

CZECH REPUBLIC

ROMA IN THE CZECH REPUBLIC Foreigners in Their Own Land

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SUMMARY

In May 1995, Tibor Berki was spending the evening at home with his wife and five children when four unknown men burst into his kitchen. The forty-three-year-old Berki tried to defend his family and home, but was beaten with a baseball bat. He died some hours later in the hospital from injuries to the head.

Berki's death brought the number of Roma (Gypsies) murdered in the Czech Republic since 1989 to an estimated twenty-seven. In 1995 alone, there were at least 181 reported attacks against Roma or foreigners in the country. Many other assaults go unreported.

The Berki murder incited a public debate about racism in the Czech Republic and prompted the government to take more forceful measures against racist violence, which has been on the rise since the fall of the communist system in 1989. The government condemned the attack, proposed stiffer penalties for racially motivated crimes and introduced a special department within the police to deal with "skinheads" and other extremist groups.

While these changes are steps in the right direction, they do not go far enough to combat the serious problem of racist violence and discrimination against the estimated 200,000-300,000 Roma in the Czech Republic. Since 1989, Czech authorities have failed to adequately protect Roma from the ever-increasing danger of racist attacks. When attacks do occur, Roma are often denied equal treatment before the law, a direct violation of both Czech and international law.

The biggest problem stems from the local police, who sometimes display an open sympathy for "skinheads," allowing them to hold unauthorized marches and threaten non-ethnic Czechs. Police are often slow to respond to Romani calls for help and hesitant to make arrests, even after a violent attack. In some cases, police themselves have used excessive force against Roma, sometimes causing death.

Despite noticable improvements in the last year, the judicial system still does not always punish the perpetrators of racially motivated violence to the fullest extent of the law. When cases do go to court, the attack is often viewed as a "personal fight" rather than a premeditated act of violence against an individual on account of his race, ethnicity or color. Sentences are often light, which sends the message that such attacks are not considered serious.

Racist attacks - and the government's lack of response - are the most serious concern of Roma in the country today. But Roma also face state discrimination in other areas of daily life, such as education, housing and employment. They are often segregated in "special schools," denied residency permits and refused jobs, solely because of their race or ethnicity.

The issue that has received the most international attention, however, is the country's controversial citizenship law, which came into effect after the split of Czechoslovakia in January 1993. Most of the Czech Republic's Roma originate from Slovakia, and, according to the law, were required to apply for Czech citizenship through naturalization, even if they were born on the territory of the Czech Republic and had lived there all of their lives. Although the law does not specifically refer to Roma, its requirements on residence, ancestry and criminality had a clearly disproportionate impact on Roma, and as such are discriminatory. In addition, many Roma who met all of the requirements of the law were arbitrarily denied citizenship by local officials.

As a result, many Roma living in the Czech Republic do not have Czech citizenship even though they are long-time or lifelong residents of the republic. Those denied citizenship are unable to vote, run for office, participate in the privatization process or seek redress for wrongs committed against them during the communist regime. Some non-citizens have difficulty receiving permanent residence, which is necessary to receive social benefits from the state. An undetermined number of people have been deported to Slovakia, while others are stateless altogether. Although it is difficult to prove with certainty, evidence suggests that the law was drafted with the specific intent of hindering citizenship for Roma and facilitating their removal from the Czech lands.

Parliament passed an amendment to the law in April 1996 after substantial criticism from the Council of Europe, UNHCR, the U.S. Helsinki Commission and nongovernmental organizations. According to the amendment, the Ministry of Interior may now waive the five-year clean criminal record requirement, which is the clause that had prevented many Roma from obtaining citizenship. However, it remains to be seen if the ministry will exercise this right. Even as amended, the law remains inconsistent with the Czech Republic's international commitments.

Overall, the Czech record on human rights has been admirable since the 1989 "velvet revolution" toppled the communist government. But the otherwise laudable reforms of Czech democracy have failed to ensure many basic human rights to the Roma minority. The effects of the citizenship law and the state's unwillingness to combat racist violence reveal an undeniable pattern of discrimination along ethnic lines.

RECOMMENDATIONS

Human Rights Watch/Helsinki urges the Czech government to abide by its obligations under international law to respect and promote human rights and specifically to:

- Guarantee the security of all persons from violence or bodily harm, whether inflicted by government officials or by any individual or group.
- Conduct a criminal investigation into each incidence of violence against Roma individuals or the community and prosecute to the fullest extent of the law those cases where there is evidence of guilt.
- Investigate allegations that, in certain areas, the Czech authorities failed to intervene to protect Roma from attack or failed adequately to investigate violence against Roma, and take all appropriate measures up to and including criminal prosecution.
- Ensure effective administrative and judicial remedies for Roma who are subjected to discrimination, including harassment and intimidation by government officials.
- Ensure that Roma are not treated in a discriminatory manner with regard to access to education.
- Ensure that Roma are not treated in a discriminatory manner with regard to access to housing.

- Guarantee Roma equality in the workplace, and conduct a full investigation into allegations of discriminatory hiring practices.
- Ensure that Roma are not treated in a discriminatory manner with regard to access to public services and accommodations, including public and private restaurants, discos and bars.
- Implement the so-called “zero option” by granting citizenship to all applicants who were citizens of Czechoslovakia with long-term or permanent residence in the Czech Republic prior to the country’s split on January 1, 1993.
- Take additional measures to promote mutual understanding and tolerance among ethnic Czechs, Roma and foreigners living in the Czech Republic.

BACKGROUND

Roma in the Czech Republic

Roma¹ first arrived in the territory of the Czech Republic during the Middle Ages, probably around 1400. Since that time, they have been subjected to various forms of discriminatory policies, ranging from assimilation to extermination.²

At various points in the 16th and 17th centuries, Czech authorities banned Roma from parts of the region. Signs with Roma hanging from the gallows were posted on the borders; violators had their ears cut off or were executed. In 1761, Maria Theresa shifted from banishment to forced assimilation as a means of addressing the perceived “Gypsy problem”: Roma were declared “new citizens,” and forbidden to use Romani dress or language. Romani children were taken from their homes and placed with non-Romani peasant families to be “educated.”

The most brutal treatment of Roma occurred during World War II, when the Germans occupied Bohemia and Moravia. By 1944, between 6,000 and 8,000 Czech Roma had been killed in concentration camps, predominantly Auschwitz. In total, approximately 95 percent of all Roma living in the Czech lands lost their lives during the war.³

Czechoslovakia’s communist government, which came to power in 1948, viewed Roma as a socially backward group that required forceful integration and assimilation into mainstream society. The government banned nomadic behavior and dispersed Romani settlements, forcing Roma to live in newly-constructed apartment blocs that were provided by the state. The Romani language and traditions were suppressed, and sterilization procedures

¹“Roma” is the common term for Gypsies, as the latter term is now considered perjorative. The singular used in this report is “Rom,” the adjective is “Romani.”

²For a complete historical overview, see Helsinki Watch, *Struggling for Ethnic Identity: Czechoslovakia’s Endangered Gypsies* (New York: Human Rights Watch, August 1992), pp 5-10.

³In May 1995, the Czech government unveiled a memorial in the town of Lety at the site of a concentration camp used to hold Roma during World War II. The U.S. Holocaust Memorial Museum is currently seeking from the Czech government unique archival material from the camp. Czech officials have promised, but not yet provided, microfilm copies of the archives.

were conducted on some Slovak Roma to lower what was considered the high, unhealthy birthrate.

Since the fall of communism in 1989, the situation for Roma has improved in some areas and deteriorated in others. On the one hand, Roma now enjoy the newly-won benefits of political and economic freedom, as have others in the Czech and Slovak Republics. In both republics, they are recognized as a minority and have formed political, cultural and educational organizations.

On the other hand, Roma have suffered disproportionately from the difficult transition to a market economy. They are often the first to be fired from state-run firms and the last to be hired by private businesses. Unemployment among Roma has soared since 1989 in a country where joblessness was previously unknown.

In its 1992 report, *Struggling for Ethnic Identity: Czechoslovakia's Endangered Gypsies*, Human Rights Watch/Helsinki concluded:

Discrimination against Roma has reportedly increased in housing, employment, and access to public and private services since democratic changes in 1989. The common perception that Roma destroyed better housing that they received during the communist era has led to severe discrimination against Roma now seeking housing in non-Romani neighborhoods. The high rate of unemployment of Roma has been exacerbated by the emergence of discriminatory hiring practices in both republics which go unpunished by government employment offices responsible for enforcing an employment law forbidding discrimination. State- and privately-owned restaurants, pubs and discos throughout the country increasingly deny Roma entry and service.

The greatest threat to Roma in post-communist Czechoslovakia, however, was the dramatic increase in racially motivated threats and violence against non-ethnic Czechs. Graffiti began to appear in public places throughout the country after 1989 saying "Gypsies to the Gas Chamber!" or "Foreigners Out!" Right-wing and extremist organizations like the White League (*Bila Liga*) and the Ku Klux Klan began to hold demonstrations and publish underground magazines. Physical attacks, sometimes resulting in death, began to occur with greater frequency.

This trend has continued since the peaceful split of Czechoslovakia on January 1, 1993. Despite some government actions, the number of racially motivated crimes in both the Czech and Slovak Republics continues to rise. In addition, a large number of formerly Czechoslovak Roma were denied citizenship in the Czech Republic even though they had genuine links to the republic. Some of them are now stateless.

In its 1995 report on the state of human rights in the Czech Republic, the Czech Helsinki Committee said:

One can speak of deepening racial segregation within Czech society in 1995 as far as Roma are concerned. The segregation is a result of the rapid worsening of Romas' chances in the employment market, of the relative worsening of their participation in the educational, health care and housing systems -- with an exceptionally negative and large-scale impact on the

extremely high unemployment rate of the Roma, on the reproduction of the lack of at least primary education, their social deprivation and being affected more than the average by criminality and even serious forms of organized crime.⁴

Although it is no longer legal to keep criminal statistics along ethnic lines, government officials, the media and public opinion still speak about the high rate of Romani crime. While recognizing that there is a problem, Romani leaders point out that Romani involvement in crime is a result of their lower economic and social status, rather than a predisposition toward illegal activity, as is often suggested. Furthermore, they say, the Czech media often portray Roma one-sidedly as thieves, beggars or black marketeers.

Popular prejudice against Roma is increasing as a result. According to the Czech Helsinki Committee, seven out of ten Czechs do not want to live next to a Romani family; one out of every ten supports "skinheads" and other extremist groups.⁵ In the June 1996 parliamentary elections, the far-right Republican Party captured eighteen seats (an increase of four seats) with a blatantly anti-Roma program.⁶

A disjointed Romani political movement has not been able to provide much help. A number of Roma were in the first democratically-elected federal and national parliaments after 1989, but only one Rom was in the Czech parliament elected in 1992. As of April 1996, there are no Roma in the Czech parliament.

VIOLENCE BY PRIVATE ACTORS

⁴*Report on the State of Human Rights in the Czech Republic in 1995*, Czech Helsinki Committee, January 1996, p.36.

⁵*Ibid*, p. 37.

⁶Miroslav Sladek, head of the Republican Party, has openly called for the deportation of Roma. Jan Vik, secretary of the party, has been quoted as saying: "Roma and Romani groups murder, rape and rob decent people. It is high time to resolutely stop the raving of these black racists who are acting as parasites to the detriment of the whole society." ČTK, January 9, 1996.

By all accounts, violent attacks against Roma by private individuals are increasing. According to the Office of Criminal Police, from 1990 to 1993 there were 121 racially motivated attacks in the Czech Republic. Since 1993, however, there have been 181 registered attacks, forty-two of which occurred in the first two months of 1996.⁷

Human rights and Romani organizations, however, claim that the number is much higher since many incidents go unreported. According to the Citizens' Movement for Solidarity and Tolerance (HOST), a Czech organization that monitors racist violence and the work of the police, there were 181 racist attacks in 1995 alone.

One Romani woman in Prague told Human Rights Watch/Helsinki:

I rarely let my children out alone, and never at night. Under communism it was better. At least we had jobs and didn't have to worry about skinheads attacking us at any moment. I'm scared to send my children to school.⁸

Many Roma told Human Rights Watch/Helsinki that they did not report incidents to the police because they did not believe it would do any good. Some had had bad experiences with the police in the past, including witnessing or being a victim of police violence, which made them hesitant to ask for their assistance.

Ondřej Giňa, chairman of the Romani organization The Fund for Hope and Understanding and a representative on the government's Council for Nationalities, repeated a common sentiment among Roma when he told Human Rights Watch/Helsinki:

Many cases are not reported. Roma who get beaten by the police or by skins don't complain or even go to the doctor because they are afraid.⁹

Giňa's seventeen-year-old nephew, Dezider, was attacked twice by skinheads in Plzen, where he used to go to school. He told Human Rights Watch/Helsinki what happened after the second attack in autumn 1994:

The police came and investigated. They took me to the station. I explained what happened, but they said they cannot do anything because they don't know the attackers' names. "Skinhead" is a broad term. I told him I knew the boy who beat me, and they said they'd do something.

We went together to a group of skins and he [a policeman] told me to show him which one it was. But it was a different group. So he told me to get on the train and go home. The police asked nothing of the skins. Only "where are you going?" In the station they didn't fill out any documents. I got nothing. One week later I went there with my grandfather and we got a

⁷Fax sent to Human Rights Watch/Helsinki by the Presidium of the Czech Police, Č.j.: PPR-599 /RKP-OOK-96, Prague March 5, 1996.

⁸Human Rights Watch/Helsinki interview, Prague, February 21, 1996.

⁹Human Rights Watch/Helsinki interview with Ondřej Giňa, Rokycany, February 26, 1996.

document, but since then there has been nothing. Now I don't go to school in Plzen because I am afraid.¹⁰

¹⁰Human Rights Watch/Helsinki interview with Dezider Giňa, Rokycany, March 2, 1996.

Some Roma reported that, when the police were called, they either did not come or came too late. When they did arrive, they were often slow to take action. Very rarely would the police interfere ahead of time to diffuse a potentially explosive situation.¹¹

Ms. Holemek, a Romani activist in Brno, told Human Rights Watch/Helsinki:

From my experience, if there is any demonstration by Roma or anarchists or, on the other side, skinheads, then they [the police] try to separate the groups. That's it. But if skinheads run through town yelling "Heil Hitler!" then the police do nothing. . . . If there is an attack, then the police say it was not a racist attack, but a normal attack. Police have the same opinion as most people that Roma are bad for society.¹²

Peter Uhl, a former dissident and founding member of HOST, told Human Rights Watch/Helsinki:

The police have tolerated or even encouraged skins. Not openly, because they know it is illegal. But they often revealed themselves to be sympathizers of skins. Faced with this situation, we founded HOST, so that we may do something in place of the state. We must tell the state organs that the local organs are operating in conflict with the law.¹³

Some government representatives recognize that there are problems with the police. Hana Frištenská, director of the secretariat of the Council for Nationalities, mentioned the positive changes in the police, but also told Human Rights Watch/Helsinki:

We don't say that everything is alright with the police. The police must deal with the baggage of the past. Many are from the previous times when they dealt with undesirables of a different sort, like people who didn't want to work.¹⁴

¹¹Roma are not the only ones to complain about police inaction in the face of racist attacks. For example, Uyen Pham Huu, a Vietnamese computer scientist who has lived in the Czech Republic for sixteen years, was attacked twice by skinheads in Prague, but did not report the incidents to the police. He told Human Rights Watch/Helsinki:

I was a victim, but I didn't call the police. What would the police do? It was ten o'clock in the morning in a metro full of people. And no one said anything. They [the attackers] were just kids, fourteen or fifteen years old. At that moment, I had the feeling that I was not a human being.

My friend was seriously hurt by skins. He spent four days in the hospital and one month at home. He reported it to the police and they said, "We can't do anything because the attackers are unknown." Vietnamese people have big trouble with the police. Somewhere deep in every Vietnamese mind there is a fear of the police. And the police use this to extract money. And it is not just Vietnamese, but blacks or anyone who looks different.

¹²Human Rights Watch/Helsinki interview with Ms. Holemek, Brno, February 28, 1996.

¹³Human Rights Watch/Helsinki interview with Peter Uhl, Prague, March 6, 1996.

¹⁴Human Rights Watch/Helsinki interview with Hana Frištenská, Prague, March 6, 1996.

An internal study by the Interior Ministry conducted in 1995 determined that racism was a serious problem within the police force. Human Rights Watch/Helsinki heard from several sources who saw the report that, according to the study, roughly 60 percent of the police force sympathized with skinheads.

Petr Želásko, who is in charge of tracking extremist groups at the criminal police headquarters in Prague, said he was aware of the Interior Ministry's study, but refuted its results. He told Human Rights Watch/Helsinki:

There is no racism in the police. It's just a matter of their [police officers'] personal experiences. And a lot of them have had bad experiences with Roma. And someone dealing with them on a day by day basis could even say that every Roma is a thief. It's an individual matter.¹⁵

Mr. Želásko described the changes the police have made in recent years to combat the growing problem of racially motivated violence. As of January 1996, a special department has been working within the criminal police to deal specifically with extremist groups. Specialists from the various branches of the police, representatives of the Jewish community, judges and prosecutors have been invited to provide training to the new department, although, thus far, no Roma have participated. There has also been an attempt to recruit more Roma into the force.¹⁶

The changes in the police have had some effect: Roma leaders claim that the police have become slightly more sensitive to their needs in the last year. Still, the number of attacks continues to rise, and even the police admit that the trend is likely to continue. In the end, the police have still not undertaken a serious effort to protect the Roma population from physical attacks.

The Legal System's Response

The legal system altered its approach to racially motivated crimes in the second half of 1995, after the brutal murder of Tibor Berki (see description below). The government introduced stiffer penalties for racially motivated crimes and state prosecutors were ordered to seek the highest possible penalty in crimes where race was a factor.¹⁷ Romani and human rights activists report a noticeable improvement in the work of the courts since then.

Despite these positive changes, the courts are still failing to apply the law equally. Too frequently, attacks that are clearly motivated by race are considered a normal assault, or a personal fight between individuals. In some cases, judges have shown open sympathy for skinheads and other extremists who have committed racist attacks.¹⁸

¹⁵Human Rights Watch/Helsinki interview with JUDr. Petr Želásko, Prague, March 4, 1996.

¹⁶In January 1996, Romani organizations complained to Interior Minister Jan Ruml and the South Bohemia Police Inspectorate about a local police chief who sent the force's only Romani officer to patrol a Romani boxing match, saying, "If the blacks are organizing it, let the blacks police it." Their request for the chief's removal was denied. OMRI Daily Report, February 4, 1996.

¹⁷Four articles of the penal code were amended, increasing the penalties for racially motivated crimes by either one or two years.

¹⁸It should be noted that many of the problems in the Czech legal system are inherited from the communist past, such as the lack of qualified judges and prosecutors. In addition, the court system is overburdened with the dramatic increase in cases.

Jana Chalupová, ombudsman in President Václav Havel's office, told Human Rights Watch/Helsinki:

I don't believe in the changes to the penal code. They aren't used. Or very rarely. I'm sure they cannot solve the problem. Judges, prosecutors and policemen have told us that skinheads come from good families, that they were just engaged in child's play. But if they have a Romani boy who stole something, then he is not a good kid.¹⁹

Perhaps the most telling example is the case of Tibor Berki, who's murder inspired the changes in the law. A forty-three-year-old Rom, Berki was killed in his South Moravian home in May 1995 when four young men burst in to his house and beat him with a baseball bat. The attackers, who did not know Berki personally, were overheard in a pub before the attack saying they would "get a Gypsy."

The government publicly condemned the attack and the prosecutor sought the highest possible punishment for racially motivated murder. Despite this, on December 12 the court ruled that there had been no racial motivation since the attackers did not utter any racial slurs while committing the murder. The leader of the group, Zdenek Podrazsky, was sentenced to twelve years in prison for murder, while his main accomplice, Martin Komar, received eighteen months. Two others who participated got suspended sentences of two years and six months. The presiding judge, Jan Engelman, justified the absence of racial motivation by saying:

¹⁹Human Rights Watch/Helsinki interview with Jana Chalupová, Prague, March 5, 1996.

It was not shown that Podrazsky attacked with the baseball bat with the intent to kill Berki as a Gypsy. He acted subconsciously because Berki held an axe in his hands. Moreover, throughout the entire attack he was silent, and did not yell any abusive words from which a racist motive could be discerned.²⁰

Romani leaders and human rights activists were outraged by the court's decision, and argued that it set a bad precedent for similar cases. Ondřej Giňa told Human Rights Watch/Helsinki:

The court said it wasn't racially motivated murder. If the court can't prove racial motivation in such a brutal case, then in a normal case, when someone is attacked on the street by a skin, they're just charged with a normal assault.²¹

Prime Minister Klaus also protested the court's ruling, and the prosecutor applied for an appeal. On May 23, 1996, the appeals court in Olomouc overturned the lower court's decision, ruling that racial motivation had indeed been a factor. Podrazsky's sentence was increased to thirteen years.²²

Despite this positive development, Human Rights Watch/Helsinki heard of many other cases where the courts failed to prosecute racially motivated attacks to the fullest extent of the law. Perhaps the most flagrant example occurred in Pisek in December 1994. One year before, a large group of skinheads had come to the town from the neighboring area to attend a soccer match. On September 24, they found four Romani boys on an island in the middle of the Otava River and attacked them with sticks and stones, forcing them into the water. One of the boys, seventeen-year-old Tibor Danihel, drowned.

Two of the skinheads were convicted of "damaging the health resulting in death," without any mention of racial motivation, and received one-year suspended sentences. The police checked the blood of the Romani youths and determined that they had been sniffing glue, which, they claimed, contributed to Danihel's drowning. No blood checks were run on the attackers.

Throughout the trial, the judge displayed an open sympathy for the skinheads. Ladislav Zamboj, a social worker who observed the trial, told Human Rights Watch/Helsinki:

²⁰*Mlada Fronta Dnes*, December 14, 1996.

²¹Human Rights Watch/Helsinki interview with Ondřej Giňa, Rokycany, February 26, 1996.

²²The defendants could not be sentenced according to the stiffer penalties since the amendments were introduced after the Berki attack. Under the new law, Podrazsky could have been imprisoned for up to twenty-five years.

The judge showed clearly that he was on the side of the skins. The whole courtroom was full of skins. Journalists and human rights monitors couldn't enter because it was so full. And the judge was soft on the skins who were rowdy and shouted at the witnesses. He just said, "come on boys, quiet down."²³

Vaclav Trojan monitored the trial for the Czech committee of the Helsinki Citizens' Assembly (HCA), a local nongovernmental organization, and Amnesty International. He told Human Rights Watch/Helsinki:

The courtroom was full of skinheads. I couldn't even get in. The police said I couldn't enter. I told them I was from the HCA to monitor, and then I had to sneak in. After the verdict, the mother of the killed Rom cried emotionally and told the judge: "You're treating my son as if he were an animal." The judge told the police to escort her out, and charged her with contempt of court.²⁴

According to Trojan, on the last day of the trial, some Romani homes near the courthouse were spray painted with the slogan "Zigani Raus" (German for "Gypsies Out"). He told Human Rights Watch/Helsinki:

I saw that and went to the police. I said that I wanted to report a racial crime. After a long discussion they asked me what I wanted. Should the slogan be removed? But they are obliged to investigate. They didn't understand and they didn't even make a written record.²⁵

As with the Berki case, the prosecutor appealed for a stiffer penalty. The case was scheduled for trial in late June 1996.

Another problem Roma face in court stems from their poor understanding of the law. The generally lower level of education and occasional illiteracy among the Romani population leave them open to abuse by the legal system. In addition, few lawyers are willing to accept their cases, often for financial reasons. Some lawyers told Human Rights Watch/Helsinki that there is a stigma attached to working with Roma: having a Romani client could bring problems with the police and the courts, or deter other clients.

The Government's Response

The murder of Tibor Berki finally sparked a response from the government. Prime Minister Klaus condemned the attack and called a ministerial meeting to address the problem of racist violence, which led to the changes in the penal code and a directive for prosecutors to seek the highest sentences in racially motivated crimes. A new section was opened within the criminal police to follow extremist groups in the country. In a commentary entitled "How to Solve the Problem of Racism" published in the main Czech daily *Mlada Fronta Dnes*, Justice Minister Jiří Novák said:

²³Human Rights Watch/Helsinki interview with Ladislav Zamboj, Prague, February 30, 1996.

²⁴Human Rights Watch/Helsinki interview with Vaclav Trojan, Prague, February 30, 1996.

²⁵*Ibid.*

The role of the state in solving this problem is clearly important and cannot be replaced. This is a democratic state and its institutions should assure citizens equal standing and protection against those who challenge the institutions and, on the other hand, take action against all those who do not respect this principle. . . . The government of this republic will without doubt do everything it can to make the word racism disappear from our daily vocabulary.²⁶

Romani leaders and human rights activists welcomed the government's apparent resolve, but complained that it came too late and did not go far enough. Ondřej Giňa told Human Rights Watch/Helsinki:

It was a reaction to the most brutal racist case that had taken place in the Czech Republic. But Klaus ignored the other cases before this. He only responded after this case. The result was that they took some administrative measures, but only to improve the work of the police, prosecutors and the courts. The statement wasn't about improving the situation generally, just the institutions.

²⁶*Mlada Fronta Dnes*, May 25, 1996.

Something only happens when somebody dies. But there are so many other problems that go ignored. This is a huge tragedy because our kids are losing the chance to go to school. Both the police and society are passive.²⁷

In its annual report on human rights for 1995, the Czech Helsinki Committee wrote:

The Czech Republic has not yet been successful in protecting the Roma from violent acts of racism and discrimination, the numbers of which have been clearly growing in recent years resulting in deaths and severe injuries. The obligation to protect minorities from racial violence has been fulfilled neither by repressive steps nor those toward its prevention, be it safety measures or education. The government tends to react once violent acts of racism have been committed, usually by verbal statements and by prosecution, not by active political prevention.²⁸

Hana Frištenská from the government's Council for Nationalities emphasized the steps taken by the government following the Berki murder. Still, she felt the government could do more to combat racism in Czech society. She told Human Rights Watch/Helsinki:

The government must start thinking differently about racism. Not about the victims of racism, but racism as a phenomenon. Until now, it has not done so much to prevent racism. In this society, in public and in the state, no one says it is not good to be a racist.²⁹

Karel Holemek, a member of the first post-communist Czechoslovak parliament and a prominent Romani activist, thought that the problem lay more with local officials. He told Human Rights Watch/Helsinki:

I must objectively say that the government is not racist. It is trying to do what it can. But it's not always perfect and there are many obstacles in society. For example, the government introduced some laws to parliament about racist violence being judged more severely than normal attacks. But the verdicts of judges are not always corresponding.³⁰

²⁷Human Rights Watch/Helsinki interview with Ondřej Giňa, Rokycany, February 26, 1996.

²⁸*Report on the State of Human Rights in the Czech Republic in 1995*, Czech Helsinki Committee, January, 1996, p.41.

²⁹Human Rights Watch/Helsinki interview with Hana Frištenská, Prague, March 6, 1996.

³⁰Human Rights Watch/Helsinki interview with Karel Holemek, Brno, February 28, 1996.

In general, Human Rights Watch/Helsinki found the same to be true. Many of the specific abuses against Roma take place on the local level: in police stations, courtrooms and administrative offices. However, the government is obliged by international law to "pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms. . ."³¹ Ultimately, the Interior Ministry is responsible for the action of every police officer, the Justice Ministry for every judge. Failure to aggressively combat discrimination on all levels amounts to tacit approval for racist behavior.

POLICE VIOLENCE AGAINST ROMA

Although much improved since the communist era, police violence continues to be a concern, especially for Roma. Many Roma report police harassment and, at times, the unnecessary use of force, only because they are not "white Czechs." In its annual report on human rights, the U.S. Department of State concluded:

In 1995 they [the police] continued to have a poor reputation among the public, in part a heritage from the communist era. There have been reports of police shakedowns and anecdotal stories of physical abuse and malfeasance, often directed at foreigners and Roma.³²

Human Rights Watch/Helsinki confirmed two cases in recent years where a Rom died as a result of police mistreatment. None of the responsible police officers was held accountable.

The Death of Martin Červeňák

On June 8, 1994, Martin Červeňák was working outside his house with his three brothers in the village of Jeníkovice near the town of Horšovský Týn. According to the Červeňák family, three policemen arrived at their home around 10 a.m. and said they needed to take Martin to the police station, although they did not explain why.³³ Later they learned that he had been suspected of stealing a car radio.

The police told the family that Martin would be back soon. But at 3:30 p.m. a friend telephoned them to say she had seen Martin being transported from the police station in Horšovský Týn by ambulance. According to Ladislav Červeňák, Martin's brother:

We called the police and they gave the phone to Dr. Lukaš Režek in Horšovský Týn. . . . The doctor said he [Martin] fell on a rock, that's why he had a hole in his head. We phoned again and a policeman said that he had fallen on a heater.³⁴

³¹United Nations International Convention on the Elimination of All Forms of Racial Discrimination, 1966, Article 2.

³²*Human Rights Practices in the Czech Republic for 1995*, U.S. Department of State, Washington:1995.

³³Human Rights Watch/Helsinki interview with the Červeňák family, Jeníkovice, February 26, 1996.

³⁴*Ibid.*

The family then went to the hospital where they found out that Martin was in intensive care and probably would not survive. He died soon thereafter of a gunshot wound to the head.

The official police report, issued on September 30, 1994, claimed that Červeňák had attacked three policemen, Officers Horák, Marek and Bárta, who were conducting the initial investigation at the police station. During the ensuing struggle, the report said, one of the officer's pistols had accidentally fired, striking Červeňák in the head. The report concluded that "there is no suspicion of criminal offense" on the part of the police.³⁵

Martin's father, Matej, protested the investigator's conclusions. The police recommended a local lawyer, Vlastimil Kaplan, to assist him in his case. According to Mr. Červeňák, the lawyer was friendly with the police, charged the family money and never genuinely assisted them with their case. Human Rights Watch/Helsinki saw a letter Matej Červeňák wrote to the police protesting the investigator's decision and requesting more information on his son's death. He received a letter back from Václav Královec of the regional government in Plzen which said:

³⁵Police of the Czech Republic, ČVS: KVV-52/22-94, Plzen, September 30, 1994.

I have not found anything inappropriate with the investigator's report. The only thing left is for you to cease with this unreasonable initiative. I must also inform you that, if you present another similar request, we will not respond, nor will we confirm its receipt.³⁶

Officers Horák, Marek and Bárta are all still working for the police in the nearby town of Domažlice.

The Death of Václav Baláž

On November 22, 1991, a Romani man, Václav Baláž, exited a pub in his home town of Březlav with three friends. The group was apparently drunk as they blocked the passing car of Captain Petr Baránek, an off-duty policeman. An argument ensued which quickly grew violent. Baránek fired his gun, killing Baláž and injuring two of the other men.

The inspector at the Ministry of the Interior opened an investigation but determined that Baránek had been attacked first, and fired his gun accidentally when the men tried to take his weapon. The official report concluded that Baránek had, "behaved according to the law concerning the behavior of the police."³⁷

Roma activists, however, claim that Baláž was murdered. Witnesses told Romani leaders that Baránek had clearly fired his gun at the men, killing the eighteen-year-old Baláž. Numerous pleas to the Ministry of the Interior and the prosecutor's office to press charges against Baránek brought no results.

Karel Holemek, who was a member of the Czechoslovak parliament at the time the attack took place, told Human Rights Watch/Helsinki:

I made an interpellation in parliament about that policeman Baránek who shot a drunken group of Roma. They just touched his car, and he got out and shot. The policeman was thrown out of the police, but then nothing more.³⁸

Human Rights Watch/Helsinki discovered that Petr Baránek is now working as a police captain in Březlav.

These and other incidents of police mistreatment have helped erode the little trust that Roma had in the police. As Ondřej Giňa told Human Rights Watch/Helsinki:

If the institutions like the police, courts and official investigators are not able to find the truth when the police are involved, how can they protect people from individuals like skinheads?³⁹

DENIAL OF ACCESS TO PUBLIC ESTABLISHMENTS

³⁶Letter from Václav Královec to Matej Červeňak, Krajské státní zastupitelství v Plzni, Kzv 52/94-28, Plzen March 17, 1995.

³⁷Inspector's Office of the Ministry of the Interior - Brno, ČVS: IMČ/B-228/91, January 27, 1992.

³⁸Human Rights Watch/Helsinki interview with Karel Holemek, Brno, February 28, 1996.

³⁹Human Rights Watch/Helsinki interview with Ondřej Giňa, Rokycany, February 26, 1996.

Throughout the Czech Republic, Roma are often denied access to pubs, discos, restaurants, swimming pools and other public establishments run by private individuals or the state. According to the 1995 report of the Czech Helsinki Committee:

Cases of open non-violent discrimination of minorities, in particular of Roma, were registered [in 1995] in consumer services, stores, restaurants etc., where employees refused to serve Roma or let them enter. These acts of discrimination, in some cases even overtly declared (notices such as "We do not serve Gypsies"), are left unprosecuted since there is no direct legal instrument for their punishment and that what is called indirect instruments are not used.⁴⁰

The Prague-based organization HOST is conducting a study of such discrimination throughout the Czech Republic by purposefully sending Romani customers into establishments known not to serve Roma. Ms. Holemek, who is running the project in Brno, told Human Rights Watch/Helsinki that six out of twenty restaurants in her town had refused Roma service.

Her father, Karel Holemek, told Human Rights Watch/Helsinki:

I have some experience from this week. Two of my Romani employees went to a restaurant, and they didn't allow them in. They said directly: "We won't serve you here."⁴¹

Human Rights Watch/Helsinki also heard about a restaurant in Rokycany, *Na Železné*, that refused to serve Roma. A Human Rights Watch/Helsinki researcher then watched the waiters refuse service to a woman they mistakenly thought was a Rom.⁴²

In March 1996, a controversy erupted in the South Moravian town of Březlav when a candidate for parliament, Rudolf Baránek, put up a sign outside his hotel that said: "Because of repeated stealing, access is forbidden to those of Romani origin." After public outcry, the sign was removed, and Baránek was placed much lower on the list of his party, the Free Democrats - Liberal National Social Party. Ladislav Bodý, the only Rom in parliament at the time, subsequently filed suit against Baránek for fomenting racism. As of June 1996, the case was still under investigation.

DISCRIMINATION IN HOUSING, EDUCATION AND EMPLOYMENT

⁴⁰*Report on the State of Human Rights in the Czech Republic in 1995*, Czech Helsinki Committee, January 1996, p. 37.

According to Law No. 634 of the Czech civil code, all customers must be treated equally. In addition, international covenants and declarations ratified by the Czech government outlaw discrimination and denial of "access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafes, theaters, parks." International Convention on the Elimination of All Forms of Racial Discrimination, Article 5.

⁴¹Human Rights Watch/Helsinki interview with Karel Holemek, Brno, February 28, 1996.

⁴²The woman was actually an American of Indian descent.

Although not the focus of this report, it should be said that Roma face daily discrimination in housing, education and employment. The situation was aptly summed up by Vaclav Trojan from the HCA when he said:

Roma are a marginalized group in society, and they are not able to defend themselves. And this is abused by individuals and sometimes the local officials.⁴³

For example, there are some new initiatives for Roma in schools, such as a Head Start program and after-school activities. But a disproportionate number of Roma still attend special schools for handicapped children. A number of Roma told Human Rights Watch/Helsinki that Romani children are often placed in such schools even if they are good students. As Human Rights Watch/Helsinki's 1992 report on Roma in Czechoslovakia pointed out: "These schools offer an inferior education and significantly restrict choices for further studies and job opportunities."⁴⁴ In normal schools, Romani children are often placed in the back of the room or ridiculed by students and even teachers.

In May 1996, the organization HOST issued an 80-page report about the inequalities in the education system. It targeted seven areas, including: de facto segregation in special schools where Roma are labeled retarded, violence against Romani children, teachers' lack of response to racism in class, lack of funding for Romani education, lack of access for Roma to higher education, the absence of Romani teachers and the lack of state resolve to address the situation.⁴⁵

The lack of a proper education clearly limits the possibilities for fruitful employment. But even well-educated Roma face discrimination in the job market. Z.M. from Usti nad Labem told Human Rights Watch/Helsinki about a common experience for Roma:

I called about a job at a construction site. The manager said come on down. But when I got there he saw I was a Gypsy and told me all the jobs had been taken.⁴⁶

In fact, Usti nad Labem has a special employment office for Roma that offers retraining. But discrimination in this town and others throughout the Czech Republic appears widespread.

Freedom of movement is guaranteed in the Charter on Fundamental Rights and Freedoms, but Roma face constant difficulties in finding and registering for housing in many areas of the country. As the 1992 Human Rights Watch/Helsinki report points out, "Roma are

⁴³Human Rights Watch/Helsinki interview with Vaclav Trojan, Prague, February 26, 1996.

⁴⁴Helsinki Watch, *Struggling for Ethnic Identity: Czechoslovakia's Endangered Gypsies* (New York: Human Rights Watch, August 1992), p. 39. The report cited statistics from 1990/91 which say that 12,444 pupils out of 41,383 children in special schools are of "Gypsy origin." Human Rights Watch/Helsinki did not obtain updated numbers, but was told by Romani activists, social workers and an official at the Ministry of Education that the situation with special schools has not improved much in recent years.

⁴⁵OMRI Daily Report, May 18, 1996.

⁴⁶Human Rights Watch/Helsinki interview, Usti nad Labem, March 1, 1996.

often prevented from obtaining housing by non-Roma who do not want them to 'ruin the neighborhood'.⁴⁷

THE CITIZENSHIP LAW

⁴⁷Helsinki Watch, *Struggling for Ethnic Identity: Czechoslovakia's Endangered Gypsies* (New York: Human Rights Watch, August 1992), p. 58.

On January 1, 1993, Czechoslovakia ceased to exist. The country split peacefully into two parts, the Czech and Slovak Republics, both of which adopted new citizenship laws to determine who would and would not gain citizenship in Europe's two newest states.⁴⁸

Slovakia decided that all former Czechoslovak citizens could receive Slovak citizenship if they desired, regardless of where they had been living on the day of the split. Czechoslovak documents were simply exchanged for the Slovak equivalent.

The Czech Republic, however, chose a more restrictive route. According to the Law on the Acquisition and Loss of Czech Citizenship (Law No. 40/1993), passed December 29, 1992, all those with Czech state citizenship from the former Czechoslovakia automatically received Czech national citizenship.⁴⁹ Those with Slovak state citizenship, even if they had been living in the Czech Republic, had to apply for Czech national citizenship through naturalization, and meet a series of stringent requirements.⁵⁰

The law thus created a distinction between Czech and Slovak state citizenship that did not exist before. In the former Czechoslovakia, state citizenship was largely meaningless: it denoted a person's place of residence, but had no relevance to taxes, voting rights or any other right or obligation usually connected with citizenship. Many people were not concerned with their "administrative identity," and moved from one republic to the other without applying for a change.

As the new Czech citizenship law came into effect, however, it became clear that the distinction between Czech and Slovak state citizenship was highly relevant for a certain sector of the population. Approximately 95 percent of the Czech Republic's Roma population had moved to the Czech Republic from Slovakia after World War II.⁵¹ Very few of them had bothered to change their state citizenship over the years and, therefore, were considered Slovak citizens under the new law, even if they had been living on the territory of the Czech Republic since the 1950s. The children of such people are also considered Slovak, even though they were born on the territory of the Czech Republic, have lived their entire lives there and have no connections to Slovakia.

As Slovaks, these people were forced to go through a rigorous administrative process to obtain citizenship in the very country in which they had spent most or all of their lives. Many Roma were unable to meet the requirements of the law, such as five years with a clean criminal record or proof of permanent residency. There were also many cases where Roma

⁴⁸Before the dissolution of the federation, any Czechoslovak citizen could switch their internal citizenship from Slovak to Czech, or visa-versa, without restriction. Before January 1, 1993, approximately 60,000 Slovaks acquired Czech state citizenship. Letter to Human Rights Watch/Helsinki by Vojtěch Wagner, Director of the Interior Ministry's Department for International Relations, October 31, 1994.

⁴⁹Based on a 1968 law, No. 165/1968, Czechoslovak citizens also held citizenship in either the Czech or Slovak Republics. However, this internal citizenship was without meaning in practice. A person's place of permanent residence, and not his or her internal citizenship, appeared on identity documents.

⁵⁰The requirements for Slovaks were slightly more lenient than for other applicants for the first six months after the law came into effect. Unlike other would-be citizens, for example, Slovaks only had to prove two years of permanent residency in the Czech Republic. That grace period was later extended until June 1994.

⁵¹Following the war, the Czechoslovak government offered incentives for people to move to the industrial areas of the Sudetenland to fill jobs left behind by ethnic Germans who were expelled from the country for their alleged collaboration with the Nazis. Thousands of Roma from Slovakia moved to the region to work the factories and mines of Northern Bohemia.

who met all of the law's requirements were arbitrarily denied citizenship by local officials. Occasionally misinformation was provided, either by accident or intentionally, to keep Roma from obtaining citizenship.

Major national and international bodies, such as the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe and the United States Commission on Security and Cooperation in Europe (Helsinki Commission), publicly stated that the law did not comport with international legal principles. A report on the law prepared by the UNHCR concluded:

... those who were permanently resident in the Czech Republic should not, in January of 1993, have been classified as Slovak citizens. The individuals with whom this paper is concerned were not resident in Slovakia and had a genuine effective link with Czech territory. This attribution of Slovak citizenship to non-residents who have no effective link and have indicated, in fact, their link to be elsewhere does not conform with generally accepted rules of international law.⁵²

Max van der Stoel, OSCE high commissioner on national minorities, also expressed his concern at an OSCE meeting on Roma held in 1994, saying:

In no case should new citizenship laws be drafted and implemented in such a way as to discriminate against legitimate claimants for citizenship, or even to withhold citizenship from possibly tens of thousands of life-long and long-term inhabitants of the state, most of whom are Roma. As a result, the status of these persons is essentially that of "foreigner" in their own country. This would greatly undermine what I would consider to be in the long-term interest of the state. I would strongly urge that the clearly negative impact of such legislation be considered, and that appropriate changes be made.⁵³

A number of Czech nongovernmental organizations conducted detailed research to document the discriminatory impact of the law on the Romani population. The Tolerance Foundation, which produced five reports on the citizenship law based on interviews with hundreds of Roma, determined:

The law was aimed at limiting the Roma population's possibility of acquiring Czech citizenship because it imposed a set of requirements that are particularly difficult for this ethnic group to comply with.⁵⁴

⁵²*The Czech and Slovak Citizenship Laws and the Problem of Statelessness*, The Office of the United Nations High Commissioner for Refugees, February 1996, p. 27.

⁵³Statement by Max van der Stoel, OSCE high commissioner on national minorities, Human Dimension seminar on Roma in the OSCE region, organized by the Office for Democratic Institutions and Human Rights and the High Commissioner for National Minorities, in Cooperation with the Council of Europe, Warsaw, September 20-23, 1994.

⁵⁴*Report on the Czech Citizenship Law: The Effect of the Citizenship Law on the Czech Republic's Roma Community*, Tolerance Foundation, Prague, May 25, 1994, p. 40.

During its fact-finding mission in the Czech Republic, Human Rights Watch/Helsinki conducted interviews with numerous individuals who had either monitored the citizenship law or were affected by it. Although it is difficult to prove with certainty, based on this research, there is substantial evidence to suggest that the law was drafted with the specific intent of restricting citizenship for the Romani population. In any case, there is no doubt that the law has had a highly discriminatory impact on Roma living in the Czech Republic.

Despite this, the Czech government continues to defend the law. Although President Havel has criticized the discriminatory implementation of the law, he too maintains that the legislation itself is sound. In a letter written to the U.S. Helsinki Commission, the president's director of foreign policy wrote:

President Havel believes that the Czech citizenship law can stand the comparison with analogous legislation of other nations. The requirements stipulated by the law are binding upon all inhabitants of the former Czechoslovakia, without discriminating in any way against any nationalities or ethnic groups.⁵⁵

Regarding citizenship in newly-formed states, Human Rights Watch supports the "zero option," i.e. the granting of citizenship equally to all who were permanent residents at the time the new state came into existence, and who were citizens of the predecessor state. Any other option presents the possibility that citizenship will be denied to individuals who had significant links to the territory of the state in question, in this case the Czech Republic. Those excluded are individuals who, while Czechoslovakia was a united state, migrated from Slovakia to the Czech Republic. We believe, however, that most individuals who migrated within the country could not have foreseen the change in Czechoslovakia's political status, and that they lived in the Czech Republic with the expectation that their residence would not be interrupted by the issue of their citizenship. These individuals must be considered separately from new immigrants, i.e. people without genuine links to the Czech Republic who applied for citizenship after the dissolution of Czechoslovakia.

Our concern with respect to citizenship entitlement is twofold: first, citizenship entitles individuals to basic rights such as voting and residence. Denying citizenship to deserving individuals would therefore violate their voting rights guaranteed in Article 25 of the ICCPR, and Paragraph 7 of the 1990 Copenhagen Document of the OSCE. Second, the allocation of property and other social and economic rights often hinge upon citizenship. Citizenship laws that exclude otherwise deserving individuals would create categories of people who would be the victims of systematic discrimination, banned by Article 27 of the ICCPR.⁵⁶

There is no question that the citizenship law has left some long-term or life-long residents of the Czech Republic without Czech citizenship, almost all of them Roma. According to the Interior Ministry, only 200 former Czechoslovak citizens had been denied

⁵⁵Letter written to the U.S. Helsinki Commission by Pavel Seifter, Director of Foreign Policy Department, November 23, 1995.

⁵⁶This is based on the Helsinki Watch Policy Statement on Citizenship Legislation Adopted or Under Consideration in Former Soviet Republics.

Czech citizenship as of December 31, 1995.⁵⁷ But research by Czech NGOs suggests that the number of rejected applicants is much higher. In one study alone, for example, the Tolerance Foundation questioned 255 Roma from eight cities who had been denied citizenship. They found that 52 percent of these people were born in the Czech Republic; 26 percent had lived there more than twenty years.⁵⁸ Estimates differ, but NGOs claim that between 10,000 and 25,000 former Czechoslovak citizens with genuine links to the Czech Republic have not obtained Czech citizenship.

Some of these people have become stateless altogether. Others have been deported to Slovakia. Those that remain in the Czech Republic cannot vote or participate in privatization programs, and have difficulty obtaining social support.

Background to the Law

Discussions on controlling the "Gypsy problem" began in the summer of 1992. Partially it was a response to the growing crime problem in Czechoslovakia, much of which was blamed on Roma. In addition, local officials in the Czech Republic expressed fears of a Roma influx from the poorer and lesser developed Slovakia, especially as it became clearer that Czechoslovakia would split.

The loudest complaints came from the industrial towns in northern Bohemia, where many Roma lived and unemployment levels were growing. Already in 1991 and 1992 there had been a number of violent incidents between Roma and the local population.

Around this time, the government formulated an internal document, known as the "Catastrophic Scenario," which dealt with many aspects of the federation's pending split. Sections leaked to the press made clear references to the "Romani question," including a section which said:

⁵⁷According to the ministry, 311,000 people were granted Czech citizenship between January 1, 1993, and December 31, 1995.

⁵⁸*The Non-Czech Czechs*, The Tolerance Foundation, August, 1995, Prague, p. 4.

We should use the process for the purpose of departure of not-needed persons from factories, especially for the reasons of structural changes, and for the departure of people of Roma nationality to the Slovak Republic.⁵⁹

Interior Minister Jan Ruml denied on television that the document mentioned the deportation of Roma, but was later quoted in *Mlada Fronta Dnes* as saying, "The question of deporting Roma is in the discussed material only as a footnote besides the text itself."⁶⁰

In October 1992, the northern town of Jirkov passed a local ordinance as a response to the perceived inflow of Roma from Slovakia.⁶¹ The decree, which the city council admitted was aimed at Roma, spoke of areas in danger of migration and gave local authorities the power to evict people from apartments that were deemed overcrowded or unclean.⁶² The town hall had to approve visits to Jirkov by anyone without residency permits in the area. Visitors were allowed twice a year for one week, and police had the right to enter a flat they suspected of harboring guests. Unregistered guests could cost the host up to 5,000 koruny (approximately U.S. \$185) or imprisonment.

The general prosecutor stated that the decree violated the Charter on Fundamental Rights and Freedoms, but did not take any action against the local authorities. Soon thereafter, five other towns in Bohemia began to adopt points from the Jirkov decree. All together, approximately twenty families were expelled from their homes as a result, according to local Romani activists. Some were given train tickets to Slovakia.

In November, the mayors of the northern Bohemian towns of Louny, Teplice, Chomutov, Litomerice, Most, Usti nad Labem and Dečín formulated a series of demands for the parliament and Interior Ministry regarding Roma and the influx of migrants. Among other things, they proposed that Czech citizenship be granted only to those individuals without a criminal record, and who had been approved by the local authorities where they were living.

⁵⁹*Prostor*, July 21, 1992.

⁶⁰*Mlada Fronta Dnes*, July 23, 1992.

⁶¹Jirkov has approximately 2,000 Roma out of 19,500 inhabitants.

⁶²"Law on Romanies Causes Uproar in Czech Republic." RFE/RL Research Report, February 12, 1993.

One month later, the Czech general prosecutor, Jiří Setina, proposed a Law on Extraordinary Measures to be used in areas “threatened by migration.” According to the proposal, people who did not have a residency permit in a certain municipality needed the permission of the local authority to stay there. Visits were limited, and violators could be fined 1,000 koruny (approximately U.S. \$36) per day of illegal stay. The police also would have the right to monitor who was staying in any apartment, except between midnight and 6:00 a.m. The report accompanying the draft law referred to the large concentration of Roma in certain areas of northern Bohemia.⁶³

Romani and human rights organizations, as well as some deputies in parliament, condemned the proposal as a violation of the Charter of Fundamental Rights and Freedoms, and called for the general prosecutor’s resignation. In January, Justice Minister Jiří Novák said that the draft law contravened the constitution, but refused to recall the general prosecutor.

As these debates raged, the Czech parliament quietly reviewed the citizenship law. On December 29, 1992, it passed by a vote of 155 to thirteen.

Clearly, the law was drafted in an atmosphere of fear that Romani immigrants would flood the Czech Republic from Slovakia. Some government officials admit this, and criticize the law for disproportionately affecting the Romani population, although they adamantly deny the law was drafted with the intent of discriminating against Roma.

Many Romani and human rights activists however, believe that the law was drafted specifically to hinder the application process for Roma and expel “undesirable” people from the country. Human Rights Watch/Helsinki believes that there is strong evidence to suggest that this is the case.

Indeed, the Czech Republic could have crafted a law that would have prohibited immigration from Slovakia while providing citizenship to long-term residents of the Czech Republic who had also been Czechoslovak citizens. Such a proposal was advanced during separation negotiations with Slovakia in 1992, but was dropped by Czech officials when Slovaks held out for a dual citizenship agreement.

Discriminatory Aspects of the Law

Throughout the process, the citizenship law presents formidable barriers for Roma to obtain citizenship. First, applicants have to obtain proof of their Slovak citizenship from the Slovak authorities. Having obtained proof of Slovak citizenship, an applicant must apply for release from this citizenship, a procedure which originally cost 3,000 Slovak koruny (approximately U.S. \$120). Only then could one apply to the Czech authorities for Czech citizenship, a procedure which originally cost 5,000 Czech koruny (approximately U.S. \$180).⁶⁴

Even for educated people, the process was obtuse and confusing. But for many Roma, who suffer disproportionately from low levels of education and literacy, it was at times incomprehensible. Many Roma couldn’t understand why they had to apply for citizenship in

⁶³*Ibid.*

⁶⁴Both fees were later reduced, to 200 Slovak koruny and 500 Czech koruny respectively.

one country, give it up, and then apply in another country, only to keep living in the place where they had been living most or all of their lives. For many, the very notion of citizenship was confusing.

Eva Bajgerová, a Romani social worker in Usti nad Labem, told Human Rights Watch/Helsinki:

Many people were asking me for help with their citizenship. But the biggest problem was that many of them had committed a crime in the last five years. The second problem was that they couldn't understand why they should apply for citizenship when they were born here.⁶⁵

Marta Miklušáková, who interviewed between thirty and forty Roma for her master's thesis on the citizenship law and worked with numerous international organizations on the issue, told Human Rights Watch/Helsinki:

No one ever saw the law, and they did not understand the basic terminology. Many [Roma] are even illiterate. What you take for granted, they cannot do. They are powerless against the institutions.⁶⁶

Moreover, the government failed to provide substantive information about the law or explain the application procedure. With some exceptions, the government did not cooperate with local Romani groups, who have good contact with the Romani communities. Instead, the information campaign became the task of nongovernmental organizations, who printed brochures and placed ads in local papers. Some of these groups, such as the Tolerance Foundation and the Helsinki Citizens' Assembly, told Human Rights Watch/Helsinki that the Czech authorities often proved uncooperative. In its report on the Czech and Slovak citizenship laws, UNHCR also complained of poor cooperation with the government, stating:

UNHCR has also encountered serious obstacles in gaining access to individuals and records. The authorities have, on several occasions, committed themselves to providing the Office with access to data as well as to individuals. Despite reminders, significant obstacles remain. With the cooperation of the authorities, these issues could be resolved.⁶⁷

Many Roma were also not able to afford the administrative fees required to apply. The Tolerance Foundation spent U.S. \$10,000 in two months to help 212 people from Prague and Usti nad Labem gain citizenship. Another \$15,000 was spent in Teplice. According to Ladislav Zamboj, who helped administer the project:

There was a serious financial problem for many people. Many didn't have the money to get the necessary documents. But it's not their fault, they

⁶⁵Human Rights Watch/Helsinki interview with Eva Bajgerová, Usti nad Labem, March 1, 1996.

⁶⁶Human Rights Watch/Helsinki interview with Marta Miklušáková, New York, March 16, 1996.

⁶⁷UNHCR report, p. 28.

should have the possibility to get citizenship without difficulty. They should not pay anything.⁶⁸

For those who understood and could afford the application, the difficulties were not over. According to the law, "Slovak citizens" had to meet a series of stringent requirements in order to obtain Czech citizenship. Significantly, other categories of former Czechoslovaks who were predominantly ethnic Czechs were not required to meet these conditions at all.

Clean Criminal Record Requirement

Known as the "Gypsy clause," Article 7 of the law required that applicants not have committed an intentional crime within the five years preceding their application. However, denying citizenship to previously convicted criminals effectively adds an additional, *ex post facto* punishment to the individual who committed a crime. Imposing penalties heavier than those that applied at the time a crime was committed violates Article 15 of the ICCPR.

In addition, the clean criminal record requirement does not take into consideration the severity of the crime, and thus violates the accepted international principle of proportionality. As such, individuals were denied citizenship for both shoplifting and murder.

⁶⁸Human Rights Watch/Helsinki interview with Ladislav Zamboj, Prague, February 30, 1996.

This is especially relevant since, according to the Interior Ministry, the most common crimes committed by Roma are robbery and simple theft.⁶⁹ In an August 1995 report, the Tolerance Foundation also determined that, of 114 people who had been denied citizenship because they had committed a crime, seventy-four of them had committed a theft or other petty crime.⁷⁰

Another factor is that Roma are more likely than ethnic Czechs to encounter difficulties with the legal system. Partially this is due to their lower economic status. But racism in the law enforcement and legal systems also makes it more likely that Roma will be arrested, convicted and incarcerated. Jana Chalupová, ombudsman for President Havel, told Human Rights Watch/Helsinki that approximately one-third of the amnesties issued by the president were for Roma, especially women with children. She said:

It's connected with the problem that they [Roma] are more criminalized. More often they are in prison. If you have a Czech boy and a Roma boy who commit the same crime, you can bet that the Roma boy will go to prison and the Czech boy will get a suspended sentence.⁷¹

Regarding proportionality, the Council of Europe's report on the citizenship law concluded:

. . . [I]t is questionable whether the requirement of proportionality, as an element of the concept of the Rule of Law, is met. The condition encompasses every offence except very minor ones and its practical application could be seen as extremely harsh, in particular toward persons who had lived on the territory of the Czech Republic for a long time or even were born there. . . . It is the opinion of the experts that the clean criminal record requirement is not proportional and could be considered discriminatory for this segment of the population which is already socially marginalized.⁷²

Permanent Residency

According to the citizenship law, Slovak citizens must prove two years permanent residency in the Czech Republic to acquire citizenship. But many Roma who had been living in the Czech Republic longer than that did not have the documents to prove that they had permanent residency for the last two years. A Human Rights Watch/Helsinki report on Roma in Czechoslovakia, published in August 1992, pointed at some of the problems, stating:

⁶⁹A report conducted by the Interior Ministry in 1993 on Roma youth determined that, "From the available data, it is obvious that Roma are most likely to commit a property crime. . . . The major subject of their interest is money, electronics, bikes, motorbikes and any parts of them. At the same time, children and young people take an interest in alcohol and cigarettes." Analysis of the Situation of Romany Children and Youth, Czech Interior Ministry, Prague, September 1993. [Analýza stavu situace romských dětí mladistvých.]

⁷⁰*The Non-Czech Czechs*, The Tolerance Foundation, Prague, August 7, 1995, pp. 13-15.

⁷¹Human Rights Watch/Helsinki interview with Jana Chalupová, Prague, March 5, 1996.

⁷²"Report of the Experts of the Council of Europe on the Citizenship Laws of the Czech Republic and Slovakia and their Implementation," Strasbourg, April 2, 1996, p. 25.

The housing situation for Romanies in the Czech Republic has been increasingly difficult in the last several years, especially in Northern Bohemia and Moravia. In the face of a general housing shortage, in which people must wait anywhere from two to ten years for an apartment (from the state), Romani families sometimes live in extremely unhygienic conditions, sometimes as many as fifteen to twenty persons in a two-room showerless apartment. This situation has been aggravated by the process of restitution and privatization, in which Roma, who rarely had any property in the past and are presently in the poorest social strata, are left with few possibilities.⁷³

The result is that many Roma are not able to provide documents proving their permanent residency. A 1994 Tolerance Foundation report on the citizenship law examined 1,000 individual cases in five Czech cities. It concluded:

Many Roma families were living in overcrowded flats with, for example, 18-20 persons in three rooms. Their applications for extra rooms or extra flats were never resolved by local authorities. At the same time, administration officials were refusing to register as permanent residents at a specific address, more than three or four members of the family (which invariably far exceeded that number) because they did not have the legally required number of square meters per person.⁷⁴ As a result, many Roma have been unable to prove permanent residence and, consequently, to acquire Czech citizenship.⁷⁵

In late 1994, the Czech Constitutional Court recognized that proving permanent residency with a document was difficult for some people who had, in fact, been living permanently in the Czech Republic. On September 13, the court ruled:

... permanent residency means actual residency and not one that is reflected only in official files . . . In this sense, permanent residency must be understood to mean that the person lives at his place of continuous residence, is generally at the place where he has his family, parents, apartment or employment and also the place where he lives with the intention of staying there permanently. . .⁷⁶

Despite this, Roma and human rights organizations report that local Interior Ministry officials still often require the permanent residency document. UNHCR has concluded:

Under these circumstances, many of the Roma are not able to meet the condition of the law requiring permanent residency, despite the fact that they

⁷³Helsinki Watch, *Struggling for Ethnic Identity: Czechoslovakia's Endangered Gypsies*, (New York:Human Rights Watch, August 1992).

⁷⁴The housing regulations require approximately eight square meters per person.

⁷⁵*Report on the Czech Citizenship Law*, The Tolerance Foundation, Prague, May 25, 1994, p. 17.

⁷⁶Decision of the Constitutional Court 207/1994, September 13, 1994.

have been resident in the Czech Republic and their children born on Czech territory.⁷⁷

Orphans and Prison Inmates

⁷⁷UNHCR report, p. 22

The citizenship law states that all children under fifteen years of age are included on the applications of their parents. Furthermore, both parents must agree that the child apply for citizenship.⁷⁸

This condition has grave consequences for the hundreds of children in the Czech Republic's 180 orphanages, the majority of whom are Roma of Slovak origin.⁷⁹ Very few of these children have contact with their parents, which leaves them foreigners in a Czech institution, even though they were born in the Czech Republic. One foreign observer very familiar with the citizenship issue believed that over 1,000 children were in such a position.

The same situation exists for prison inmates who have not been able to regulate their citizenship during their period of incarceration. According to Zdenek Trojan, a member of parliament, between 1,500 and 2,000 people in prison do not know if they are Czech or Slovak.⁸⁰ Human rights organizations report very bad cooperation with the prison authorities in determining whether these people have a legal right to obtain Czech citizenship.

Discriminatory Implementation of the Law

Aside from the inherently discriminatory aspects of the law, there are also many reported cases where local authorities arbitrarily denied citizenship to Roma who met all of the law's requirements. The Interior Ministry issued directive No. 1/1993 to instruct the local authorities on how to process applicants. But Romani and human rights activists, as well as Roma who were denied citizenship, told Human Rights Watch/Helsinki that local officials sometimes provided misinformation, both intentionally and by accident. Partially this was because the Interior Ministry did not always provide clear enough information to those responsible for dealing with the application process. In other cases, local authorities denied citizenship solely because the applicant was a Rom.

President Havel recognized the discriminatory implementation of the law. In a letter to the U.S. Helsinki Commission, the president's director of foreign policy wrote:

The President is aware of certain problems in the application of the citizenship law at the executive level. In many ways, he has sought to promote proper application of the law with a view to preventing injustices. He has been repeatedly stressing the need that the competent authorities at all levels provide the applicants correct information and considerate treatment.⁸¹

Marta Miklušáková echoed this view, and told Human Rights Watch/Helsinki:

⁷⁸Aside from the obvious difficulty in finding both parents for orphans, Romani activists told Human Rights Watch/Helsinki that there are many times when the mother of children under fifteen years of age does not know how to find the father.

⁷⁹The Tolerance Foundation visited the orphanage in Bielec and found thirty-one boys between the ages of six and eighteen, 80 percent of whom were Roma of Slovak origin.

⁸⁰Trojan made his comments at a press conference held by the Czech HCA on February 29, 1996, to present their opinion on a government-proposed amendment to the citizenship law.

⁸¹Letter to the U.S. Helsinki Commission from Pavel Seifert, director, Foreign Policy Department, November 23, 1995.
Human Rights Watch/Helsinki 33June 1996, Vol. 8, No. 11 (D)

I saw so many [Roma] who fulfilled all of the condition and were denied [citizenship] because the social worker told them that they didn't meet the requirements. The main thing was the five year [clean criminal record] condition because social workers did not understand that the law differentiated between the beginning and end of the prison sentence.⁸²

According to the law, the five year clean criminal record requirement refers to the date of sentencing. Despite this, some people were told that they did not qualify for citizenship because they had been released from prison within the last five years. The Tolerance Foundation also reported cases where Roma were denied citizenship even though they had been arrested or detained, but not convicted. Lastly, officials sometimes failed to explain that a person who was ineligible because of a crime would become eligible after five years had passed since the date of sentencing.⁸³ The UNHCR's report also stated that regional authorities had "wrongly rejected some applications on grounds of the criminal record," stating:

For example, persons arrested but never prosecuted were told they did not meet the requirement of a clean record. For others, who were amnestied, the authorities refused to take this into account. Individuals sentenced more than five years ago have been told they did not meet the requirement.⁸⁴

Human Rights Watch/Helsinki also heard about the case of M.S., a Romani woman living in Karlovy Vary. Social workers falsely told her that her two children, Simona and Zdenek, would automatically be included on her citizenship application. Following their advice, she asked for them to be included on her application, and they did not receive citizenship, even though both were born in the Czech Republic.⁸⁵

It should be noted, however, that some of the local authorities performed their duties in good faith. The generally lower level of education among Roma, including cases of illiteracy, and poorer understanding of administrative procedures, compounded the problem.

The Case of Karvina

In August 1994, the Czech press began running stories about an office worker in Karvina, a North Moravian town with a large Romani population, who was accused of taking bribes in return for granting citizenship. The local authorities began an investigation and checked the citizenship documents of individuals who had their papers signed by the worker in question, Mrs. Čechová. According to the Tolerance Foundation, by May 1995, 10,500 ID cards had been checked. In 360 cases, the citizenship stamp was determined to be illegal, and was canceled. Mrs. Čechová was not prosecuted, but did lose her job.⁸⁶

⁸²Human Rights Watch/Helsinki interview with Marta Miklušáková, New York, March 16, 1996.

⁸³*Report on the Czech Citizenship Law*, Tolerance Foundation, pp. 14-15.

⁸⁴UNHCR report, p. 25.

⁸⁵Human Rights Watch/Helsinki interview with Ladislav Zamboj, Prague, February 30, 1996.

⁸⁶*The Non-Czech Czechs*, Tolerance Foundation, Prague, August 7, 1995.

While some of those 360 stamps may have been illegally acquired, problems arose because the cancellations of citizenship were conducted without a court order. The authorities simply examined the files of those individuals who had received citizenship with Mrs. Čechová's approval, and revoked the citizenship if any of the necessary documents were either missing or not in order. According to human rights activists and some members of the government familiar with the case, the authorities revoked the citizenship of some individuals who had legally met all of the requirements. Since many of these people had obtained a release from Slovak citizenship, they became *de jure* stateless. In its report on the Czech citizenship law, the Council of Europe stated that the procedure in Karvina, "clearly does not meet European legal standards."⁸⁷

Volnya Czechs

After 1992, there was a particular interest in ethnic Czechs living outside of the Czech Republic. Of special concern were the Volnya Czechs who live in Ukraine.

On June 28, 1995, parliament passed an amendment to the citizenship law that gave the Interior Ministry the right to waive the five year permanent residency requirement for foreigners to those individuals who had been resettled in the Czech Republic by the Czech government before December 31, 1994. The amendment was intended to grant citizenship to a couple hundred Volnya Czechs who had been resettled by the Czech government the year before. After the amendment, an estimated 200-300 Volnya Czechs received citizenship.

Human rights activists pointed out the hypocrisy in the government's action: the state had facilitated citizenship for ethnic Czechs living abroad, while doing very little to assist non-ethnic Czechs from obtaining citizenship in the country where they had lived all or most of their lives. For many people, this illustrated the ethnic intentions of the citizenship law. Ironically, some pointed out, it was easier for an ethnic Czech in Ukraine who had committed a murder to gain Czech citizenship than a law-abiding Rom who was born and lived his entire life in the Czech Republic.

Consequences of Lost Citizenship

The precise number of people with genuine links to the Czech Republic who have not received citizenship is hard to estimate. Romani and human rights activists estimate the figure is between 10,000-25,000. Without any question, the majority of these people are Roma. Czech officials have refused to provide credible and consistent documentation on the question of numbers.

The most obvious consequence of lost citizenship is the inability to vote, a fundamental right in any democracy. In addition, non-citizens are not allowed to participate in the Czech Republic's privatization process or hold public office.

According to the Law on Foreigners' Stay and Residence, there are three forms of legal stay for non-citizens in the Czech Republic: short term (up to 180 days), long term (up to one year) and permanent residence. To obtain the latter, an individual must prove foreign citizenship, a place of residence, adequate financial means and proper health. Many of these are difficult for Roma to prove. In one study, the Tolerance Foundation questioned ninety-

⁸⁷"Report of the Experts of the Council of Europe on the Citizenship Laws of the Czech Republic and Slovakia and their Implementation," Strasbourg, April 2, 1996, p. 36.

nine individuals who had been denied Czech citizenship. From this group, not one had a permanent residency permit.⁸⁸

Without permanent residency, a person is not entitled to benefits from the state, such as unemployment compensation and health insurance. In addition, if the father of the household does not have permanent residency, the whole family receives nothing from the state. Those without permanent residency are subject to deportation by the foreigners' police.

Even those who do obtain permanent residence are sometimes discriminated against because they do not have citizenship. Human Rights Watch/Helsinki heard of a few cases where individuals were taken off job lists in local employment offices, even though one does not need to be a citizen to be on such a list.

Statelessness

The Czech government has continually stated that, with a few random exceptions, no one became stateless as a result of the citizenship law. In a position paper issued in response to the UNHCR report on the Czech and Slovak citizenship laws, the government says:

⁸⁸*A Need for Change in the Czech Citizenship Law: Analysis of 99 Individual Cases*, Tolerance Foundation, November 21, 1994.

Upon establishment of the Czech Republic as a new subject in international law, it became necessary to define its citizenship by law. The new citizenship law determined that persons who had been holders of Czech citizenship prior to the dissolution of the federation should become citizens of the Czech Republic. A similar transformation took place in the Slovak Republic; as a result, former Czechoslovak citizens automatically became citizens of either of the successor States. The above legislation therefore could not have caused situations of statelessness.⁸⁹

Despite this, governmental and nongovernmental organizations monitoring the citizenship law have documented cases where statelessness has clearly occurred.⁹⁰ According to the UNHCR, "A significant number of *de facto* statelessness have resulted from the fact that certain groups and individuals were physically and/or legally not able to take the necessary steps to exercise Czech or Slovak citizenship."⁹¹

The primary way that statelessness can occur is in the transition between releasing Slovak citizenship and obtaining Czech citizenship. Governmental and nongovernmental organizations found individuals who had obtained release from their Slovak citizenship and then, for a variety of reasons, did not obtain Czech citizenship, and are now stateless. The problem was reduced after the Czech and Slovak authorities agreed to coordinate their administrative procedures in 1994, but incidents of statelessness from this transition period still occur.

In its investigation of ninety-nine Roma who were denied Czech citizenship, for example, the Tolerance Foundation found that only six of the ninety-nine people held a Slovak passport.⁹² The rest did not have any Slovak identification papers and are, therefore, *de facto* stateless. Eight of the ninety-nine people were *de jure* stateless, since they had certificates of exemption from Slovak citizenship but had not yet acquired Czech citizenship.

Deportations

⁸⁹*Position of the Czech Republic on the UNHCR Regional Bureau for Europe Document The Czech and Slovak Citizenship Laws and the Problem of Statelessness*, Prague, February 1996.

⁹⁰The Czech Republic is obliged under the OSCE Helsinki Document 1992, Paragraph 56, not to increase statelessness.

⁹¹UNHCR report, p. 26.

⁹²*A Need for Change in the Czech Citizenship Law - Analysis of 99 Individual Cases*, Tolerance Foundation, Prague, November 21, 1994, p. 17.

According to Article 16 of the Czech criminal code, police may expel any foreigner who commits a misdemeanor or lesser crime. Those who commit more serious crimes may be expelled by a court decision.⁹³ According to the Czech Alien and Border Police, in 1995 there were 881 expulsions from the Czech Republic, a 14 percent increase from the previous year. Of these, 244 people were Slovak citizens.⁹⁴

Clearly, some of those deported were genuinely foreigners who committed a crime in the Czech Republic. But there is reason to believe that many of those deported to Slovakia were Roma who, for one reason or another, were denied Czech citizenship despite having genuine links to the Czech Republic. In such cases, these people were not only denied citizenship in the country where they have established lives, but were sent to a country where they have no legitimate connection. In some cases, families have been divided.

One such example is of Edmond Billy, a nineteen-year-old Rom who was born in Košice, Slovakia, but moved to the Czech Republic when he was four years old. His mother and one sister live in the Czech Republic and have Czech citizenship, but Edmond and his brother do not. According to Ladislav Zamboj, a social worker who worked closely with the case, Billy was arrested in December 1994 for shoplifting from a Kmart in Prague. Because it was a misdemeanor, he was sentenced to one year in prison and ordered deported from the country by administrative decision. Billy began his sentence in January 1995 and was expelled from the Czech Republic on January 13, 1996.⁹⁵

A Czech human rights activist who had contact with Billy before his deportation but wanted to remain nameless, told Human Rights Watch/Helsinki:

He [Billy] said he thought they would send him to his father's permanent address [in Slovakia], but he knew that his father had sold his house. He didn't know where his father was. He said he had no family there. He was born in Slovakia and spent one year there at age sixteen. But he told me that he knew no one there.⁹⁶

Human Rights Watch/Helsinki encountered another case in Trmice, a town outside of Usti nad Labem. Mr. and Mrs. Demeter came to the Czech Republic from Slovakia in 1975, and obtained Czech citizenship in 1993.⁹⁷ They have four children, aged fifteen to twenty-four, three of whom also had no trouble obtaining Czech citizenship. Their fourth son, however, twenty-one-year-old Josef, did not apply for citizenship right away in early 1993, committed a crime, and was then denied citizenship. He was convicted and began serving time in Stráž pod Ralskem prison on June 3, 1995. His deportation to Slovakia is currently scheduled for July 1996. Mr. Demeter told Human Rights Watch/Helsinki:

⁹³Article 57 of the criminal code states that expulsions by judicial decision can be ordered only for non-Czech citizens. But the law does not require that the person have citizenship in another country.

⁹⁴These numbers also coincide with the figures provided Czech NGOs by the Interior Ministry.

⁹⁵Police decision PSP 141/CPPS C95.

⁹⁶Human Rights Watch/Helsinki interview, Prague.

⁹⁷Human Rights Watch/Helsinki interview with Mr. and Mrs. Demeter, Trmice, March 1, 1996.

We have no family in Slovakia. Our home is here. Our son was three months old when we moved here. We don't know where he'll live.⁹⁸

Those Roma who are deported to Slovakia face harsher economic conditions than in the Czech Republic. The large Romani population in Slovakia is poorer and more isolated; many people live in over-crowded, ghetto-like settlements in the eastern part of the country. A human rights monitor for the International Helsinki Federation in Bratislava, who has carefully monitored Roma rights in Slovakia, told Human Rights Watch/Helsinki:

⁹⁸ *Ibid.*

If you send them [Roma] back to Slovakia, they left years ago and the connections are broken. They do not have a group of relatives to take care of them and help them out. And they are much poorer here. Those deported really have it tough.⁹⁹

Another problem is that Slovak state benefits are distributed through the local authorities, which means that individuals much be registered with a place of permanent residence. As in the Czech Republic, Roma in Slovakia often face resistance from local authorities when trying to obtain such a permit.

Milan Kropuch, the mayor of Javornice in eastern Slovakia, told Human Rights Watch/Helsinki that a lot of Czech Roma had come to his town since the split of Czechoslovakia, but very few were granted residence. He said:

In the last two years, since the split, about one hundred Czech Roma came here and wanted to be registered. But we've got our laws. Where can I register them? Where, when in some houses there are thirty people. We must force them to take care of themselves.

It's mixed. Some of them are Czech Gypsies. Born here but they lived there for a long time and had kids there. Then they didn't get citizenship because of the five year criminal requirement. Others are Slovak.

They must apply [for the Slovak residency permits] in written form. Then the town hall must find where he wants to be registered. Then they decide. Of one hundred, two were registered, I think.¹⁰⁰

Amendments to the Citizenship Law

Since its enactment, the citizenship law has been amended three times. The first amendment, on October 12, 1993, was intended to allow children to acquire citizenship by adoption, and to allow senior citizens to opt for citizenship on slightly more liberal conditions. A proposal to eliminate the clean criminal record requirement was rejected by parliament.

The second amendment passed parliament on June 28, 1995. It granted the Interior Ministry with the right to waive the two year permanent residency requirement for those individuals who had been "resettled in the Czech Republic by December 31, 1994, by invitation of the government."¹⁰¹ The amendment was intended to facilitate the granting of citizenship to Volnya Czechs from Ukraine (see section on Volnya Czechs).

The most recent amendment, passed by parliament on April 26, 1996, grants the Interior Ministry the power to waive the clean criminal record requirement. While this change is a step in the right direction, it still does not eliminate all of the discriminatory aspects of the law. It also remains to be seen if the ministry will utilize its newly-won power to help those with genuine links to the Czech Republic gain citizenship. Human Rights Watch/Helsinki

⁹⁹Human Rights Watch/Helsinki interview, Bratislava, Slovakia, March 7, 1996.

¹⁰⁰Human Rights Watch/Helsinki interview with Mayor Milan Kropuch, Jarovnice, Slovakia, March 9, 1996.

¹⁰¹Law No. 140/1995 Coll., Art. 1.

questions whether the government organ that, at times, applied the law in a discriminatory manner, will now actively work to rectify the problems.

In addition, the government has not attempted to inform individuals that the clean criminal record requirement may now be waived. Without spreading this information widely throughout the Roma community, it is unlikely that many people will resubmit their applications for consideration. Many Romani and human rights activists believe that the amendment was passed to console the Council of Europe and UNHCR, after both organizations had released critical reports on the law.

LEGAL STANDARDS

International Standards

The following section refers to Czech law and the international legal instruments to which the Czech Republic is a party, as well as to politically binding documents adopted by the Czech Republic through the OSCE.

International law prohibits states from discriminating on the basis of ethnic or national identity:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁰²

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination . . .

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination . . .

Each State Party shall take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists . . .¹⁰³

¹⁰² International Covenant on Civil and Political Rights (ICCPR), 1966, Article 26.

¹⁰³ United Nations International Convention on the Elimination of All Forms of Racial Discrimination, 1966, Article 2.

Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms also states:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

According to the OSCE Meeting of Experts on National Minorities, the participating states:

. . . will take the necessary measures to prevent discrimination against individuals, particularly in respect of employment, housing and education, on the grounds of belonging or not belonging to a national minority. In that context, they will make provision, if they have not yet done so, for effective recourse to redress for individuals who have experienced discriminatory treatment on the grounds of their belonging or not belonging to a national minority, including by making available to individual victims of discrimination a broad array of administrative and judicial remedies.¹⁰⁴

The Czech Republic also has international obligations to protect all inhabitants from violence, including a specific obligation to protect minorities from violence due to racial or ethnic identity:

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone without distinction as to race, color, or national origin, to equality before the law, notably in the enjoyment of . . .

b. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by Government officials or by any individual, group, or institution . . .¹⁰⁵

The participating States . . . commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property . . .¹⁰⁶

When fundamental rights are violated, the state is obligated to provide an effective remedy.

¹⁰⁴Report of the CSCE Meeting of Experts on National Minorities, Article 4, Geneva, July 1991.

¹⁰⁵*Ibid.*, Article 5. See also the ICCPR, Articles 2 and 9.

¹⁰⁶Document of the Copenhagen Meeting on the Conference on the Human Dimension of the CSCE (1990), Paragraph 40.2. Although the CSCE documents do not have the binding force of a treaty, Bulgaria has made a solemn commitment to abide by the standards set out therein.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.¹⁰⁷

States Parties assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.¹⁰⁸

The conduct of police officers is prescribed by international standards:

Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.¹⁰⁹

¹⁰⁷ Universal Declaration of Human Rights, Article 8. See also ICCPR, Article 3.

¹⁰⁸ Convention on the Elimination of Discrimination, Article 6. See also ICCPR, Article 26.

¹⁰⁹ United Nations Code of Conduct for Law Enforcement Officials, Article 1. This document and the U.N. Code of Conduct and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, cited at footnote 100, are not treaties and, therefore, their obligations are not legally binding. However, they do constitute authoritative interpretations and explanations of more general standards that are themselves binding, either because they are found in treaty law or because they are customary international law.

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.¹¹⁰

International standards also state that:

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment . . .¹¹¹

The government has a responsibility to guarantee that police officers have the proper training and equipment to fulfill their obligations. Specifically, the government has an obligation to make clear to police officers which means may be used to prevent the commission of a crime, and the circumstances under which particular means are appropriate. In an effort to avoid the use of lethal force:

Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations . . . [I]t should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bulletproof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.¹¹²

Governments should make human rights and civil rights training a part of any police training program:

In the training of law enforcement officials, governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programs and operational procedures in the light of particular incidents.¹¹³

In cases where allegations are made of police misconduct, it is the duty of the responsible authorities to conduct an investigation and carry out the appropriate disciplinary measures.

¹¹⁰ *Ibid.*, Article 2.

¹¹¹ *Ibid.*, Article 5.

¹¹² United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 2.

¹¹³ *Ibid.*, Principle 20.

Every law enforcement agency . . . should be held to the duty of disciplining itself . . . and the actions of law enforcement officials should be responsive to public scrutiny.¹¹⁴

International law prohibits states from discriminating on the basis of ethnic or national identity, and requires states to take positive measures to prevent discrimination on these grounds:

¹¹⁴ Preamble to the United Nations Code of Conduct for Law Enforcement Officials.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹¹⁵

The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.¹¹⁶

The Czech Republic has agreed to take additional measures to promote mutual understanding and tolerance:

Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.¹¹⁷

The participating States [will] . . . take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information. . . .¹¹⁸

International law allows states to take special measures (i.e., "affirmative action"), for a limited period of time, to ensure members of all ethnic groups the equal enjoyment and exercise of human rights and fundamental freedoms:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.¹¹⁹

Domestic Standards

¹¹⁵ International Covenant on Civil and Political Rights, Article 26.

¹¹⁶ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Paragraph 31.

¹¹⁷ *Ibid*, Paragraph 36.

¹¹⁸ *Ibid*, Paragraph 40.3.

¹¹⁹ International Convention on the Elimination of All Forms of Racial Discrimination (1969), Article 1.

The Czech constitution incorporates the above-mentioned international obligations into domestic law. The Czech Charter of Fundamental Rights and Freedoms states:

Fundamental human rights and freedoms are guaranteed to everybody irrespective of sex, race, color of skin, language, faith, religion, political or other conviction, ethnic or social origin, membership in a national or ethnic minority, property, birth, or other status.¹²⁰

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.¹²¹

Everyone shall be entitled to personal freedom and inviolability.¹²²

The home shall be inviolable.¹²³

Regarding minorities, the Czech Charter of Fundamental Rights and Freedoms states:

The national or ethnic identity of any individual shall not be used to his or her detriment.¹²⁴

(1) Citizens who constitute national or ethnic minorities are guaranteed all-round development, in particular the right to develop with other members of the minority their own culture, the right to disseminate and receive information in their language, and the right to associate in ethnic associations. Detailed provision in this respect shall be set by law.

(2) Citizens constituting national and ethnic minorities are also guaranteed under conditions set by law:

- a) the right to education in their language,
- b) the right to use their language in official contact,
- c) the right to participate in the settlement of matters concerning national and ethnic minorities.¹²⁵

Finally, the Charter on Fundamental Rights and Freedoms extends basic rights to all individuals, regardless of their citizenship. Article 42(3) of the law states:

Wherever the existing regulations use the term "citizen" it shall be understood as meaning every individual with respect to the fundamental rights and freedoms the Charter extends to everybody irrespective of his or her citizenship.

¹²⁰ Czech Charter on Fundamental Rights and Freedoms, Article 3(1).

¹²¹ *Ibid.*, Article 7.

¹²² *Ibid.*, Article 8.

¹²³ *Ibid.*, Article 12.

¹²⁴ *Ibid.*, Article 24.

¹²⁵ *Ibid.*, Article 25.

APPENDIX¹²⁶

¹²⁶ At the time this letter was written, the proposal was for the Ministry of the Interior to be able to waive the clean criminal record requirement for those who were punished with a prison term of less than two years. The final amendment granted the Ministry the right to waive the requirement regardless of sentence length.

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