



FRA
Thematic Study on Child Trafficking

Czech Republic

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Executive summary

- [1]. In recent years there has not been much focus on the issue of the specific group of child victims of trafficking. Attention has been paid to the issue of trafficking as such (for several years now) and children were not excluded from the framework. The national laws are complex and the authorities are not formally coordinated. In recent years the situation has been improving.

General anti-child-trafficking framework

- [2]. The Czech Republic is party to the ILO Convention No. 182 on the Worst Forms of Child Labour (1999) and the Convention on the Rights of the Child (1989). However, the Czech Republic is not yet party to other relevant conventions adopted either on a universal or on a regional level, including the Council of Europe conventions. The reason for this is that the criminal liability of legal entities has not yet been defined by Czech national law.
- [3]. Provisions of the amended Penal Code [Trestní zákon] are sufficient to address cases of trafficking in children and also trafficking in other persons (Sec. 232a). Some other provisions of the Penal Code criminalise child trafficking for adoption, child pornography and the incitement to sexual intercourse or similar act for payment or other benefit where committed against a person under 18 years. Moreover, the general offence of the organisation of prostitution includes qualified elements of the offence, giving rise to a more severe sanction where the victim is a child. Legal provisions establishing the principle of the best interests of the child as a primary consideration in all actions and decisions affecting children are not embodied in criminal legislation, but this obligation arises directly from the Convention on the Rights of the Child (1989).
- [4]. The Czech Republic has a *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National Strategy to Combat Trafficking in Human Beings (2008-2011)], which was adopted by the Czech government in the Annex to the Government Resolution No. 67 of 23.01.2008.¹ This National Strategy deals with the issue of trafficking

¹ See Usnesení vlády č. 67 ze dne 23. ledna 2008 (Resolution of the government of the Czech Republic No. 67 concerning the National Strategy to Combat Trafficking in Human Beings (2008-2011) (the Resolution is in Czech only, the National Strategy is

in human beings in general. The National Strategy includes a report which describes the situation pertaining to the area of trafficking in human beings, the evaluation of measures adopted (2005–2007) and the measures proposed for 2008-2011.² This is not a legally binding document but rather one setting out a programme. While the above National Strategy addresses the problem of trafficking in general, the issue of the commercial sexual exploitation of children is described separately in another strategic document: *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National plan on combating commercial sexual exploitation of children (2006-2008)]³.

Prevention of child trafficking

- [5]. Campaigns and activities aimed at the prevention of trafficking in human beings have been carried out by both the state and NGOs. Relevant NGOs and other actors participate in awareness-raising activities; however, most of these campaigns are in relation to adults. Since 2000 there has been no extensive campaign related to the prevention of child trafficking or any aspect thereof. The prevention of children becoming victims of child trafficking is not governed by any special policy in the Czech Republic. Preparation and implementation of preventive events pertaining to the subject of trafficking in human beings in general lacks a direct approach. With regard to local communities and minority groups, the state authorities do recognise their role in the general context of the problem of trafficking in human beings. However, evidence of direct participation of Roma, other minority groups or local communities in preventive efforts is scarcely to be found.

Appointment of legal guardian

- [6]. The guardianship system is rather complex. The *Zákon o rodině* [Family Act] stipulates that the court appoints a guardian whenever it is necessary in the interests of a child, so all unaccompanied minors should theoretically have a guardian appointed. The guardians are

available in English,
http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf =
 (last accessed 15.06.2008).

² See *ibid.*

³ *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National plan on combating commercial sexual exploitation of children 2006-2008], p. 36, available at: <http://aplikace.mvcr.cz/archiv2008/dokument/2006/komercni06.pdf> (in Czech only) (last accessed 23.06.2008).

appointed by the court, which also sets out the limits of the work of the guardian. A guardian is only appointed for children under the age of 18 years. There are special provisions for the appointment of the guardian in the asylum procedure.

Coordination and cooperation

- [7]. In the Czech Republic the cooperation between state and non-state actors concerning trafficking in human beings is formalised through the *Národní kooperační mechanismus* [National Cooperation Mechanism], and primary responsibility for coordinating preventive activities is held by the *Odbor bezpečnostní politiky Ministerstva vnitra České republiky* [Security Policy Department of the Ministry of the Interior]. An overall *Meziresortní koordinační skupina (MKS)* [Inter-ministerial Coordinating Group (IMCG)] was created to coordinate preventive activities and to be responsible for the operations of the current National Coordination Mechanism. It is composed of representatives of individual ministries and relevant NGOs and inter-governmental organisations. Formally, the IMCG also covers the issue of trafficking of children, in practice, however, the IMCG deals only with issues related to adults. The issue of child trafficking has been dealt with only in the context of the sexual exploitation of children. At the same time, there are no cooperation agreements concerning child trafficking between the Czech Republic and countries of origin outside the EU and there are no support programmes as part of international development assistance from the Czech Republic.

Care and protection

- [8]. Legal provision ensuring the granting of and respect for the reflection period of 30 days is Sec. 42e of the *Zákon o pobytu cizinců* [Aliens Act]. In practice, several problems were observed with ensuring respect for the reflection period, for example, the reluctance of the police and other authorities responsible for informing the incoming foreigner. Czech legislation also contains a special provision ensuring the right to residence for children: Sec. 87 Aliens Act (this is a different residence permit from that granted pursuant to Sec. 42e). This provision grants permanent stay to foreigners under 18 years of age under certain preconditions. However, officially no child has yet been granted a temporary stay in the Czech Republic on grounds of trafficking. Czech law allows the detention of people over 15, i.e. only children aged 15-18 may be detained. Detained children are placed in the same facilities as adults; several legal provisions stipulate certain

special safeguards for detained children (such as Sec. 135 (2), Sec. 143 Aliens Act – meal five times per day, rigid restrictions to the possibilities of placing children under a strict detention regime). The repatriation (voluntary return) programme for children may pose a serious problem, especially with regard to the risks associated with the immediate return of trafficked children. All unaccompanied children (foreigners under the age of 15) are placed in a specialised facility, which is an institution specialising in unaccompanied foreign children between the ages of 0 and 18. Custody of children in the facility is similar to custody of Czech children in similar facilities, but some services are added. The facility provides full direct care including health care services and education. It does not provide legal assistance. None of the children in the facility have been identified as a trafficking victim. There is no monitoring mechanism of what happens to runaway children and there is no strategy to prevent them from hiding. There is also no hotline following Commission Decision of 15.02.2007, however, there are several similar instruments to report missing and exploited children.

Best interests determination and durable solutions, including social inclusion/return

- [9]. There is generally no limit on initiating the procedure for applying for asylum/subsidiary protection for child victims of trafficking – any individual may seek international protection in the Czech Republic. Czech law does not provide for a special reason of being the victim of trafficking as a ground for obtaining refugee status, therefore the possibility of victims of trafficking obtaining protection depends on the interpretation of the *Zákon o azylu* Asylum Act. The victims may also be granted humanitarian asylum, or they may be granted a permanent residence permit (special residence permit valid until the child reaches the age of 18). There are several procedures in which the child victim can take part. There is the procedure on international protection (single procedure for asylum/subsidiary protection) and there is also a special procedure regarding the residence permit pursuant to Directive 2004/81/EC; but the child may also remain in the Czech Republic as the child of a foreigner (parent) and thus covered by his/her residence permit. There are no specialised integration programmes for trafficked children; there are some programmes for unaccompanied minors or minors in general.

Prosecution

- [10]. There are no special legal provisions for the investigation of trafficking in children. However, Sec. 102 of the Criminal Procedure Code [Trestní řád] provides that if a person under 15 years is examined as a witness in sensitive circumstances which could unfavourably influence, with regard to age, his/her psychological and moral development, the examination must be undertaken in a sensitive and careful manner. The examination may be conducted in the presence of a specialist in pedagogy and, where appropriate, the parents of the child victim/witness. Unfortunately, we do not have data for convictions based on child trafficking cases alone.
- [11]. There are no special legal provisions granting trafficked children access to justice, including the right to compensation. However, access to justice is ensured on the basis of general provisions on victims in the Criminal Procedure Code. A victim is a person who, as a result of a criminal offence, suffered an injury to health, property, moral integrity or other damage. The victim may take part in criminal proceedings and claim compensation from the accused. Besides the possibility of claiming and having adjudicated compensation from convicted perpetrators of trafficking, the system of supporting and protecting victims of trafficking in human beings from public funds, which is also to motivate victims to cooperate with law enforcement authorities, was established in the form of the 'Model for Supporting and Protecting Victims of Trafficking in Human Beings for the Purpose of Sexual Exploitation' [Model podpory a ochrany obětí obchodování s lidmi za účelem sexuálního vykořisťování] in 2003. This Model does not cover victims of other types of trafficking, as they have not yet been identified as a serious or widespread problem.

Miscellaneous

- [12]. There are several NGOs which deal with the issue. Their websites often contain interesting information, including analysis. Examples include *Organizace pro pomoc uprchlíkům* [Organisation for Aid to Refugees] (www.opu.cz), *Poradna pro uprchlíky* [Counselling Centre for Refugees] (www.uprchlici.cz) and *La Strada* (www.strada.cz).

Good practice

- [13]. The Czech Republic allows unaccompanied minors to stay in the country until they reach the age of majority for the simple reason of

being an unaccompanied child. Children who are studying may then apply for a national residence status (permanent residence permit pursuant to the provision of Sec. 66 of the Aliens Act). Upon the condition of integration, a permanent residence permit may be granted to them.

- [14]. The Aliens Act allows family reunification for those people who are granted a residence permit pursuant to Directive 2004/81/EC. The residence permit for family members is limited by the continuation of the residence permit of the victim.

A. General anti-child-trafficking framework

- [15]. The Czech Republic is party to the following international legal instruments: the ILO Convention No. 182 on the Worst Forms of Child Labour (1999)⁴ and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (2000)⁵ (which may be relevant to child trafficking in some countries but is unlikely to be in the Czech Republic and other EU countries), but not yet to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000). The Czech Republic has signed but not yet ratified the UN Convention against Transnational Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000). Even though the Czech legal framework satisfies almost all the requirements which the Protocol imposes upon signatory countries, the Czech Republic can, at the moment, ratify neither the Convention nor its Protocols. The reason for this is that the liability of legal entities has not yet been defined by Czech national law. Introduction of criminal liability of legal entities was one of the heavily discussed proposals contained in the original draft recodification of the Penal Code [Trestní zákon].
- [16]. However, the Czech Republic has not yet signed and ratified the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007). The Czech Republic was repeatedly criticised for its position, according to which its accession to the 2005 Convention is predominantly hindered by the requirement of the Convention to implement the liability of legal entities for some types of criminal conduct defined by the Convention as criminal acts. The Convention requires the introduction of criminal, civil or administrative liability (Article 22 of the Convention on corporate liability – in particular paragraph 1 and paragraph 3). The Ministry of the Interior [Ministerstvo vnitra], in cooperation with the Ministry of Justice [Ministerstvo spravedlnosti], is currently working on a draft

⁴ See Czech Republic/*sdělení Ministerstva zahraničních věcí č. 90/2002 Sb.m.s.* [notice of the MFA No. 90/2002 Coll. of International Treaties]. Ratified on 19.06.2001.

⁵ See Czech Republic/*sdělení Ministerstva zahraničních věcí č. 45/2003 Sb.m.s.* [notice of the MFA No. 45/2003 Coll. of International Treaties]. Ratified on 30.11.2001.

stipulating the form in which the liability of legal entities should be introduced into the Czech legal framework. Implementation of such legal provisions would enable ratification of the Council of Europe Convention as well as other international conventions pertaining to this area.

A.1. National legal framework

- [17]. Legal provisions criminalising child trafficking were included in the amended Penal Code in 2004.⁶ The Penal Code distinguishes several offences connecting to child trafficking. First, the most general anti-trafficking provision is Sec. 232a of the Penal Code. This section, introduced by the amendment Act No. 537/2004 Coll., replaced the former Sec. 246 (trafficking in persons for the purpose of sexual intercourse). This provision includes trafficking in children (persons under 18 years) which is punishable in all circumstances. It also includes trafficking in any persons where the act involved violence, the threat of violence, trick, error, distress or dependency, in order to use them for sexual exploitation, slavery or servitude, or for forced labour or other forms of exploitation. The perpetrator is liable to punishment of up to ten years in prison or, in aggravated cases, up to 12 or even 15 years in prison (in particular where death or other serious injury occurred or a transnational organised group was involved). The qualified offence, which is subject to more severe sanctions, does not make a distinction between adult and minor victims.
- [18]. Secondly, Sec. 216a criminalises child trafficking for adoption or other similar purpose. The perpetrator is liable to up to three years' imprisonment. In the even of aggravating circumstances (participation in an organised group, significant profit or serious injury), this act is punishable by up to eight or ten years' imprisonment.
- [19]. Thirdly, there are a number of more specific provisions dealing only with certain aspects of trafficking in human beings, including children, such as Sec. 204 which criminalises the organisation of prostitution (i.e. not the prostitution as such). The organisation of or taking profit from prostitution exercised by another person is punishable with up to three years' imprisonment for an ordinary offence or up to five years where the act involves the use or threat of violence or the abuse of distress or of dependence. The act is punishable with up to eight years' imprisonment where the victim is a person under 18 years of age, or up to 12 years' imprisonment where

⁶ Czech Republic/*Zákon č. 140/1961 Sb., ve znění pozdějších novel* [Act No. 140/1961 Coll., as amended by later laws].

the victim is a child under 15 years of age (minor victims thus constitute an aggravating circumstance).

- [20]. Fourthly, child pornography is punishable under Sec. 205. The elements of the offence, significantly amended by the Act No. 271/2007 (in force as of 01.12.2007), include both the offer or dissemination of ‘normal’ pornography to children (punishable with up to two years’ imprisonment or forfeiture) and the production, import, export, offer or dissemination of child pornography (punishable with up to three years of imprisonment or forfeiture). In cases of qualified elements of the offence (a commission of the act in an organised group or a display of pornography in print, film, broadcasting or on the internet, or with the aim of significant profit), the sanction is up to six or eight years of imprisonment or a financial penalty. The possession of child pornography only for personal use is not criminalised, although the draft new Penal Code, rejected by the Chamber of Deputies of the Parliament in 2006, envisaged doing so. This is why the amendment to the Penal Code (No. 271/2007) introduced a new Sec. 205a. According to this provision the mere possession of child pornography is punishable by up to two years of imprisonment. Under the newly incorporated Sec. 205b the abuse of a child for the production of pornography is punishable by to five years of imprisonment. The same act committed with aggravating circumstances is punishable by up to six years (organised group, with the aim of significant profit) or even up to eight years of imprisonment (transnational organised group, large profits).
- [21]. Finally, Sec. 217a criminalises the incitement to sexual intercourse or similar act for payment or other benefit where it is committed against a person aged under 18 years. In the case of qualified elements of the offence (act committed repeatedly or over a long period of time), the perpetrator is liable to punishment of up to five years of imprisonment.
- [22]. According to the prevailing theory and practice of criminal law, international standards are not directly applicable in Czech penal law (substantive law), although. ‘the promulgated international treaties, the ratification of which was approved by the Parliament, and binding on the Czech Republic, shall be part of the legal order’ (Article 10 of the Constitution). Nevertheless, the Czech Penal Code has been amended in accordance with the international obligations of the Czech Republic in the area of trafficking.⁷ Moreover, under sec. 20a of the

⁷ Zákonem č. 537/2004 Sb., kterým se mění zákon č. 140/1961 Sb., trestní zákon [Act No. 537/2004 Coll., amending Act No. 140/1961 Coll., Penal Code] (concerning trafficking in persons) a zákonem č. 271/2007 Sb., kterým se mění zákon č. 140/1961 Sb., trestní zákon [Act No. 271/2007 Coll., amending Act No. 140/1961 Coll., Penal Code] (concerning child pornography).

Penal Code an act shall be characterised as punishable according to Czech law where this is provided by a promulgated international treaty binding on the Czech Republic.

- [23]. Legal provisions establishing the principle of the best interests of the child as a primary consideration in all actions and decisions affecting children are not embodied in criminal legislation, but this obligation arises directly from the Convention on the Rights of the Child (1989).⁸ As an international treaty on human rights, the Convention has been directly applicable and has had primacy over national laws since 1993 (Article 10 of the Constitution).⁹ This has the same value as a constitutional guarantee. At the level of statutory law, the principle appears in Sec. 5 of the *Zákon č. 359/1999 Sb., o sociálně-právní ochraně dětí* [Act on the Social and Legal Protection of Children].

A.2. National Plan of Action

- [24]. The Czech Republic has a *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National Strategy to Combat Trafficking in Human Beings 2008-2011], adopted by the Czech government in the Annex to the Government Resolution No. 67 of 23.01.2008.¹⁰ This National Strategy deals with the issue of trafficking in human beings in general. The National Strategy includes a description of the situation pertaining to the area of trafficking in human beings, evaluation of measures adopted (2005-2007) and measures proposed for 2008-2011.
- [25]. The above-mentioned resolution of the government introduced the task, for the Ministry of the Interior [Ministerstvo vnitra] in cooperation with the Ministry of Labour and Social Affairs

⁸ See Czech Republic/*sdělení FMZV č. 104/1991 Sb.* [notice of the FMFA No. 104/1991 Coll.]. Ratified on 07.01.1991.

⁹ This results from the case law of the Czech Constitutional Court; cf. e.g. the plenary judgment of 28.03.1995, Pl. US 20/94, No. 72/1995 Coll., the plenary judgment of 30.06.2004, Pl. US 23/02, No. 89/2004 Coll. Const. Court, or case law from administrative courts; cf. e.g. the judgment of the Municipal Court in Prague of 25.02.2004, 10 Az 120/2003 - 55, No. 293/2004 Coll. Supreme Admin. Court.

¹⁰ See *Usnesení vlády č. 67 ze dne 23. ledna 2008* (Resolution of the government of the Czech Republic No. 67 concerning the National Strategy to Combat Trafficking in Human Beings (2008-2011) (the Resolution is in Czech only, the National Strategy is available in English, http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf = (last accessed 15.06.2008).

[Ministerstvo práce a sociálních věcí] and the Ministry of Justice [Ministerstvo spravedlnosti], to analyse the situation and to submit a criminal law definition of forced labour or new constituent elements of offences such as ‘serious forms of labour exploitation’ and ‘serious forms of violations of labour law regulations’. New constituent elements should define the punishment of ‘illegal employment’, including the different length of sentences according to the gravity of exploitation of an individual by an employer. The task was due for completion by 31.07.2008. We have no information on the latest developments.

- [26]. The Ministry of the Interior was charged by the above resolution, in cooperation with other ministries, with the development of a central system of data collection on trafficking in human beings. The deadline was 30.06.2008.
- [27]. The issue of commercial sexual exploitation of children is described separately in the strategic document, *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National plan on combating commercial sexual exploitation of children (2006-2008)].¹¹ Its structure and key elements are as follows: (1) basic framework of commercial sexual exploitation of children; (2) its causes; (3) its victims; (4) perpetrators of commercial sexual exploitation of children; (5) situation in the Czech Republic; (6) implementation of tasks in 2002-2004 and update for 2004-2006; and (7) plan of action on combating commercial sexual exploitation of children in 2006-2008. The plan of action focuses on prevention, research and education, the elimination of the causes of, enhancement of the struggle against and the elimination of the consequences of the commercial sexual exploitation of children.
- [28]. There is no special National Rapporteur, which covers the issue of trafficking of children. There are some informal inter-agency coordination meetings (see below).
- [29]. Even though there is no formal mechanism (National Referral Mechanism or similar systematic, formalised and standardised instrument for cooperation and referral), which addresses also the rights of trafficked children, the Committee on the Rights of a Child acts as a subsidiary body of the Governmental Council for Human Rights.

¹¹ See Resolution of the government of the Czech Republic No. 949 of 16.08.2006, on the *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National plan on combating commercial sexual exploitation of children (2006-2008)]; available at <http://www.mvcr.cz> security and prevention, trafficking in human beings, documents (Czech only).

A.3. Other national activities

- [30]. In order to successfully implement effective measures against trafficking in human beings in general, it is necessary to earmark specific financial sums. The Czech authorities have in mind that resources needed to implement some of the measures can be found in various funds, projects and grants at the EU level. Some measures which must be implemented and whose purposes do not comply with EU funding objectives will be covered from the state budget of the Czech Republic, namely from the General Cash Management Chapter (items ‘Social and Crime Prevention Programme’ and ‘International Development Aid’), and also from the internal budgets of parties responsible for individual tasks. It might be necessary to change priorities in the budget chapters of some ministries to cover identified requirements in the combating of trafficking in human beings. However, the methodology used does not make it possible to identify a special budget designated only for measures in respect of child trafficking.
- [31]. The Ministry of the Interior has so far in particular used data available in databases of public administration bodies, which may be limited. For example, collecting and providing information on the number and structure of victims of trafficking in human beings has usually only taken into account data on victims participating in the Programme for Victims of Trafficking in Human Beings [Program ochrany a podpory obětí obchodu s lidmi].¹² However, NGOs also provide care for other victims of trafficking in human beings who were not, regardless of the reason, included in the Programme (for example, they were not interested in joining the Programme, were not willing to cooperate with law enforcement authorities in criminal proceedings, or they wanted to cooperate but were unable to provide any specific information of importance for criminal proceedings, or they were not sufficiently reliable). In order to monitor current trends the Ministry of the Interior will gather and analyse statistical data on such people and will establish a structure and system for collecting such data, including the method of collection and a time limit for publication.
- [32]. The former National Strategy 2005-2007¹³ (now replaced by the Strategy 2008-2011) set out strategy task no. 3 (‘to innovate the curriculum of the police education and training programmes – initial, ongoing and specialised – in accordance with the new internal management acts of the Ministry of the Interior’). In previous year’s topics relating to the issue of trafficking in human beings were

¹² Cf. *infra*, chap. G. Prosecution, paras. 72, 73.

¹³ See Resolution of the Government of the Czech Republic No. 957 of 20.07.2005 (only in Czech).

included in education and training programmes for the initial basic training of members of the Czech police at high /secondary schools of the Ministry of the Interior. The objective of such training is to provide police officers with basic information on the issue of trafficking in human beings and to strengthen their ability to recognise victims of trafficking in human beings and sexual exploitation. All high/secondary police schools of the Ministry of the Interior and Police Training Centres of regional administrations of the Czech police received guidelines describing how to treat victims of the described criminal offence. Police officers also received a pamphlet containing, inter alia, 12 basic questions which may help identify victims of trafficking in human beings.

- [33]. In the context of the Czech Republic's accession to the Schengen area in December 2007, the Alien and Border Police [Služba cizinecké a pohraniční policie] of the Czech Police has strengthened its activities within the country. One of its priorities will be to combat illegal employment of foreign nationals and criminal offences relating to migration. In 2006 FRONTEX¹⁴ presented the AGELAUS project to EU Member States and Schengen area states. It was the first project the primary aim of which was to obtain information on illegal migration in relation to the phenomenon of trafficking in human beings and to map the situation in Member States pertaining to this issue. A target group was unaccompanied minor travellers from third countries and persons who might be involved in trafficking in human beings. Although no relevant cases were reported from Prague-Ruzyne airport during this operation, training sessions on how to identify victims of trafficking in human beings who were held prior to the operation was commenced were very beneficial.¹⁵

¹⁴ European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

¹⁵ See *National strategy to combat trafficking in human beings (2008-2011)*, p. 22 (*Národní strategie boje proti obchodování s lidmi pro období 2008-2011*, available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf (in English) (last accessed 15.06.2008).

B. Prevention of child trafficking

- [34]. Campaigns and activities aimed at the prevention of trafficking in human beings have been carried out by both the state and NGOs. One such campaign, in relation to adults, was held in 2006 on the website of the Ministry of the Interior. It responded to the World Cup football championship in Germany and focused on the increased risk of the occurrence of trafficking in human beings during the championship. In addition to guidelines on how to behave during the championship itself, fans could find information on how to recognise victims of trafficking and how to respond proactively. Between 01.07.2007 and 01.01.2008, the International Organization for Migration (IOM) in Prague carried out a counter-trafficking information campaign, targeting clients of prostitution as well as the wider public in the Czech Republic. The aim of the campaign was to raise awareness about human trafficking and to present more information, such as information about non-profit organisations that offer support to victims of human trafficking. The campaign was publicised through websites with detailed information about human trafficking as well as email contacts and discussion forums. Phone hotlines of the partner non-profit organisations, La Strada and Caritas, were also listed, where more information may be obtained and cases of suspected human trafficking may be reported.¹⁶ In addition, a campaign entitled ‘Prevention of trafficking in human beings: Lectures in secondary schools’ was carried out by the IOM between May and June 2007.¹⁷ This campaign comprised lectures and discussions. In the lectures, students were able to pose questions and discuss potentially dangerous situations and their solutions. Discussions focused not only on providing information on labour migration and general information on trafficking in human beings, but also on the overall mapping of knowledge of secondary school students on the issue in question. At the end of the project a report which mapped the knowledge and attitudes of students in this area and contained a range of useful recommendations was submitted by the IOM. The recommendations included that secondary school students should be informed about the issue of trafficking on a regular basis and that the issue of trafficking

¹⁶ See *Final report to the Ministry of the Interior of the Czech Republic: counter-trafficking campaign targeting clients of prostitution in the Czech Republic*, available at http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/iom-kampan.pdf (in English) (last accessed 28.06.2008).

¹⁷ *Závěrečná správa Ministerstvu vnitra České republiky: Prevence obchodu s lidmi: Přednášky na středních školách* [Final report to the Ministry of the Interior of the Czech Republic: Prevention of trafficking in human beings: Lectures in secondary school lectures], available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/zz-prevence-na-skolach3375.pdf (in Czech only) (last accessed 23.06.2008).

should be included in training for teachers and other staff.¹⁸ In 2007 there were further ongoing awareness-raising campaigns. However, most of these campaigns are in relation to adults. Since 2000 there has been no extensive campaign related to the prevention of child trafficking or any aspect thereof. Overall it may be added that the preparation and implementation of preventive events pertaining to the subject of trafficking in human beings in general still lacks a direct approach. Therefore a framework strategy aimed at all the relevant ministries and all the possible target groups was developed by the Ministry of the Interior as the leading coordinator of combating trafficking in human beings.¹⁹ The framework strategy is an eight-page document which focuses on four priorities: (1) education of children and young people; (2) training of relevant target groups; (3) cooperation and prevention in the countries of origin; and (4) focus by the local authorities on children who might be at risk of being trafficked.

- [35]. The following examples can be given as evidence that the relevant NGOs and other actors participate in awareness-raising efforts. The counter-trafficking campaign carried out by the IOM in 2007, for example, drew on the results of a study carried out in 2005 on clients of prostitution as well as the pilot information campaign targeted at the same target group in 2006 in the Czech border regions. Both the study and the pilot information campaign were carried out by the IOM. However, non-profit organisations La Strada Czech Republic and Caritas Czech Republic (Magdala Project) cooperated as partners of the project.²⁰ As an example of participation of minors in the development and implementation of awareness-raising campaigns, the La Strada Czech Republic project, 'Prevention of trafficking in human beings with special regard to young people in corrective and educational facilities in the Czech and Slovak Republics' can be named.²¹ The project started in 2006 and aims to undertake research in

¹⁸ *Závěrečná zpráva Ministerstvu vnitra České republiky: Prevence obchodu s lidmi: Přednášky na středních školách* [Final report to the Ministry of the Interior of the Czech Republic: Prevention of trafficking in human beings: Lectures in secondary schools], available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/zz-prevence-na-skolach3375.pdf (in Czech only) (last accessed 23.06.2008).

¹⁹ This framework strategy is elaborated in full detail in Annex 1, *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National strategy to combat trafficking in human beings 2008-2011], available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf (in English) (last accessed 15.06.2008).

²⁰ *Final report to the Ministry of the Interior of the Czech Republic: Counter-trafficking campaign targeting clients of prostitution in the Czech Republic*, available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/iom-kampan.pdf (in English) (last accessed 28.06.2008).

²¹ See <http://www.strada.cz/cz/kdo-jsme/projekty/> (in Czech only) (last accessed 15.06.2008).

corrective and educational facilities for young people in the Czech and Slovak Republics. On the basis of the results of this research, prevention activities will be carried out, including an awareness-raising campaign relating inter alia to trafficking in human beings.

- [36]. Evidence of direct participation by minority groups or local communities in preventive efforts is not known to the author of the report. In this context, the only point to be mentioned is the efforts of the state authorities to include the issue of commercial sexual exploitation in the educational programmes for so-called Roma social assistants and Roma field staff, who work directly with the Roma community.²² State authorities in general do recognise the role of local communities and minority groups in the general context of the issue of trafficking in human beings. For example, the National Strategy to Combat Trafficking in Human Beings 2008-2011 asserts that citizens of the Czech and Slovak Republics who are of Roma ethnicity, are significantly active in domestic trafficking in human beings.²³ At the same time, several cases of trafficking in Roma children for the purpose of coercing them into committing petty criminal activities have been reported. According to the information received from an official of the Ministry of Labour and Social Affairs, since September 2007 some 17 cases of Slovak and Bulgarian children of Roma ethnicity, who committed petty criminal activities and thus might have been victims of child trafficking, have been reported. It is not clear whether the children were counted as victims of trafficking and the author did not obtain any further information on the actions taken in these cases. The issue of the possible trafficking of children for the purposes of committing petty crimes has not been dealt with much in recent years (as the Ministry of the Interior admits in the National Strategy 2008-2011).²⁴ Some steps were undertaken by the relevant actors, e.g. training of police officers focusing mainly on the area of reporting unaccompanied minors.
- [37]. The prevention of children becoming victims of child trafficking is not governed by any special policy in the Czech Republic. All

²² *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National plan on combating commercial sexual exploitation of children 2006-2008], p. 36, available at: <http://aplikace.mvcr.cz/archiv2008/dokument/2006/komercni06.pdf> (in Czech only) (last accessed 23.06.2008).

²³ *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National strategy to combat trafficking in human beings 2008-2011], available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf (in English) (last accessed 15.06.2008), p. 7.

²⁴ *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National strategy to combat trafficking in human beings 2008-2011], available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf (in English) (last accessed 15.06.2008), p. 10.

unaccompanied children, from the moment they first encounter the police or other authorities responsible, are under the protection of these authorities. Children up to the age of 15 are immediately placed in a special *Facility for Children – Foreigners* [Zařízení pro děti - cizince]; children aged 15-18 may also be placed in detention facilities (under some circumstances), see par. 50 for details.

C. Appointment of legal guardian

[38]. The guardianship system is rather complex.²⁵ First, almost all unaccompanied children are placed in the Facility for Foreign Children.²⁶ Secondly, the *Zákon o rodině* [Family Act]²⁷ stipulates that, ‘the court appoints a guardian whenever it is necessary in the interests of the child’ (Sec. 83 (1), so all unaccompanied minors should theoretically have a guardian appointed (the law does not explicitly mention the necessity of appointing a guardian for every unaccompanied minor, but the situation when an unaccompanied child enters the country should be counted as a situation when ‘it is necessary in the interests of the child’ in terms of the above-mentioned Sec. 83 (1) of the Family Act. Nevertheless, according to information from at least one NGO,²⁸ in practice a guardian is not always appointed in such cases. This is the first step undertaken when an unaccompanied child appears (he/she is placed into the Facility for Foreign Children and he/she may have a guardian appointed). There are special provisions in the *Zákon o azylu* [Asylum Act] for the situation when an unaccompanied child seeks international protection, whereby he/she is appointed a guardian for the asylum procedure.²⁹ A child aged between 15 and 18 (age is counted from the moment of first contact with the state authorities) may also be placed into

²⁵ A study entitled *The risk group of unaccompanied minors: protection measures in an enlarged European Union* on this issue was undertaken in 2007 by Nathalie Schlenzka from the Berlin Institute of Comparative Social Research (financed by the European Commission, Daphne II Programme), available at: http://www.zrs-kp.si/SL/Projekti/MINORS/Conference_Agenda_MinOrs_Florence.pdf (last accessed 28.06.08)

²⁶ The facility was established at the end of 2003; its functioning is regulated by *zák. č. 109/2002 Sb., o výkonu ústavní nebo ochranné výchovy ve školských zařízeních a o preventivně výchovné péči ve školských zařízeních* [Act No. 109/2002 Coll., on Executing Institutional or Protective Education at School Facilities and on Preventive Educational Care at Educational Facilities]. More information is available on the website of the facility, <http://www.ddc.cz/index.php> (in English) (last accessed 28.06.08).

²⁷ Law No. 94/1963 Coll., Family Act (*zák. č. 94/1963 Sb., o rodině*), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=94%2F1963&number2=&name=&text= (last accessed 27 June).

²⁸ Interview with an employee of the Organisation for Aid to Refugees, 19.06.2008.

²⁹ Pursuant to the provisions of the *zák. č. 325/1999 Sb., zákon o azylu* [Law No. 325/1999 Coll., Asylum Act] (Sec. 89), *zák. č. 359/1999 Sb., o sociálně-právní ochraně dětí* [Law No. 359/1999 Coll., on the Social and Legal Protection of Children] and the *zák. č. 94/1963 Sb., o rodině* [Law No. 94/1963 Coll., Family Act]. The child may already have been granted a guardian immediately after his/her first contact with the authorities and in that case it would be the guardian who applies for international protection.

detention for no more than 90 days, pending deportation.³⁰ In this case he/she must be appointed a guardian for the detention.³¹ The first and crucial question is nevertheless the identification of the child as a victim of trafficking. Either of the guardians may identify a child as a victim of trafficking; also an NGO may do so, as may employees of the Facility for Foreign Children or another state authority. Once a child is identified as a victim of trafficking, he/she may be asked to cooperate with the police within the penal procedure as a witness; then the guardian acts for the child (he/she should be appointed pursuant to the general provision of the law if he/she was not appointed before). A child may even cooperate with the police and obtain a residence permit under Directive EC/2004/81. However, if the child is not interested in cooperating with the police, he/she may only be asked to give a statement. The child may continue to stay in the Facility for Foreign Children or detention, based on the simple fact that he/she is an unaccompanied child. Children may stay in the Czech Republic until they are 18 years old (they are granted a permanent residence permit pursuant to the Sec. 87 *Zákon o pobytu cizinců* [Aliens Act], upon the condition of being placed in the Facility for Foreign Children).³² If the children are still studying, they may also be granted a permanent residence permit after the age of 18, regardless of their stay in the Facility (Sec. 66 Aliens Act).

- [39]. The guardians are appointed by the court,³³ which also sets the limits for the work of the guardian (Sec. 84 of the Family Act; the task of the guardian depends on each individual case, but his/her work must be in compliance with the best interests of the child). The age limit for a child to have a guardian appointed is 18. There is an exception given by the Aliens Act³⁴ for the legal capacity pursuant to the provisions of the respective law, the child may act in the issues connected to his/her stay on the territory by him/herself from the age of 15 (Sec. 178). The

³⁰ *Zákon č. 325/1999 Sb., zákon o azylu* [Law No. 325/1999 Coll., Asylum Act], available at

<http://portal.gov.cz/wps/portal/s.155/701?number1=326%2F1999&number2=&name=&text=> (Czech only) (last accessed 19.07.2008) (Sec. 124).

³¹ Pursuant to the provisions of the *zák. č. 359/1999 Sb., o sociálně-právní ochraně dětí* [Law No. 359/1999 Coll., on the Social and Legal Protection of Children and the *zák. č. 94/1963 Sb., o rodině* [Law 94/1963 Coll., Family Act].

³² This type of residence permit is called a permanent residence permit, but it is limited to when the child reaches the age of 18.

³³ There is an exception for guardians who are appointed to children in detention – those guardians are granted by the police. The court decides without undue delay, the although the NGO Organisation for Aid to Refugees has also reported cases when the appointment of the guardian took three or four months.

³⁴ Czech Republic/*Zákon č. 326/1999 Sb., o pobytu cizinců* (Act No. 326/1999 Coll., Aliens Act), available at: <http://portal.gov.cz/wps/portal/s.155/701?number1=326%2F1999&number2=&name=&text=> (Czech only) (last accessed 19.06.2008).

guardian acts in the best interests of the child (Sec. 1, Sec. 5 of the *Zákon o sociálně-právní ochraně dětí* [Act on the Social and Legal Protection of Children] and International Convention on the Rights of the Child). The guardians themselves are not necessarily lawyers. They may ask for help, for example from NGOs which are specialised in the field. There is an informal cooperation with NGOs which specialise in asylum law and the lawyers of the NGOs represent children before the courts in asylum/international protection procedures.³⁵ There is also a possibility of legal aid for those who are in the reflection period or have the residence permit pursuant to the provision of 42e of the Aliens Act; the legal aid is granted by NGOs.³⁶ The child may of course have a paid legal representative or an NGO employee, or he/she may ask and qualify for free legal aid (means test is applied; children who are eligible in the light of their financial situation **will** get the free legal aid (state paid), the children who are not eligible **may** get legal aid from NGOs. The possibility of granting free legal aid is not limited by age.

- [40]. The possibility of age assessment tests is explicitly provided for in the international protection procedure. The law stipulates that if there are well-grounded doubts about the age of the person, then a medical age assessment test should be carried out³⁷ (Sec. 89 (3) Asylum Act). The results of the test are then used as proof in the procedure for appointing a guardian for the international protection procedure. If the unaccompanied minor refuses the assessment test, the Ministry of the Interior counts him/her as an adult seeker of international protection. No benefit of the doubt is applied. There is no possibility stipulated by the law of an age assessment test being carried out on an unaccompanied minor who does not ask for international protection. He/she may theoretically be asked to undergo an age assessment test so that the results of the test may be used, for example as proof in the procedure for appointing a guardian or for possible placement into detention; but if he/she refuses to do so then there is no legal provision which would place an obligation on the child to undergo the test. At the same time, the child may not be able prove his/her age otherwise and there is no benefit of the doubt stipulated in the laws again, so it may have negative consequences for a child.
- [41]. There are no guardians with specific expertise appointed to victims of trafficking. Nevertheless, the education and training of all relevant persons was one of the issues stipulated in the *Národní strategie boje*

³⁵ Information provided by the NGO Organisation for Aid to Refugees.

³⁶ The Ministry of the Interior may contribute to natural or legal persons providing legal aid to third-country nationals; the Ministry can contribute in the form of financial support to cover their expenses.
(Sec. 48b Aliens Act).

³⁷ X-ray shot of carpal bones – the bones in the wrist.

proti obchodování s lidmi pro období 2005-2007 [National Strategy to Combat Trafficking in Human Beings 2005-2007]. Many training programmes have been organised for all relevant persons, either by the state authorities or by NGOs, and more training programmes are planned.³⁸ Emphasis was placed on training for police staff (also programmes in police training colleges etc.). Some of the training have been carried out, for example, for the group of employees of the Facility for Foreign Children³⁹ and for workers in the departments for the social and legal protection of children (these departments are at different levels of the state administration, they are guided by the Ministry of Labour and Social Affairs).

- [42]. There is no explicit rule on the amount of time that the guardian should spend with the child to whom he/she was appointed. To illustrate: if the child is an unaccompanied minor, then the situation is as follows. The guardian, who is appointed to the child, is not necessarily a lawyer. If it is in the interests of the child, the guardian either asks for legal help from a professional lawyer (or for free legal aid if the child qualifies for it), or for help from a lawyer from an NGO or UNHCR. If the child is not an unaccompanied minor, e.g. has his/her parents in the Czech Republic, then the lawyer should be sought by the parent. A lawyers' contact with the client is guaranteed, the child must be allowed to have contact with his/her lawyer. The time which the lawyer or the guardian should spend with the child is not regulated by the law.

³⁸ Many training programmes are listed in the National Strategy to Combat Trafficking in Human Beings 2008-2011, p. 23 and following. See *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National Strategy of the Fight against Trafficking in Human Beings for the period 2008 – 2011], available at http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf = (in English) (last accessed 15.06.2008).

³⁹ See footnote No. 22 and para. 56, 57 and 58.

D. Coordination and cooperation

- [43]. The Ministry of the Interior is a principal coordinator in the Czech Republic as regards combating trafficking in human beings in general, including the area of child trafficking. The Security Policy Department [Odbor bezpečnostní politiky] of this Ministry has been named the national rapporteur. The role of the national rapporteur involves analytical and strategic activities and includes both, coordination of activities to combat trafficking in human beings, including draft measures, and reporting. As the coordinator, the Ministry of the Interior organises round tables concerning the implementation of the National Strategy to Combat Trafficking in Human Beings 2008-2011.⁴⁰ These are meetings of representatives of individual ministries which have been assigned tasks by the National Strategy and representatives of NGOs and other entities involved in the area of trafficking of human beings in the Czech Republic. An overall Inter-ministerial Coordinating Group (IMCG) [Meziresortní koordinační skupina]⁴¹ was created to coordinate activities relating to trafficking in human beings (composed of representatives of individual ministries, relevant NGOs and inter-governmental organisations). Formally the IMCG also covers the issue of trafficking of children, in practice, however, the IMCG deals only with issues related to adults. Despite the fact that the Czech state authorities are aware of the existence of child trafficking, officially there is no distinction between adult and minor victims of trafficking and the issue of trafficking of *children* is not explicitly regulated by Czech legislation. Nevertheless, the issue of trafficking in human beings is regulated in many laws and the issue of trafficked children is dealt with pursuant to the provisions of those laws. In recent years not much attention has been paid to the issue of trafficked children as a particular group, but the situation is improving, especially in 2008. According to a statement by an official of the Ministry of Labour and Social Affairs (Social and Legal Care of Children Department) an informal working group on child trafficking, headed by an NGO and comprising of state actors and non-state actors has been established.

⁴⁰ *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National Strategy of the Fight against Trafficking in Human Beings for the period 2008-2011], available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf = (in English) (last accessed 15.06.2008).

⁴¹ This group should have come into existence by 30.06.2008; for a detailed description of the tasks and the composition of the Group see the National Strategy to Combat Trafficking in Human Beings 2008-2011, p. 48.

- [44]. In the Czech Republic, the cooperation between state and non-state bodies concerning trafficking in human beings is formalised by the *Národní kooperační mechanismus* [National Cooperation Mechanism], set out in the National Strategy to Combat Trafficking in Human Beings 2008-2011. The National Strategy provides a comprehensive framework, including the legal basis for the cooperation of all actors relevant for anti-trafficking efforts, whereby, according to both documents, all ministries participate in anti-trafficking efforts. Children are not formally excluded from the above-mentioned document; however, almost no attention is paid to this specific problem. Even the National Strategy admits that the problem of child trafficking has been dealt with only in the context of the sexual exploitation of children. This aspect is also dealt with by the *National plan on combating commercial sexual exploitation of children 2006-2008*⁴², which provides a basis for cooperation for the relevant state actors (most of the ministries under the leadership of the Ministry of the Interior). Despite the non-existence of special agreements between relevant ministries concerning child trafficking and despite the broad neglect of the problem, with the National Strategy and the *National plan on combating commercial sexual exploitation of children 2006-2008*, there appears to at least to be a formally sufficient legal basis for cooperation between the relevant state actors.
- [45]. The Programme to Support and Protect Victims of Trafficking in Human Beings in the Czech Republic [Program ochrany a podpory obětí obchodu s lidmi] comprises and sets out formal cooperation with non-state actors, such as NGOs and intergovernmental organisations. In July 2005 for the first time so-called ‘Agreements on cooperation for the support and protection of victims of trafficking in human beings between the Ministry of the Interior and partner non-governmental non-profit organisations’⁴³ were concluded between the Ministry of the Interior and two NGOs, La Strada Czech Republic and the Caritas Czech Republic. These agreements were also concluded in the following years, the last one in October 2007. Under the newly adopted Act No. 108/2006 Coll., on Social Services [Zákon o sociálních službách], as amended, registered organisations may provide necessary social services to victims of trafficking in human

⁴² *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National Plan on Combating Commercial Sexual exploitation of Children 2006 – 2008], available at: <http://aplikace.mvcr.cz/archiv2008/dokument/2006/komerчни06.pdf> (in Czech only) (last accessed 23.06.2008).

⁴³ *Dohody o spolupráci v oblasti podpory a ochrany obětí obchodování s lidmi mezi Ministerstvem vnitra a partnerskými nestátními neziskovými organizacemi* [Agreements on cooperation for the support and protection of victims of trafficking in human beings between the Ministry of the Interior and partner non-governmental non-profit organisations].

beings. On this legal basis, agreements between the Ministry of the Interior and the NGOs on financial grants are also being concluded. However, there is again no specific agreement concerning the problem of child trafficking. There are no agreements between state and non-state actors for running shelters for child victims of trafficking, as the only facility for the minor victims of trafficking is a state facility.

- [46]. In the Czech Republic, there is a general law concerning personal data protection, the *Zákon o ochraně osobních údajů* [Personal Data Protection Act]⁴⁴. The observance of the Act is supervised by an independent body, the Office for Personal Data Protection [Úřad pro ochranu osobních údajů]. Also further acts relevant to the topic of child trafficking contain provisions on personal data protection, e.g. Sec. 71a of the Asylum Act⁴⁵, Sec. 35 sub. 3 of the Act on the Social and Legal Protection of Children⁴⁶ and Sec. 54 of the *Zákon o dočasné ochraně cizinců* [Act on the Temporary Protection of Foreigners].⁴⁷ The observance of such provisions of the Asylum Act is supervised by the Asylum and Migration Department [Odbor azylové a migrační politiky] of the Ministry of the Interior. Nevertheless, there are no special legal provisions or, as confirmed by the officials of the Ministry of the Interior, guidelines aimed at protecting the personal

⁴⁴ Czech Republic/*Zákon č. 101/2000 Sb., o ochraně osobních údajů* [Act No. 101/2000 Coll., Personal Data Protection Act], available at: <http://www.uouu.cz/index.php?l=en&m=left&mid=01:01&u1=&u2=&t=> (in English) (last accessed 01.07. 2008).

⁴⁵ Czech Republic/*Zákon č. 325/1999 Sb., o azylu* [Act No. 325/1999 Coll., Asylum Act], available at: http://portal.gov.cz/wps/portal/_s.155/701?number1=325%2F1999&number2=&name=&text= (Czech only) (last accessed 19.06.2008); see Sec. 71a, which stipulates for the Ministry of the Interior an exception to the obligation to request permission to submit personal data to third countries of asylum seekers, applicants for international protection and those who were granted international protection from the Office for Personal Data Protection.

⁴⁶ Czech Republic/*Zákon č. 359/1999 Sb., o sociálně-právní ochraně dětí* [Act No. 359/1999 on the Social and Legal Protection of Children], available at: http://portal.gov.cz/wps/portal/_s.155/701?number1=359%2F1999&number2=&name=&text=ochrana+osobn%C3%ADch (Czech only) (last accessed 19.06.2008); see Sec. 35 sub. 3, which stipulates that local authorities, as the authorities primarily responsible, do not require the permission of the Office for Personal Data Protection pursuant to special law provisions to submit personal data of children to other states.

⁴⁷ Czech Republic/*Zákon č. 221/2003 Sb., o dočasné ochraně cizinců* [Act No. 221/2003 Coll., Act on the Temporary Protection of Foreigners], available at: http://portal.gov.cz/wps/portal/_s.155/701?number1=221%2F2003&number2=&name=&text=ochrana+osobn%C3%ADch (Czech only) (last accessed 19.06.2008); see Sec. 54, which stipulates for the Ministry of the Interior an exception of the obligation to request permission, where special Czech law provisions require legal protection of personal data, from the Office for Personal Data Protection to submit to Member States of the EU or other states personal data of seekers of temporary protection or aliens enjoying temporary protection.

data of trafficked children. Even the National Strategy 2008-2011 mentions the topic of personal data protection of trafficking victims only in the context of the non-existence of legal provisions enabling the Ministry of the Interior to collect, maintain and use data from victims taking part in the Programme. The personal data of trafficked children are therefore protected by standard protection as set out in the Personal Data Protection Act and provisions of other applicable laws related to foreigners in the Czech Republic. It should be noted that problems with personal data protection of trafficking victims in practice were mentioned in a personal interview with the legal expert of La Strada Czech Republic.⁴⁸ According to this, agreements between La Strada and the Ministry of the Interior contain obligations to report information and data on trafficking victims, whereas these obligations are contrary to valid legal provisions, for example provisions of the Act on the Social and Legal Protection of Children.

- [47]. At present there are no cooperation agreements concerning child trafficking between the Czech Republic and countries of origin outside the EU, as confirmed by an official from the Ministry of the Interior in a personal interview.⁴⁹ The National Strategy 2005-2007 included task no. 11 ('to initiate the active involvement of the Czech Republic in international projects aimed at preventing trafficking in human beings in source countries'). Due to limited funds, the Czech Republic has only been involved in a few preventive projects (containing elements of the prevention of trafficking in human beings) carried out in source countries, e.g. the project of the UN Office for Drugs and Crime in Moldova and cooperation with Slovakia in developing the Slovak programme for victims of trafficking in human beings. Some Czech NGOs were also involved in activities in countries of origin. For example, the Caritas Czech Republic carried out projects focusing on the prevention of illegal migration from Ukraine to the Czech Republic and the prevention of exploitation of labour forces in the European labour market with a special focus on the Czech Republic.
- [48]. At present there are no support programmes forming part of international development assistance by the Czech Republic. Furthermore, prevention in source countries as part of international development assistance from the Czech Republic remains widely neglected. This was confirmed by an official from the Ministry of Foreign Affairs in a phone response to the authors' request for information,⁵⁰ as well as in a personal interview with officials from

⁴⁸ Personal interview by the author with La Strada legal expert on 06.07.2008.

⁴⁹ Personal interview by the author with two officials from the Ministry of the Interior, Crime Prevention Department, took place on 04.07.2008.

⁵⁰ Phone interview with an official of the Ministry of Foreign Affairs on 04.07.2008.

the Ministry of the Interior. However, it should be mentioned that the National Strategy 2005-2007 included task no. 10 ('to incorporate into international development aid projects aimed at migration the issue of trafficking in human beings'). The projects which comprised, inter alia, the issue of trafficking in human beings, were carried out by non-state actors in cooperation with the ministries responsible: for example Assistance in Stabilising Potential Migrants and Preventing Irregular Migration of Minors in Moldova implemented by IOM (a series of seminars), Stabilising Potential Illegal Migrants through Support of Job Creation in Moldova implemented by the Caritas Czech Republic (a seminar for local coordinators of Caritas), and Promotion of Development of Border Migration Management in Georgia and Moldova implemented by IOM (a series of lectures).⁵¹

⁵¹ For current and finished projects of the IOM see <http://www.iom.cz/english/Wc18d546f003e9.shtml> (last accessed 19.06.2008); for activities of the Caritas Czech Republic see <http://www.charita.cz/article.asp?nArticleID=1263&nDepartmentID=424&nLanguageID=2> (last accessed 19.06.2008).

E. Care and protection

- [49]. Legal provision ensuring the granting of and respect for the reflection period of 30 days is Sec. 42e Aliens Act.⁵² Sec. 42e Aliens Act is based on Council Directive 2004/81/EC of 29.04.2004. The provision stipulates that, during this period, the foreigner cannot be deported and his/her stay in the Czech Republic cannot be terminated in any other manner. In practice, there is a certain reluctance on the part of the police and other authorities responsible for informing the incoming foreigner, which was observed by NGOs involved. For example, Directive 2004/81/EC was not implemented into the relevant provisions of the *Trestní řád* [Criminal Procedure Code]⁵³ and this has a knock-on effect for the reflection period.⁵⁴ The reflection period is granted to ensure a free decision of the person on whether or not to cooperate with the law enforcement authorities. The Directive stipulates in this context that the reflection period should help the entitled persons to make a free decision under consideration of the real situation and possible risks. The Criminal Procedure Code, however, does not allow testimony to be denied or refused for other reasons than those stated in Sec. 99 and 100 *Trestní zákon* [Penal Code].⁵⁵ Under the reasons listed in Sec. 99 and 100, the reflection period as a reason for refusal to give testimony is not included. Thus, persons within the reflection period cannot refuse to give testimony without fearing legal consequences, such as a fine pursuant to Sec. 66 Criminal Procedures Code. In practice, the police often interrogate people within the reflection period. Through such practice, not only is the reflection period not respected, but the individuals interrogated are

⁵² Czech Republic/*Zákon č. 326/1999 Sb., o pobytu cizinců* (Act No. 326/1999 Coll., Aliens Act), available at:

<http://portal.gov.cz/wps/portal/s.155/701?number1=326%2F1999&number2=&name=&text=> (Czech only) (last accessed 19.06.2008).

⁵³ Czech Republic/*Zákon č. 141/1961 Sb., Trestní řád* [Act No. 141/1961 Coll., Criminal Procedure Code], available at:

http://portal.gov.cz/wps/portal/s.155/701.cmd/ad/c/313/ce/10821/p/8411/s.155/701?PC_8411_number1=141/1961&PC_8411_l=141/1961&PC_8411_ps=10&PC_8411_text=ochrana%20osobn%C3%ADch#10821 (in Czech only) (last accessed 02.07.2008).

⁵⁴ See La Strada (author Klára Kalibová), *Obchodování s lidmi – některé problematické momenty platné legislativy* [Trafficking in human beings – some problematic aspects of the current legislation], p. 13, available at:

<http://www.strada.cz/download/files/0508analyzaweb.pdf> (in Czech only) (last accessed 02.07.2008).

⁵⁵ Czech Republic/*Zákon č. 140/1961 Sb., Trestní zákon* (Act No. 141/1961 Coll., Penal Code), available at:

http://portal.gov.cz/wps/portal/s.155/701.cmd/ad/c/313/ce/10821/p/8411/s.155/701?PC_8411_name=trestn%C3%AD%20z%C3%A1kon&PC_8411_l=140/1961&PC_8411_ps=10#10821 (in Czech only) (last accessed 02.07.2008).

not able to make a free and informed decision on cooperation with the relevant authorities.

- [50]. Czech legislation contains a special provision ensuring the right to residence for children, Sec. 87 Aliens Act. This provision grants permanent stay to foreigners under 18 years of age who have been placed in foster care and under the precondition that at least one natural person into whose care the foreigner was placed holds permanent residence in the Czech Republic or if the institution in which the child has been placed is located in the Czech Republic. In this way a child can obtain entitlement to permanent stay irrespective of cooperation with police/prosecutors. Nevertheless, according to information provided by various state authority officials and NGOs, these provisions have not been used yet in practice in cases of child trafficking, mainly because Sec. 87 of the Aliens Act was applied. (However, it might also be because there were no cases of child trafficking or that the children had no reason to cooperate with the state authorities and might be better forgetting the past.) The law contains several other provisions on which the right/entitlement to residence may be based, such as Sec. 33 (visa for a stay longer than 90 days for the purpose of exceptional leave to remain in the territory) and Sec. 50 (temporary stay in the territory under a departure order) of the Aliens Act and Art. 42e (long-term residence permit for the purpose of receiving protection on the territory). It should be added that officially (according to the internal Guidelines of the Under-Secretary of the Ministry of the Interior No. 5 of 26.10.2007) state authorities do recognise the humanitarian background in most cases and people who are not able to provide information relevant for law enforcement authorities shall also be entitled to participate in the state programme for victim protection (this is not the same thing as the provision transposing Directive 2004/81/EC) and thus legalise their stay in the Czech Republic on the basis of the provisions of the Aliens Act given above. It remains questionable whether the shift from the requirement of cooperation with law enforcement authorities to a more humanitarian approach will show any results in practice.
- [51]. The authors of the report looked at the website of the *Český statistický úřad* [Czech Statistical Office],⁵⁶ but no relevant statistics could be found. The authors also submitted a request for statistics to the Facility for Foreign Children (hereinafter the Facility)⁵⁷, an organisation of the Ministry of Education, Youth and Sports [Ministerstvo školství, mládeže a tělovýchovy], as this is the only institution in the Czech Republic where all minor foreigners unaccompanied by parents or statutory representatives who are

⁵⁶ www.czso.cz, last accessed 02.07.2008).

⁵⁷ www.ddc.cz (last accessed 02.07.2008).

apprehended by the police on the territory of the Czech Republic territory are placed. In response the Deputy Director of the Facility⁵⁸ provided only overall numbers of clients (children) at the Facility. She also stated that suspicious cases as regards child trafficking were reported to the police, however, no child has yet been identified as a trafficking victim. Therefore, officially no child has yet been granted a temporary stay in the Czech Republic on grounds of trafficking.

- [52]. Czech law allows detention pending deportation of persons older than 15, i.e. children of aged 15-18 only. This can be deduced from the provisions of the Aliens Act related to detention: Sec. 124, which allows detention for the purpose of administrative expulsion and Sec. 124b, which allows detention for the purpose of deportation. These provisions are strictly followed in practice, as was confirmed in a phone interview with officials from the Social and Legal Protection of Children Department of the Ministry of Labour and Social Affairs, who are directly involved in the care of trafficked children.
- [53]. In general, detained children (aged 15-18) are placed in the same facilities as adults. However, the applicable law contains several provisions stipulating certain special safeguards for detained children. One of the most significant provisions in this regard is Sec. 125 Aliens Act, which stipulates that the maximum length of detention for children aged 15-18 is 90 days, compared to the maximum length for adult detainees of 180 days. Sec. 141 Aliens Act sets out in its sub. 2 the placement of unaccompanied children separate from adults, in sub. 3 placement of a foreigner younger than 18 years of age with a close family member or with the person into whose care he/she has been placed. Sec. 124 sub. 4 and 5 Aliens Act provides that if the detained foreigner is an unaccompanied minor pursuant to Section 180c) Aliens Act,⁵⁹ the police will appoint a guardian. The police will immediately inform the foreigner of the guardian's appointment and the tasks to be performed thereby. A detained foreigner, or a guardian appointed on behalf of a detained unaccompanied minor foreigner, has the right to submit an application for proceedings in which a court will decide on the duration of the detention or will order the foreigner's release if the legal reasons for continuing the detention have ceased to exist. Sec.

⁵⁸ Email from Ms Mgr. Zuzana Vučková received on 09.07.2008.

⁵⁹ Pursuant to Section 180 c) Aliens Act, for the purposes of the Aliens Act, an unaccompanied minor alien is understood to be an alien between the ages of 15 and 18 who arrives in the territory unaccompanied by an adult responsible for him/her as provided for in the legal code that is valid in the minor alien's (country) state of citizenship, or in the case of a stateless individual, the (country) wherein he/she last held residence, for as long as he/she is not actually taken into the care of such a person; an unaccompanied minor alien is also considered to be an alien younger than 18 years of age who is left unaccompanied after his/her arrival in the territory.

135 sub. 2 Aliens Act limits the reasons⁶⁰ for which a foreigner younger than 18 years can be placed in the strict regime area of the facility.⁶¹ Section 143 Aliens Act provides that children younger than 18 years of age will be provided with food five times a day, compared to three meals provided to adult detainees. According to Sec. 138 sub. 2 Aliens Act the operator of the detention facility at which families with children and unaccompanied minor foreigners are staying will establish within the internal code of conduct a selection of cultural, sport and other activities designed specifically for various age groups.

- [54]. The basis for family tracing programme are established by the provisions of the Act on the Social and Legal Protection of Children in Sec. 36. If the trafficked child identified by the state authorities decides not to apply for international protection (1) the Czech Office for International Legal Protection of Children⁶² and the home country of the child are informed and (2) the child's best interests are assessed by a welfare officer from the Refugee Facility Administration [Správa uprchlických zařízení] of the Ministry of the Interior, including assessment of repatriation of the child for the purposes of family reunification. The repatriation (voluntary return) programmes for children, even if not specifically designed for trafficked children, are carried out. There is a lack of standards for repatriation, there are no guidelines issued by the state and thus the risk of the immediate return of trafficked children can arise.
- [55]. All unaccompanied foreign children under the age of 15, including victims of trafficking, are placed immediately in the Facility for Foreign Children, which comprises a diagnostic facility, a facility for children of foreign nationals, a children's home with school, an educational institute, an educational care centre, primary and special school. It is the only shelter/institution in the Czech Republic, where unaccompanied children aged 0-18 can be placed.⁶³ The Facility provides a number of services, see para. 55, 56 and 58 for details.

⁶⁰ The possible reasons for placing an alien younger than 18 years of age are pursuant to Sec. 135 Sub. 1 (a) (c) and Sub. 2: the alien is aggressive or requires a higher level of monitoring for other serious reasons; the alien repeatedly breaches his/her obligations or prohibitions as provided by this Act.

⁶¹ The strict regime entails, for example, accommodation separate from other occupants (Sec. 132 Sub. 2), restrictions on free movement in the facility (Sec. 134 Sub.3), etc.

⁶² The Czech Office for the International Legal Protection of Children deals mainly with illegal displacement of minors by parents (parental hijacking), child maintenance enforcement with an international background and international adoption proceedings.

⁶³ Activities of the Facility are regulated by *Zákon č. 109/2002 Sb., o výkonu ústavní výchovy nebo ochranné výchovy ve školských zařízeních a o preventivní výchovné péči ve školských zařízeních a o změně dalších zákonů* [Act No. 109/2002 Coll., on Act on Executing Institutional or Protective Education at School Facilities and on Preventive

- [56]. The author requested statistical data from the Facility, where unaccompanied children of foreign nationals are placed.⁶⁴ In its response the Facility stated that 66 children in 2007, 72 children in 2006, 63 children in 2005 and 26 children 2004 ran away and can be considered as children who left with unknown destination. As none of the children at the Facility have yet been identified as trafficking victims, the official statistics on trafficked children who leave with unknown destination remains zero. In the Facility's response it was also pointed out that there is no monitoring mechanism of what happens to the runaway children from the Facility, nor is there a strategy to prevent them from hiding. However, according to information provided by an employee of the Facility, there are efforts at the Ministry of the Interior to create monitoring mechanisms for such children. The authors of the report are not aware of further details.
- [57]. On the territory of the Czech Republic, all persons with permanent residency have a health insurance (it is granted by the law, the insurance company must provide the insurance, the client/employer (labour office in case of unemployment) pays for it). Unaccompanied children of foreign nationals in general are placed into the Facility for Foreign Children on the basis of a preliminary measure from a court (Sec. 2 sub. 2 and 3 of the Act on the Social and Legal Protection of Children) and from this moment they are entitled to a permanent residence permit pursuant to Sec. 87 Aliens Act. Therefore from the moment of the court's decision they also enjoy full direct care including health care services. The health insurance is paid by the State pursuant to Sec. 7 sub. 1) *Zákon o veřejném zdravotním pojištění* [Act on Public Health Insurance]⁶⁵ and children are insured with the insurance company, Všeobecní zdravotní pojišťovna. Pursuant to Sec. 2 sub. 7 of the *Zákon č. 109/2002 Sb., o výkonu ústavní výchovy nebo ochranné výchovy ve školských zařízeních a o preventivní výchovné péči ve školských zařízeních a o změně dalších zákonů* [Act on Executing Institutional or Protective Education at School Facilities

Educational Care at Educational Facilities], available at: http://portal.gov.cz/wps/portal/_s.155/701?number1=109%2F2002&number2=&name=&text=cizinec (in Czech only) (last accessed 02.07.2008) and by *Vyhláška č. 438/2006 Sb., ze 30. srpna 2006* [Decree No. 438/2006 Coll. as of 30.08.2006], available online at http://portal.gov.cz/wps/portal/_s.155/701?number1=438%2F2006&number2=&name=&text=cizinec (in Czech only) (last accessed 02.07.2008).

⁶⁴ Phone interview (07.07.2008) and email from Ms. Mgr. Zuzana Vučková (received on 09.07.2008).

⁶⁵ Czech Republic/*Zákon č. 48/1997 Sb., o veřejném zdravotním pojištění* [Act No. 48/1997 Coll., on Public Health Insurance], available at: http://portal.gov.cz/wps/portal/_s.155/701/cmd/ad/c/313/ce/10821/p/8411/_s.155/701?PC_8411_number1=48/1997&PC_8411_l=48/1997&PC_8411_ps=10#10821 (in Czech only) (last accessed 02.07.2008).

and on Preventive Educational Care at Educational Facilities], the health care services provided by the Facility also include all health care expenses which are not covered by the health insurance (e.g. dental fillings). In this way, access to full health care services is assured.

- [58]. The education of children is ensured by the Act on Executing Institutional or Protective Education at School Facilities and on Preventive Educational Care at Educational Facilities. This Act ensures access to educational services for all children falling within its scope, i.e. including trafficked children placed in the Facility. The Facility includes a primary school and a two-year secondary school focusing on vocational training (training in culinary services), where children receive educational services. The primary school fulfils educational, but also diagnostic, therapeutic and social tasks. A two-year practical school is a part of the educational institute and was established because of the children's language barrier. The school educational programme is therefore adjusted to the children's need for Czech language teaching and to gain social and practical skills to live in the Czech Republic. With regard to the statistics, in the school year 2006/07, 18 children attended the primary school and 24 children attended the practical school. However, according to the information received from the officials of the Facility there are no statistics on how many of the children living in the Facility arrived as victims of child trafficking. Therefore the requested statistics are not available.
- [59]. In the Czech Republic there is no general law with regard to free access to legal assistance. The access to free legal aid is granted by several laws and depends on the financial situation of the individual. There are also NGOs who provide free legal aid to their clients. According to the information received from NGOs and the Facility officials,⁶⁶ legal assistance to children (i.e. including child trafficking victims) is provided by NGOs and other organisations, such as IOM, OPU (Organisation for Aid to Refugees) and Poradna pro uprchlíky [Counselling Centre for Refugees]. The guardians of the children may request free legal aid from the attorneys, which may be granted by courts or by the Bar Association under the means test. As there is no central institution or legal provisions ensuring access to legal assistance, and also the Facility did not report any cases of trafficking victims, the requested statistics cannot be presented.
- [60]. The services provided to the children at the Facility are similar to the services provided to Czech children in similar facilities, but some services are added, e.g. interpreting services and an extended number of Czech language lessons. In addition, individual educational

⁶⁶ Email from Ms. Mgr. Zuzana Vučková received on 09.07.2008.

programmes are prepared if necessary, e.g. in the school year 2006/07 there were 11 students with individual educational programmes.⁶⁷ In addition, religious customs and needs are taken into consideration, for example, by permitting children from the Facility to visit churches or other religious facilities according to their needs. According to the information from the Facility officials, Islamic students at educational facilities are allowed, for instance, to take a short break during classes to fulfil their religious duties. Worth mentioning is also the personal counselling provided by NGOs: for instance a lawyer and a specialised teacher from the Organisation for Aid to Refugees visit the Facility on a regular basis during children's leisure time and children can ask questions with regard to their stay on the territory of the Czech Republic. If the topic is difficult to understand in Czech, interpreters are also provided.

- [61]. There is no hotline in the Czech Republic, reserved as 116 000, following the European Commission Decision of 15.02.2007, to report missing and sexually-exploited children. According to information from the Crime Prevention Department of the Ministry of the Interior, it also cannot be expected that such a hotline will come into existence in the near future. The Ministry of the Interior dealt with this topic and technical difficulties were mainly named as reasons for cancelling plans to establish the hotline.
- [62]. There are several similar instruments to report missing and exploited children. The tools of the counter-trafficking campaign carried out by the IOM in 2007 were publicised on websites,⁶⁸ with detailed information about human trafficking as well as email contacts and discussion forums. They also listed the phone hotlines (605 988 566 / 222 717 171) of the partner non-profit organisations La Strada and Caritas, where more information may be obtained and suspected cases of human trafficking may be reported. All the tools remained available in all three languages in which the campaign was carried out (Czech, English and German). There is also the 24-hour Safety Hotline⁶⁹ with the freephone numbers 800 155 555 / 116111, to which maltreatment and exploitation of children can be reported.

⁶⁷ *Výroční zpráva o činnosti školy za rok 2006/2007* [Annual report on the activities of the School 2006/2007], available at: http://www.ddc.cz/downloads/zprava_za_skolni_rok_2006-2007.doc (in Czech only) (last accessed 28.06.2008).

⁶⁸ www.rekni-to.cz, www.sage-es.cz, www.say-it.cz (last accessed 06.07.2008).

⁶⁹ www.linkabezpeci.cz (last accessed 05.07.2008).

F. Best interests determination and durable solutions, including social inclusion/return

- [63]. Asylum/subsidiary protection is available for child victims of trafficking. There is generally no limit on initiating the procedure for applying for asylum/subsidiary protection for child victims of trafficking – any individual may seek international protection in the Czech Republic. However, the application can be deemed inadmissible, for example, if it is lodged by an EU national or where the Dublin Regulation is applicable (Sec. 10a Asylum Act).⁷⁰ The procedure for granting asylum/subsidiary protection is regulated by the Asylum Act,⁷¹ into which the Geneva Convention (1951) and the Qualification Directive are incorporated. The procedure is a single one; it aims to establish whether an individual has reason for international protection to be granted to him/her. If the request is approved, international protection is then granted, either in the form of asylum or in the form of subsidiary protection. The Asylum Act provides for international protection in the form of asylum for the reasons given by the Geneva Convention, i.e. a well-founded fear of being persecuted on the grounds of race, sex, religion, nationality, membership of a particular social group or for holding a certain political opinion (Sec. 12). This provision also embodies the right to asylum formulated at the constitutional level and also provides for one more ground not included in the Geneva Convention but stipulated in Directive 2004/83/EC: the ground of ‘gender’) and also for other reasons, such as family reunification (Sec. 13) and humanitarian reasons (Sec. 14). The Act also provides for international protection in the form of subsidiary protection, generally on the grounds contained in Directive 2004/83/EC; subsidiary protection can also be issued to family members. The Act also stipulates the reasons for denying protection, which are basically in compliance with the Geneva Convention and the *acquis* (detailed information is not provided here). Czech law does not make special provision for the status of being the victim of trafficking as a ground for obtaining refugee status and so the possibility of protection being granted to victims of trafficking depends on the interpretation of the Asylum Act. Child victims may also be granted humanitarian asylum or they may be issued with a

⁷⁰ The procedure is terminated in case that the application for international protection is Inadmissible (Sec. 25 25 (i) Asylum Act).

⁷¹ *Zákon č. 325/1999 Sb., o azylu* [Act No. 325/1999 Coll., Asylum Act], available at <http://portal.gov.cz/wps/portal/s.155/701?number1=325%2F1999&number2=&name=&text=> (Czech only) (last accessed 30.06.2008).

permanent residence permit (a special residence permit, valid until the child reaches 18 years of age). No statistics are available, as there is no specific reason for which international protection can be granted to victims of trafficking. According to the information provided by the Organisation for Aid to Refugees, children are not often granted international protection as their stay is secured by the provisions of the Aliens Law. According to the NGOs, several children who may have been trafficked were granted international protection in the form of asylum, but the specific reason was not stipulated, as asylum was granted for general humanitarian reasons.

- [64]. There are several relevant procedures in which the child victim may take part. First, there is the procedure on international protection (single procedure for asylum/subsidiary protection). When a child requests international protection, he/she participates in the procedure; he/she gives an interview etc. The guardian/legal representative/parent must be present whenever the child acts by him/herself. Interpreting is secured (Sec. 22 of the Asylum Act). Then there is a special procedure regarding the residence permit pursuant to Directive 2004/81/EC, in which the child also takes part (interpreting is secured through the provisions of the Penal Procedure Code). The child participates in the procedure and his/her guardian must always be present. If the child is not unaccompanied and is not seeking international protection, his/her status is linked to the status of his/her parents. If the parents wish to return to the country of origin, there is no procedure in which the child may take part. If the parents were, for example, involved in the trafficking, then they are charged with the relevant crime and the child is placed into the Facility for Foreign Children. Only if, for example, there is a penal procedure in process and the testimony of the child may be needed, can their possible return be postponed for the duration of the process.
- [65]. There are no general integration programmes for trafficked children (that is, programmes aimed primarily at integration into society). There are programmes (1) for unaccompanied minors, through which they are provided with education (compulsory education) and vocational programmes. The law allows the possibility of granting a residence permit to those unaccompanied minors who continue to study even after they reach the age of majority. There is also (2) a programme for victims of trafficking based on governmental Resolutions.⁷² The programme for victims of trafficking does not explicitly cover children among the possible clients of the programme,

⁷² Usnesení vlády č. 849 ze dne 3. září 2003 [Governmental Resolution No. 849 of 03.09.2003]; Usnesení vlády č. 957 ze dne 29. července 2005 [Governmental Resolution No. 957 of 20.07.2005], Usnesení vlády č. 67 ze dne 23. ledna 2008 [Governmental Resolution No. 67 of 23.01.2008].

but they are not excluded. The Czech authorities run a programme which is aimed at supporting and caring for victims of trafficking, ‘Support and Protection Programme for Victims of Trafficking in Human Beings’ [Program podpory a ochrany obětí obchodu s lidmi]. The first programme was established in 2003. If a child is not unaccompanied and is seeking international protection, he/she also has access to education, vocational programmes and health care under the provisions of the Asylum Act. The state authorities also work with La Strada (NGO), which provides support to victims of trafficking (legal, social assistance, accommodation, help with finding work etc.).

- [66]. There is no special integration programme for trafficked children. Children have access to the programmes mentioned in para 63.
- [67]. Trafficked children from different ethnic backgrounds or children with disabilities have equal status with other children from different ethnic backgrounds or children with disabilities. The religious customs and needs of children are taken into account by permitting children from the Facility to visit churches or other religious facilities (according to the information from the Facility officials, Islamic students at educational facilities are allowed, for instance, to take short breaks during classes to fulfil their religious duties). Children with disabilities also have some exemptions in the asylum procedure (for example, there is an exemption for children with disabilities from the general obligation for international protection seekers to stay in the reception centre (Sec. 46a, Sec. 73 Asylum Act); people with disabilities will be provided with adequate housing (Sec. 81 Asylum Act).

G. Prosecution

- [68]. There are no special legal provisions for the investigation of trafficking in children. However, Sec. 102 of the Criminal Procedure Code provides that if a person under 15 years is examined as a witness in sensitive circumstances which could unfavourably influence, with regard to age, his/her psychological and moral development, the examination has to be undertaken in a sensitive and careful manner, in order to avoid the need for it to be repeated. The examination of the child victim or witness may be conducted in the presence of a specialist in pedagogy and, where appropriate, the parents of the child victim/witness. The young person should only be questioned in court if it is absolutely necessary. The court may decide to read out the written testimony.
- [69]. Sec. 104a of the Criminal Procedure Code deals with the confrontation between accused and witness. Para. 5 of this section provides that the confrontation of the person under 15 years with the accused is allowed only in very exceptional cases where it is absolutely necessary. The provisions of Sec. 102 on child-sensitive procedure shall be applied as appropriate. The confrontation is not allowed where the identity of the witness is protected and must not be disclosed.
- [70]. The number of final convictions based on trafficking in human beings is in years 2000 2001 2002 2003 2004 2005 2006 2007 respectively: 16, 15, 20, 5, 12, 20, 2 and 4 (number of sentenced persons).⁷³
- [71]. Unfortunately, we do not have data for convictions based on child trafficking cases alone. Moreover, this type of crime is characterised by its high latency.⁷⁴ According to police sources, the number of investigated cases of trafficking in human beings (Sec. 232a of the Penal Code) for the years 2000-2007 was 13, 27, 15, 10, 13, 16, 16 and 11 respectively.⁷⁵ The number of cases concerning individuals under the age of 18 (child trafficking *stricto sensu*) was as follows for

⁷³ *National strategy to combat trafficking in human beings*, p. 21. See *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National strategy to combat trafficking in human beings 2008-2011], available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf (in English) (last accessed 15.06.2008).

⁷⁴ This type of crime is latent which means that it may occur but is not apparent. Therefore all statistics show fewer cases than they (probably) are.

⁷⁵ See *Report to the Minister of the Interior on the status of trafficking in human beings for 2007*, p. 3 (only in Czech), available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/zprava2007-stav4536.pdf

the years 2001-2005: 5, 2, 1, 1 and 4 respectively. Taking into account other offences as well, the total numbers of cases of commercial sexual exploitation of children in the respective years were 7, 10, 21, 55 and 67.⁷⁶

- [72]. However, most cases of trafficking concern young adults, mostly women involved in sexual exploitation. Only recently have the Czech authorities become aware of other forms of exploitation. For example, in mid-2007 the Ministry of the Interior was notified of indications of possible exploitation of labour migrants from Mongolia in the municipality of Blansko and its surroundings.⁷⁷
- [73]. There are no special legal provisions granting trafficked children access to justice, including the right to compensation. However, access to justice is ensured on the basis of the general provisions on victims in the Criminal Procedure Code. A victim is a person who, as a result of a criminal offence, suffered an injury to health, property, moral integrity or other damage. The victim may take part in criminal proceedings and claim compensation from the accused (Sec. 43). In the case of child victims this right may be exercised by their legal guardians.
- [74]. Besides the possibility of claiming and having adjudicated compensation from convicted perpetrators of trafficking, which is open to any victim of crime (not limited to victims of trafficking), the system of supporting and protecting victims of trafficking in human beings from public funds, which is also to motivate victims to cooperate with the law enforcement authorities, was established in 2003 in the form of the 'Model for Supporting and Protecting Victims of Trafficking in Human Beings for the Purpose of Sexual Exploitation' [Model podpory a ochrany obětí obchodování s lidmi za účelem sexuálního vykořisťování] (hereinafter referred to as the 'Model'). Inclusion in the Programme to Support and Protect Victims of Trafficking in Human Beings is based on a voluntary principle and on the assumption that the victim cuts off all contact with the criminal environment. Information provided by a victim to law enforcement

⁷⁶ *National plan on combating commercial sexual exploitation of children*, p. 16. See Resolution of the government of the Czech Republic No. 949 of 16.08.2006, on the *Národní plán boje proti komerčnímu sexuálnímu zneužívání dětí 2006-2008* [National plan on combating commercial sexual exploitation of children (2006-2008)]; available at <http://www.mvcr.cz> security and prevention, trafficking in human beings, documents (Czech only).

⁷⁷ *National strategy to combat trafficking in human beings*, p. 49. See *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National strategy to combat trafficking in human beings 2008-2011], available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf (in English) (last accessed 15.06.2008).

bodies within criminal proceedings should be at least reasonably relevant. Exceptions in this case are victims of trafficking in human beings who are have learning difficulties or who suffer from psychological problems. Such persons can be allowed to join the Programme without any requirement for cooperation with law enforcement authorities. The objective of the Programme to Support and Protect Victims of Trafficking in Human Beings is to provide victims of trafficking in human beings with support and to protect their dignity and human rights and to motivate them to testify.

- [75]. The Model, funded by the UN Office for Drugs and Crime, was tested from March 2003 to December 2004. In April 2004 the pilot Model was renamed the Programme to Support and Protect Victims of Trafficking in Human Beings in the Czech Republic. At the same time its financing was guaranteed from the budget chapter General Cash Management determined for the Crime Prevention Strategy 2004-2007 and from an annual grant programme 'Prevention of Trafficking in Human Beings and Assistance to its Victims'. During 2005 the Programme was made official and formalised and the National Coordinating Mechanism was established. In July 2005 for the first time agreements on cooperation on supporting and protecting victims of trafficking in human beings were entered into between the Ministry of the Interior and NGOs. Since 2005 the Programme has covered all forms of trafficking in human beings.⁷⁸ This is only a form of assistance to victims of trafficking. We do not have a separate mechanism for compensation of these victims.
- [76]. Unfortunately, we do not have data concerning the total amount, average amount and range of amounts of compensation paid to trafficked children. Since the award of compensation is contingent on conviction judgments, it is very likely that no such compensation has yet been paid.

⁷⁸ See *Národní strategie boje proti obchodování s lidmi pro období 2008-2011* [National strategy to combat trafficking in human beings 2008-2011], available at: http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/national_strategyeng4534.pdf (in English) (last accessed 15.06.2008), p. 35.

H. Miscellaneous

- [77]. There are several NGOs which deal with the issue of trafficking in general and with the issue of unaccompanied minors. Their websites often contain interesting information, including analysis (several examples of which have been cited above). These NGOs include the Organization for Aid to Refugees (www.opu.cz), the Counselling Centre for Refugees (www.uprchlici.cz) and La Strada (www.strada.cz).

I. Good practices

- [78]. The Czech Republic allows unaccompanied minors to stay in the territory until they reach the age of majority for the simple reason of being an unaccompanied child (there are several exceptions, such as issues of public policy or public order). Children who are studying may then request for a national status (permanent residence permit pursuant to the provision of Sec. 66 Aliens Act). Upon the condition of integration, a permanent residence permit may be granted to them.
- [79]. The Aliens Act allows family reunification for those people who are granted a residence permit pursuant to Directive 2004/81/EC. The residence permit for family members is limited by the continuation of the residence permit of the victim.

Annex 1 - Tables and statistics

	2000	2001	2002	2003	2004	2005	2006	2007
Number of children being granted temporary stay on grounds of trafficking	-	-	-	-	0	0	0	0
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)	-	-	-	-	79	113	133	105
Number of trafficked children receiving education/training, in particular secondary education and vocational training	-	-	-	-	79	113	133	105
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)	-	-	-	-	-	-	-	-
Number of final convictions based on child trafficking cases, per year	-	-	-	-	-	-	-	-

Total of amount of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-
Average of amounts of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-
Range of amount of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-

Any other tables or statistics relevant for child trafficking