in the judiciary: district courts, courts of appeal, high courts (Olmütz and Prague), the Supreme Court and the Constitutional Court, which may be addressed directly in some cases.

There is no specialisation within the judicial system, neither in commercial matters nor in administrative ones. Plans for the institution of a separate jurisdiction for administrative cases seem to have been abandoned. However, the establishment of a Supreme Administrative Court is provided for in the Constitution. For the time being, the Constitutional Court is performing the functions of the SAC quite satisfactorily according to the Council of Europe and “has found its rightful place in the system of constitutional checks and balances.”

For instance, the Court has quashed several local government orders imposing restrictions on freedom of assembly, association, expression, or on the use of foreign languages. It remains to be seen to what extent ordinary courts deal properly with administrative cases.

Basic codes are a heterogeneous blend of pre-war, communist and modern elements (about 6000 new laws and regulations since 1989) without any common philosophy. Re-codification of civil and criminal codes (and procedure codes) has been in preparation since 1993 and is supposed to enter into force at the beginning of 2002. Considering the speed of this process, this deadline seems very ambitious. In fact, the latest documents no longer include any reference to the above-mentioned date.

## **2. Status of Judiciary**

Judges are appointed by the president of the Republic, prosecutors by the Minister of Justice, and “investigators” by the Minister of the Interior.

The institution of an independent disciplinary board composed exclusively of judges has been announced. The effects of the "lustration" law, (on grounds of which 50% of judges and prosecutors had to resign between 1989 and 1996) were supposed to have been achieved in 1996; it has been extended to 2001. Lack of rules on the civil service is said to be the main reason for this extension. Theoretically this reduces the independence of judges. Nevertheless this law is not used very much any more.

Despite the relevant constitutional principles and the provisions of the Court and Judges Act of 1991, the Government and the Minister of Justice can still direct the management of the courts e.g. via appointment/removal of the presidents of the courts (who distribute work among judges), appointment/removal of the prosecutors and of the Chiefs of the Prosecutor's offices, full power of the judges' career etc... Specific attempts of interference with the judiciary however were not pointed out.

Investigators complete the operational work of the police and then present the information to the judiciary. They are subordinate to the Ministry of the Interior. Their important and specified role in preliminary criminal proceedings is still a weakness as far as implementation of the principle of judicial autonomy is concerned. The suppression of investigators has been announced as part of the whole judicial reform.

Though the average wage is relatively high (about 1.350 EUR per month), it seems difficult to fill the numerous vacancies (396, i.e. 15 per cent of posts) with qualified applicants, who are attracted by high free market wages for qualified jurists. Trainees often resign just after special training.

### 3. Training of judges

The Institute for Further Training of Judges (and prosecutors) has not been reformed after 1989. However, it has focused its activities on issues of human rights and democracy. Training in International or Community Law is provided for exclusively by bilateral or multilateral projects, namely with the "Ecole Nationale de la Magistrature". A new institution is in preparation, which will pay special attention to international and EU law. The first Phare project on training of judges suffered long delays before being adopted.

### 4. Functioning of Judiciary

Lack of modern equipment, precarious premises, and lack of PC's and of access to on-line legal databases are manifest. Administrative overload e.g. of petty cases (for instance on car accidents where the "constat amiable" doesn't exist), poor quality of procedural rules (e.g. lack of urgency measures, or right for the parties to present new evidence in the appeal procedure), low level of competence and insufficient specialisation of mostly young judges, lead to extremely slow judicial procedures, to unpredictable and divergent decisions, and to low confidence in the judiciary among Czech nationals and **foreigners**.

It must be added however that things improve in the courts of second and third instance. Moreover this situation is recognised by the Ministry of Justice itself, and by the Czech Government which has discussed a first reform document in April 1999. The main aims are to take into account all EU legislation, training of judges in Community law, creation of administrative and commercial courts, less administrative work by introducing "greffiers" or "Rechtspfleger", and by setting up a computer network between the courts. These are projects, which should be monitored, in the next months.

The business registration system has a bad reputation among Czech and foreign entrepreneurs, due to its slowness.

5. Criminal law and the code of criminal procedure

**There is no notion of criminal liability of legal persons in the Czech legal system.**

**At present the Czech criminal code does not cover corruption in the private sector.**

**Czech law is not fully aligned with the Joint Action of 29 December 1998 making it a criminal offence to participate in a criminal organisation. A criminal organisation is defined as an association of a number of persons who carry out criminal activity with the aim of gaining profits. In the Joint Action it is not specified that the aim must be profit, the criminal acts can be merely an end in themselves.**

**Current Czech law is more restrictive than the Joint Action of 24 February 1997 on combating trafficking in human beings and sexual exploitation of children. Recruitment of a woman or child for prostitution abroad is a criminal act and any threat of violence is an additional crime. There is no protection where a man is concerned and when there is no threat of violence. Czech law criminalises the manufacture, export, and dissemination of pornographic material but not its possession for personal use. However, under EU legislation the use of children in pornography and the possession of such material both constitute criminal acts.**

The legislation on money laundering in force since 1 July 1996 is wide ranging. A number of areas, however, leave room for improvement. Legal persons cannot be criminally liable. The Czech Republic still allows for the issuing of bearer (anonymous) bank-books. Chiefly, its implementation seems to be weak. In 1997, 1139 cases of suspicious financial transactions were reported to the Financial Analytical Unit of the Ministry of Finance: further criminal proceedings took place only in two cases. In 1998, 1100 cases were reported but only 25 submitted to the Police.

There are no provisions allowing effective confiscation of the proceeds of organised crime or suspect property, likewise no modern data protection law with provisions for an independent supervisory body.

The concept of protection of witnesses was introduced into the criminal code in 1995. However the law only provides for the protection of witnesses for the duration of the actual criminal proceedings and is not extended to the period after the court gives its ruling.

The Czech Republic does not extradite Czech nationals. A Czech national can however be punished for crimes committed abroad. Stateless people can also be tried on Czech territory.

The Czech authorities have announced that a new criminal code and a new criminal proceedings code (foreseen to enter into force in 2002), will provide for alignment with the EU Acquis.

#### 6. Judicial co- operation in criminal matters

The Czech republic has ratified the major international instruments <sup>1</sup>and is able to operate as a

---

1

- the European Convention on Extradition
- the European Convention on Mutual Assistance in Criminal Matters
- the European Convention on Transfer of Proceedings Criminal Matters
- the European Convention on Suppression of Terrorism
- the Convention on the Transfer of Sentenced Persons
- the 1954 Convention on Civil Procedure
- the 1958 Convention on Recognition and Enforcement of Decisions concerning Maintenance Obligations against Children
- the 1965 Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters
- the 1970 Convention on Evidence-Taking Abroad in Civil and Commercial Matters
- the 1970 Convention on the Recognition of Divorces and Legal Separations
- the 1971 Convention on the Law Applicable on Traffic Accidents
- the 1973 Convention Concerning the International Administration of the Estates of Deceased Persons
- the 1973 Convention on Recognition and Enforcement of Decisions concerning Maintenance Obligations against Adults
- the 1980 Convention on the Civil Aspects of International Child Abduction
- the 1961 Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

Besides, the basic documents are already submitted to the depositary for accession to the 1988 Lugano Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters.

Lastly, accession to the following conventions is under preparation:

- the 1983 European Convention on Compensation of Victims of Violent Crime

successful judicial partner with Member States. The Czech Republic has the intention of ratifying the remaining instruments. In addition, it has negotiated a number of bilateral agreements. Requests can be made through the appropriate Ministry, but they can also be made directly between judicial authorities on the basis of specific agreements. The framework is in place allowing for effective judicial co-operation in criminal matters with the Czech Republic.

There is valuable information on the implementation of this co-operation as regards extradition, transfer of proceedings, transfer of enforcement of judgements, judicial assistance. Three Member States, in their periodic relationship with Czech authorities, assess that no particular problems arise with regard to these issues. The central authorities, Ministry of Justice and Attorney-General's office, have always proved co-operative and competent. When the procedure is carried out directly between the courts and the Public Prosecutors office, it works steadily. **Better knowledge of foreign languages is needed.**

#### 7. Judicial co-operation in civil matters

The same assessment can be made with regard to civil judicial co-operation. The Czech Republic is a contracting state to the relevant Conventions or has initiated the procedures for accession. The Czech republic has been invited to accede to the Lugano Convention and the corresponding inquiries have shown that Czech law and practice meet the requirements of the Convention. These assessments are based on a reasonable number of cases (for instance, 350

- 
- the 1989 Convention on Insider Trading
  - the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
  - the 1999 Criminal Law Convention on Corruption

**The following conventions shall enter into force 'before the entry into the EU':**

- the 1977 European Agreement on the Transmission of Applications for Legal Aid
- the 1997 European Convention on the Adoption of Children
- the 1996 European Convention on the Execution of Rights of Children
- the Hague Convention of 1980 on International Access to Justice
- Council of Europe Convention of 1980 on Custody of Children (signed on April 16, 1999)



requests a year sent by a Member State to the Czech Republic, and almost 800 received from the Czech Republic). The co-operation works just as well as with EU Member States.

#### 8. Mirov prison

The Mirov prison - a castle having been used for that purpose for 600 years- is poorly equipped according to the Council of Europe's visit report.

### VI. Summary conclusions

Political divisions may often explain the current “log-jams” in Parliament. Therefore a committed political will is required at all levels of executive and legislative power in order to adopt and implement the numerous draft laws mentioned in this report.

#### 1. Securing external borders

Given its geographical position directly on the migration route to the West, the Czech Republic is highly susceptible to illegal immigration, which places special demands on the Czech border guard. Border security in the Czech Republic is not up to this challenge; it suffers from major shortcomings.

The resources spent on border security are inadequate and scarcely enough for effective protection. The efficiency of the Czech border security system is further hampered by structural shortcomings. The units dealing with border crossings and those patrolling the "green border" are under separate management; they operate alongside each other but without much communication between them, leaving gaps in the security network, which are quickly identified and exploited by gangs of smugglers. The Czech Republic's attractiveness as a migration hub is further increased by the fact that it has so far been unwilling to subject the Slovak border to a full control regime.

#### 2. Migration

The measures which the Czech Republic has taken to stem the flow of illegal immigration are



inadequate and fail to do justice to the scale of the problem. In order to implement the EU Acquis in this area, top Czech priorities in the next few years will need to include full alignment of their visa policy, which is currently governed by economic and political considerations, the introduction of rules on termination of residence and readmission and, in particular, better security on the Slovak border.

### 3. Asylum

The Czech Asylum and Asylum Procedure Law is already broadly in line with the EU Acquis, including as regards minimum guarantees in asylum procedures, manifestly unfounded applications for asylum and the concept of a refugee. With the new Asylum Law *due to enter into force early next year*, the process of legislative alignment in this area will be nearly complete. **(With two exceptions: the independence of the body in charge of the appeals procedure, and the legal suspensive effect of the appeal.)**

It remains to be seen whether the way the provisions are implemented in practice is consistent with the principles of the rule of law and human rights.

### 4. Police (including customs)

In general, there has been a slight improvement in police performance in recent years. However, bureaucratic obstacles and a lack of modern technical equipment are still undermining the efficiency of police services. The Czech Republic will need to dismantle these obstacles and create the required legal framework, but also, above all, increase police training and pay. This will make the police less susceptible to corruption in certain areas, counter the real threat of organised crime more effectively and increase public acceptance of and confidence in the police.

### 5. Justice

During the "screening" session the Czech authorities themselves gave a very adequate and comprehensive description of the rise and high level of criminal offences in their country. Despite some improvements, the legal measures taken are not sufficient nor efficient. The contrast between smooth judicial co-operation with neighbours in the traditional matters on the one hand, the weak possibility to guarantee the respect of internal regulations (and

therefore of EU Acquis) on the other, is mainly accorded to the quality of laws and of training of young judges. In these areas there are many "legislative intentions" but few laws issued. The monitoring of implementation of new laws will also be necessary. Justice is one of the fields where progress in the Czech republic has to be closely monitored.

-----

DECLASSIFIED