

REPORT ON MEASURES TO COMBAT DISCRIMINATION

Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT

Czech Republic
Pavla Boucková
State of affairs up to 8 January 2007

This report has been drafted for the **European Network of Legal Experts in the non-discrimination field** (on the grounds of Race or Ethnic origin, Age, Disability, Religion or belief and Sexual Orientation), established and managed by:

human european consultancy
Hooghiemstraplein 155
3514 AZ Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

the Migration Policy Group
Rue Belliard 205, Box 1
1040 Brussels
Belgium
Tel +32 2 230 5930
Fax +32 2 280 0925
info@migpolgroup.com
www.migpolgroup.com

All reports are available on the European Commission's website:

http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

This report has been drafted as part of a study into measures to combat discrimination in the EU Member States, funded by the European Community Action Programme to combat discrimination. The views expressed in this report do not necessarily reflect the views or the official position of the European Commission.

INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.

The Czech legal system is shaped by a hierarchy of legal provisions, by virtue of which the Charter of Fundamental Rights and Freedoms¹ occupies a superior position to ordinary laws. The Constitution² invests the Charter with a place at the top level of the legislative hierarchy³. Constitutional laws and international treaties are not on the same level of the hierarchy as the Charter and Constitution, but these are both superior to ordinary laws and, in the event of a conflict with ordinary laws, must prevail. The Constitutional Court has the power to quash laws if they are in conflict with the Charter, Constitution or Constitutional laws. All ordinary laws are on a lower level of the hierarchy and are equal to each other. In case of a conflict between the provisions of two different laws, neither of them may be quashed as the result of such a conflict. One of the conflicting provisions must be applied according to general rules of interpretation: *lex posterior derogat legi priori* or *lex specialis derogat legi generali*. Ordinary laws are superior to decrees, which can only regulate issues if ordinary laws expressly allow this.

A general anti-discrimination clause can be found in the Charter of Fundamental Rights and Freedoms. The Charter is divided into five chapters, including a chapter on general provisions which establishes the equality of rights, the principle of non-discrimination which applies to all fundamental rights and freedoms and the principle of the rule of law. Article 3 of the Charter guarantees equality in access to fundamental rights and freedoms and includes an open-ended list, expressly prohibiting discrimination on the grounds of sex, race, colour, language, religion or belief, political or other conviction, national or social origin, membership of a national or ethnic minority, property and birth or other status. It does not specifically provide protection against discrimination on sexual orientation, age and disability grounds. All grounds not explicitly included are, according to case law, contained implicitly in the term “other status”. The only body competent to interpret the Charter with binding effect is the Constitutional Court⁴. The Constitutional Court can only deliver such interpretation through a judicial decision. As far as the author of this report is aware, there has not been any important judicial decision by the Constitutional Court dealing with discrimination on the grounds of age or sexual orientation.

Anti-discrimination clauses (sometimes enumerative, sometimes open-ended) can be found in various ordinary laws governing employment and labour relations. During the period 2003-

¹ 2/1993 Sb., *usnesení předsednictva České národní rady o vyhlášení Listiny základních práv a svobod* [2/1993 Coll., Resolution of the Czech National Council on the Declaration of the Charter of Basic Rights and Freedoms (Collection of Laws 1993, no. 1 p.017)] English translation of Constitution see at: <http://www.psp.cz/cgi-bin/eng/docs/laws/constitution.html>

² 1/1993 Sb., *Ústava České republiky* [1/1993 Coll., Constitution of the Czech Republic (Collection of Laws 1993, no.1 p.001)]

³ Any newly approved constitutional laws must be in accordance with the Constitution and the Charter. Although the Charter is regarded as a part of the constitutional order, it is not possible to challenge the Constitution or any constitutional law for being inconsistent with the Charter. There are no provisions giving details on interpretation in the case of conflict between the Charter and constitution or constitutional laws. Public authorities, including courts, are not allowed to apply any laws that contradict any of the basic rights guaranteed by the Charter.

⁴ Art. 89, Para 2 of the 1/1993 Coll., Constitution of the Czech Republic: Enforceable decisions of the Constitutional Court have a binding effect on all bodies and persons.

2004, the definitions of discrimination required by the Racial Equality and Employment Equality Directives were inserted into the Labour Code⁵, the new Law on Employment⁶ and the Law on Service by Members of the Security Services⁷. While Labour code applies to contractual labour relations, the Law on Employment applies to employment related affairs preceding or outside the labour relations, such as recruitment, vocational training, and in the area of labour relations to certain positive obligations of employers towards the workforce. The Antidiscrimination bill, deemed to ensure the conformity of Czech legal system with the Equality Directives, failed on 26th January 2006 in the Czech Senate and was not approved on 23. May 2006, at the last session of the Deputy Chamber (with 101 votes necessary to overturn the vote of the Senate, only 83 Deputies voted for the Bill.) The final failure of the EU non-discrimination acquis implementing legislation was due to elections at hand, currently occupying all interest of current deputies. The Bill was even not this time supported by deputies of one small governmental party (Christian Democrats). The outcome of the implementing legislation remains unclear even after the elections, although the current government proclaims its will to submit the Anti-discrimination Bill again to the Parliament.

0.2 State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?

Labour relations

- From 1.1.2007, new Labour Code comes into force⁸. This law replaces the Labour Code 2006. With respect to Equality directives, it was intended to be supplemented by the Anti-discrimination Law; but the bill was not approved. The Labour Code 2007 unlike Labour code 2006, purely states that employers are obliged to secure equal treatment of any employee, and that any discrimination in labour relations is forbidden. It does not contain definitions of discrimination and the provisions on judicial anti-discrimination action are missing. The same could be said about legislation governing establishment of organizations of employers and employees⁹.

Access to employment and occupation

- There are no anti-discrimination provisions nor definitions of discrimination in the laws governing the labour relations of judges¹⁰, state attorneys¹¹, members of parliament¹², members of local government¹³, and labour relations covering prisoners

⁵ Zákon č. 46/2004 Sb., kterým se mění zákon č. 65/1965 Sb., zákoník práce [Law no. 46/2004 Coll., amending Law no. 65/1965 Coll., Labour Code (Collection of Laws 2004, no.14 p. 746)] (Further referred to as Labour Code 2006)

⁶ Zákon č. 435/2004 Sb., o zaměstnanosti [Law no. 435/2004 Coll., on Employment (Collection of Laws 2004, no.143 p. 8270)]

⁷ Zákon č. 361/2003 Sb., o služebním poměru příslušníků bezpečnostních sborů [Law no. 361/2003 Coll., on Service by Members of the Security Services (Collection of Laws 2003, no. 121 p. 5850)]

⁸ Zákon č. 262/2006 Sb., zákoník práce [Law no. 262/2006 Coll., Labour Code (Collection of Laws 2006, no. 84/2006, p.3146)] (Further referred to as Labour Code 2007)

⁹ Zákon č. 83/1990 Sb., o sdružování občanů [Law no 83/1990 Coll., on Associations (Collection of laws 1990, no. 19, page 0366)]

¹⁰ Zákon č. 6/2002 Sb., o soudech, soudcích, přísedících a státní správě soudů [Law no. 6/2002 Coll., on Judges, Assistant Judges and State Administration of the Courts (Collection of Laws 2002 no.82 p.4835)]

¹¹ Zákon č. 283/1993 Sb., o státním zastupitelství [Law no.283/1993 Coll., on the Public Attorney's Office (Collection of Laws 1993, no. 71 p.1522)]

¹² Zákon č. 247/1995 Sb., o volbách do Parlamentu České republiky [Law no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic (Collection of Laws 1995, no.65 p.3529)]

and volunteers¹⁴. The provisions of Law on Employment do not apply to recruitment and vocational training for these occupations.

- Where an occupation is conducted in a self-employed capacity (not in the form of employment) the anti-discrimination clauses and definitions in the Labour Code and Law on Employment do not apply. The laws governing self-employment are thus in breach of the Directives (i.e. laws governing self-employment for attorneys¹⁵, medical doctors¹⁶, notaries¹⁷ and many others);
- In the Law on Employment, (which deals also with certain entitlements of self-employed persons to vocational training and re-qualification), the term “state of health” is considered a ground of direct discrimination, while the term “disability” is only used in the definition of indirect discrimination (Art. 2 Para. 1 subsection b) ii)). It is off course self-evident, that the term “state of health” is very general, and therefore it also encompasses disability. However, a social security office has the authority to issue a decision recognising a person as “disabled”. For other people, the disability-related entitlements do not apply. It does not therefore appear that the definition of indirect discrimination on the ground of disability is compatible with the Directives.

Self-employment

- The Directives have not been transposed into laws on self-employment¹⁸ which do not include definitions of discrimination. The material scope of the laws in this area includes all types of self-employment and occupations carried out in a self-employed capacity.

Vocational training and education

- The Directives have not been transposed into laws governing vocational training, education and access to education¹⁹. There are no definitions of discrimination, except for in the case of vocational training which is covered by the Law on Employment (re-training and special forms of re-training and occupational therapy for people with disabilities). The material scope of different laws governing this area includes all agencies involved in the vocational training and education system, private, state or self-governing entities, such as Medical or Attorney Chamber.

The Czech Republic, as a new Member State, was not eligible to defer the implementation of Directive 2000/78/EC. The Anti-discrimination Bill was not approved by the Parliament.

¹³ For example *Zákon č. 152/1994 Sb., o volbách do zastupitelstev v obcích* [Law no. 152/1994 Coll., on Elections to Local Government (Collection of Laws no. 48 p. 1577)]

¹⁴ *Zákon č. 198/2002 Sb., o dobrovolnické službě* [Law no. 198/2002 Coll., on Voluntary Service (Collection of Laws 2002 no. 82 p. 4835)]

¹⁵ For example *Zákon č. 85/1996 Sb., o advokacii* [Law no. 85/1996 Coll., on Attorneys (Collection of Laws 1996, no. 29 p.1002)]

¹⁶ For example *Zákon č. 220/2001 Sb., o České lékařské komoře, České stomatologické komoře a České lékárnické komoře* [Law no. 220/1991 Coll., on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Pharmacy Chamber (Collection of Laws 2001, no.44 p.1047)]

¹⁷ For example *Zákon č. 358/1992 Sb., o notářích a jejich činnosti* [Law no. 358/1992 Coll., on Notaries and their Activity (Collection of Laws 1992, no.73 p.1999)]

¹⁸ For example *Zákon č. 455/1991 Sb., o živnostenském podnikání* [Law no. 455/1991 Coll., on Self-employment (Collection of Laws 1991, no. 87 p. 2122)]

¹⁹ For example *Zákon č. 561/2004 Sb., o předškolním, základním středním, vyšším odborném a jiném vzdělávání* [Law no. 561/2004 Coll., on Pre-school, Primary, Secondary and Higher Vocational and other Education; (Collection of Laws 2004, no. 190 p. 10 324)]

Directive 2000/43/EC

Social protection, including social security

The Directive has not been transposed into laws on social protection, including social security. No definitions of discrimination are given by these laws; the material scope of existing laws covers all agencies involved in the social protection system: state and self-governed agencies as well as private agencies empowered by law or contracted to provide services in the field of social protection.

Healthcare

The Directive has not been transposed into laws on healthcare and access to healthcare²⁰. No definitions of discrimination are given by these laws; the material scope of existing laws covers all agencies involved in healthcare system - state and self-governed agencies as well as private agencies empowered by law or contracted to provide services in the fields of healthcare, preventative healthcare or public health protection.

Education

- The Directive has not been transposed into laws on education and access to education²¹. No definitions of discrimination are given by these laws; the material scope of existing laws covers all agencies involved in the education system - primary, secondary and tertiary, private, state or self-governed entities (only public universities have a self-governing capacity, all other educational establishments are state or privately run).

Social advantages

- The Directive has not been transposed into legislation governing social advantages, what is mainly the area governed by Civil code.

Access to goods and services

- The Directive has not been transposed into laws on access to goods and services and consumer protection²². No definitions of discrimination are given by these laws; the material scope of existing laws covers all agencies involved in the system of public services provision as well as private providers.

Housing

- The Directive has not been transposed into laws on access to housing. No definitions of discrimination are given by these laws; the material scope of existing laws covers laws governing both privately owned and rented housing (the Czech Republic does not have special laws covering social housing). The material scope of existing laws covers private and public owners (the largest public owners being municipalities).

Anti-discrimination body/bodies

- The Anti-discrimination body meeting the requirements of the Art. 13 of the “Race” Directive was not established yet.

²⁰ For example *Zákon č. 20/1966 Sb., o péči o zdraví lidu* [Law no. 20/1966 Coll., on Public Welfare (Collection of Laws 1966, no. 7 p. 0074)]

²¹ For example *Zákon č. 561/2004 Sb., o předškolním, základním středním, vyšším odborném a jiném vzdělávání* [Law no. 561/2004 Coll., on Pre-school, Primary, Secondary and Higher Vocational and other Education; effective from 1. January 2005 (Collection of Laws 2004, no. 190 p. 10 324)]

²² For example *Zákon č. 634/1992 Sb., o ochraně spotřebitele* [Law no. 634/1992 Coll., on Consumer Protection (Collection of Laws 1992, no. 130 p. 3811)]

0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

- a. Name of the court
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
- c. Name of the parties
- d. Brief summary of the key points of law (no more than several sentences)

a. Constitutional Court in Brno

b. Decision of the Plenary, 26. 4. 2006, **no. Pl. ÚS 37/04**, published as 419/2006 of the Collection of Laws, no.134/2006, p.5763

http://www.judikatura.cz/cgi-bin/jus/aspi_lit_4?WVCNC+2596+jus-1

c. Proposal of the Regional Court in Ústí nad Labem for annulment of the Sec. 133a of the law no. 99/1963 Coll., Civil Procedure Code (provision on the shift of the burden of proof)

The Constitutional Court dismissed the argument of the Regional Court, that §133a places the respondent in the main proceedings before that court at a serious disadvantage, infringing his/her right to fair trial²³. It first pointed to the wording of Directives, mentioning the duty of the person who considers themselves wronged by discrimination, to establish facts from which discrimination may be presumed (prima facie case) before it shall be for the respondent to prove that there has been no breach of principle of equal treatment. Finally the Constitutional Court quoted decision of the European Court of Justice which reached the same conclusion (Case C-196/02 Nikoloudi v OTE, 10 March 2005;).

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

Although the Czech Constitution²⁴ lacks a specific provision prohibiting discrimination, a general anti-discrimination clause can be found in the Charter of Fundamental Rights and Freedoms²⁵. The Charter, according to the Czech Constitution, forms part of the constitutional order which has precedence over ordinary laws²⁶. The material scope set out in the EC Directives in the main corresponds to the rights guaranteed by the fourth chapter of the Charter (social, economic and cultural rights)²⁷.

²³ Art. 96 para 1 of Czech Constitution (1/1993 Coll.): Before the court, parties have equal rights.

²⁴ 1/1993 Sb., Ústava České republiky [No. 1/1993 Coll., Constitution of the Czech Republic (Collection of Laws 1993, no.1 p.001)]

²⁵ 2/1993 Sb., Listina základních práv a svobod [No.2/1993 Coll., the Charter of Fundamental Rights and Freedoms (Collection of Laws 1993, no. 1 p. 017)].

²⁶ Newly approved constitutional laws must be in accordance with the Constitution and the Charter. Although the Charter is regarded as a part of the constitutional order, it is not possible to challenge the Constitution or any constitutional law for being inconsistent with the Charter. There are no provisions giving details about interpretation in the event of conflicts between the Charter and Constitution or constitutional laws. Public authorities, including the courts, are not permitted to apply any laws that contradict any of the basic rights guaranteed by the Charter.

²⁷ See Articles 26-35 of the Charter.

b) Are constitutional anti-discrimination provisions directly applicable?

Article 41 of the Charter states that most social, economic and cultural rights can be invoked only within the limits established by the laws implementing them (indirect applicability)²⁸. According to the Constitutional Court's own interpretation, these rights "*are explicitly concretised by appropriate legislation, and they can be invoked only within the framework and limits set by this legislation*"²⁹. All other rights guaranteed by the Charter (basic, political and civic rights) and the Constitution could be directly invoked. For example, if a homosexual parent is discriminated against in relation to the care of his son for no other reason than that he is living in a same-sex relationship, he can directly invoke the relevant provisions of the Charter (Article 3 - discrimination on the ground of "other status" in conjunction with Article 10 of the Charter - infringement of the right to private and family life). However, if the same person is discriminated against in his occupation as a dentist (for example, if an insurance company refuses to insure him because in their view he is at higher risk than heterosexuals of contracting HIV/AIDS and endangering the health of his patients) he may be refused when attempting to invoke the Charter directly (Article 3 in conjunction with Article 26 - right to choice of profession and self-employment). This is because the right to the choice of profession and self-employment belongs to the category of social and economic rights, where the Charter requires the rights to be made concrete by legislation and invoked within the framework and limits set by this legislation. However, there are no anti-discrimination provisions in the Law on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Pharmacy Chamber nor in the Law on Self-employment (and the Anti-discrimination Law was rejected.).

In addition, the Constitution³⁰ incorporates into national legislation international treaties promulgated and ratified by the Parliament, many of which also provide protection against discrimination. International treaties are not, however, on the same level in the constitutional hierarchy as constitutional laws or the Charter - they are on a lower level. Most importantly, it is not possible to challenge the Charter or any constitutional law on the grounds of its alleged inconsistency with international treaties, and newly adopted international treaties are required to be in accordance with the Constitution and the Charter³¹. In the event of a contradiction between an international treaty and an ordinary law, the ordinary courts will refer the case to the Constitutional Court³². The ordinary courts are empowered to apply a treaty instead of a law as a *lex specialis* (where there is **no contradiction** between the two, but only where the treaty clarifies a specific point). Where there is a contradiction between the two, however the ordinary courts must submit to the Constitutional Court a petition to cancel the ordinary law or provision³³. The existence of a contradiction between an ordinary law and

²⁸ Rights declared by Article 26, Article 27 Para 4, Articles 28-31, Article 32 Paras 1 and 3 and Articles 33 and 35 of the Charter.

²⁹ Decision of the Constitutional Court No. Pl. ÚS 35/95 (206/1996 of the Coll.), Pl. ÚS 45/2000.

³⁰ Article 10 of the Constitution reads as follows:

"Promulgated international treaties, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; should an international agreement make provision contrary to the laws, the international agreement shall prevail."

³¹ From 1 June 2002, the petition to the Constitutional Court to assess the conformity of international treaties with the constitutional order was introduced to the Law on Constitutional Court by the new Section 71a. *Zákon č. 48/2002 Sb. kterým se mění zákon č. 182/1993 Sb., ve znění pozdějších předpisů* [Law no. 48/2002 Coll., amending the law no. 182/1993 Coll. (Collection of Laws 2002, no. 20 p.695)]

³² *Zákon č. 99/1963 Sb., občanský soudní řád* [Law No. 99/1963 of the Coll., the Civil Procedure Code, Section 109 Para 1 letter c) (Collection of Laws 1963, no.56 p.0383)]

³³ Section 109 Para 1 letter c) of the Civil Procedure Code reads as follows: *when the court concludes that the law which has to be applied in a case under adjudication or an individual provision of this law is contrary to constitutional law or an international treaty, which has precedence before the law in question, the court interrupts the procedure, and at the same time submits a petition to the Constitutional Court to repeal this law or revoke its individual provision.*

an international treaty would be reason to repeal the ordinary law or an individual provision, and this power is vested by the Constitution in the Constitutional Court only³⁴.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

Constitutional equality clauses are generally applicable to private actors. They must be applied by the civil courts, which should apply constitutional provisions in precedence to ordinary laws. The Constitutional Court rules on petitions by legal and natural persons *against* state bodies. It cannot therefore decide disputes between private actors, although it applies the Constitution and laws to private and public actors equally. (A private actor can only be a petitioner before the Constitutional Court, not a defendant.)

2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

The table below shows the grounds of discrimination and which laws cover these grounds. The grounds vary slightly between different pieces of legislation in their scope, formulation and the general character of anti-discrimination clauses.

	General character	Explicitly listed grounds
No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms, Art.3 Para.1	Open-ended; applies to all fundamental rights and freedoms guaranteed by the Charter.	Sex, race, colour, language, religion or belief, political or other orientation, national or social origin, adherence to national or ethnic minority ³⁵ , property, birth.
Law No. 262/2006 Coll., Labour Code, Sec. 16 para 1	open ended; right to equal treatment and prohibition of discrimination applies to all employees	No ground explicitly provided for.
Law No. 435/2004 Coll., on Employment Sec. 4., Para. 2	Enumerative.	Sex, sexual orientation, racial or ethnic origin, national origin, nationality, social origin, birth, language, state of health, age, religion and belief, property, marital and family status or family

³⁴ Art. 95 of the Constitution reads as follows: “The judge is bound by the law and international treaties constituting part of legal order; he/she is also empowered to assess the conformity of secondary legislation with the law or international treaties. When the court concludes that the law to be applied in a particular case contravenes the constitutional order, it shall submit the matter to the Constitutional Court. “ Zákon č. 182/1993 Sb., o Ústavním soudu [Law no. 182/1993 of the Coll., on Constitutional Court, Section 64 Para 3 (Collection of Laws 1993, no. 46 p. 914)] sets out the procedure for ordinary courts to apply to the Constitutional Court to have a law repealed, in whole or in part.

³⁵ Zákon č. 273/2001 Sb., o právech příslušníků národnostních menšin a o změně některých zákonů [Law no. 273/2001 Coll., on rights of national minority members] Collection of laws no. 2001, No. 104 p. 6461] Member of national minority “differs from other citizens by common ethnic origin, language, culture and traditions, create a minority of inhabitants and at the same time they show a will to be regarded national minority in order to preserve their own identity, language and culture and to express and protect interests of the historically created community”. In practice, the declaration of individual as a member of national minority would be regarded as satisfactory to meet requirements of this definition.

		obligations, political or other views, membership of political parties and movements, trade unions or employers' organisations.
Law No. 143/1992 Coll., on Pay Sec. 3, Para 3	Equal pay clause.	Sex.
Law No. 634/1992 Coll., on Consumer Protection Sec. 6	Open-ended.	No ground explicitly provided for.
Law no. 361/2003 Coll., on Service by Members of the Security Services Sec. 77, Para. 2	Enumerative.	Sex, sexual orientation, language, religion and belief, political or other opinion, membership to trade unions and other associations, property, birth, race, colour, nationality, ethnic or social origin, age, pregnancy and motherhood, marital and family status or family obligations.
Law no. 221/1999 Coll., on Service by Members of the Armed Forces Sec. 2., Para 3	Enumerative.	Race, colour, sex, sexual orientation, religion and belief, national origin, ethnic or social origin, property, birth, marital and family status and family obligations, pregnancy, motherhood or breastfeeding. .
Law No. 218/2002 Coll., on service by state administration officials and on remuneration of these officials and other employees, Sec. 80, para 2	Enumerative.	Race, colour, sex, sexual orientation, language, religion or belief, political or other orientation, membership of political parties or movements, trade unions and other assemblies, national origin, ethnic or social origin, property, birth, state of health, age, marital and family status or family obligations.
The School Law No. 561/2004 Coll., Sec. 2, para 1 a)	Open-ended; the grounds apply only to EU and Czech citizens ³⁶ .	Race, colour, sex, language, religion or belief, national origin, ethnic and social origin, property, birth and state of health or any other status.

Exceptionally severe acts of racial discrimination (involving physical violence or verbal attacks amounting to incitement of racial hatred) are specifically outlawed under the Criminal Code³⁷. Acts of racial discrimination, the severity of which does not reach the level of crimes defined by the Criminal Code, are punishable under the Misdemeanours Law³⁸. Due to the disjointed manner in which anti-discrimination provisions have been incorporated into

³⁶ According to Section 20(1) of the Law, third country nationals residing lawfully in the territory of the Czech Republic have access to elementary, secondary and higher professional education on the same conditions as nationals of the Czech Republic. However, the law does not list any grounds of prohibited discrimination which may apply to them, contrary to the provision on EU nationals and Czech citizens. Therefore, in my opinion, the Law does not provide protection against racial or other discrimination to third country nationals to the same extent as EU and Czech nationals. For example, if a child was racially harassed in the school, it would be rather problematic to seek protection against harassment under the provision by stating simply that he/she has right to access to education on an equal footing with Czech citizens.

³⁷ *Zákon č. 140/1961 Sb., trestní zákon* [Law No. 140/1961 of the Coll., the Criminal Code (Collection of Laws 1961, no. 65 p. 0465)]

³⁸ *Zákon č. 200/1990 Sb., o přestupcích* [Law No. 200/1990 of the Coll., (Collection of Laws 1990, no. 35 p.0810)]

specific laws, legislative gaps and inconsistencies are quite common and non-discrimination clauses are not always accompanied by definitions of discrimination and procedural provisions.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*

There are no definitions of any of these grounds in the strict sense.

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion')?*

i. Racial or ethnic origin

Czech legislation does not contain any definition of racial or ethnic origin. According to Section 4 of the Data Protection Law, ethnic origin belongs to the category of “sensitive” data that can be gathered and processed only under very strict conditions (e.g. the consent of the person concerned is required for collecting and processing sensitive data). If the definition were to allow for the identification of ethnic origin without such consent, this would lead to a circumvention of the Data Protection Law as such data might be no longer regarded as “sensitive”.

It does appear to be desirable to operate with some type of term allowing anti-discrimination provisions to be applied in cases where a certain ethnic or racial origin is attributed to the victim of discrimination, whether or not the victim is actually of that racial or ethnic origin.

In practice, incidents of racial discrimination are widely identified by the media and NGOs³⁹. In employment, access to goods and services, and housing, the victims are primarily Roma. Residential segregation is the main problem in the area of housing. Furthermore, employment offices (responsible for ensuring equal treatment within labour relations and access to employment) in general do not maintain records on reported and identified cases of discrimination classified and sorted according to specific grounds.

ii. Religion or belief

Detailed regulations on churches and religious assemblies exist⁴⁰, but their purpose is to regulate churches' and religious assemblies' existence as legal entities *sui generis*⁴¹ rather than to provide detailed regulations for the protection of freedom of belief. Freedom of religion is not limited only to churches and religious assemblies which are listed on the State Register. Law No.3/2002 Coll., on the Freedom of Belief and the Status of Churches and

³⁹ See for example “*Shall we take discrimination seriously?*”, Centre for Citizenship/Civil and Human Rights, Prague 2001, http://www.poradna-prava.cz/dokumenty/mame_brat_diskriminaci_vazne.PDF last accessed on 8.1.2007.

⁴⁰ Zákon č. 3/2002 Sb., o svobodě náboženského vyznání a postavení církví a náboženských společností [Law No.3/2002 Coll., on the Freedom of Belief and the Status of Churches and Religious Assemblies (Collection of Laws 2002 no. 2 p.83)]

⁴¹ The status of churches and religious assemblies as legal entities *sui generis* is created by their registration with the State. It is up to the churches and religious assemblies to decide whether to register. Those who do not wish to register can exist and perform services and other activities, unless they violate the legal order or represent a danger to public safety, restrict personal freedom or violate the rights of the others. Upon registration, churches and religious assemblies have, under certain conditions, access to special rights, e.g. the right to teach religion in schools, the right of their priests/ministers to be paid by the State, the right to confidentiality of information with regard to the police and other parts of the official administration etc. The laws set out the requirements for registration. One of the most important requirements is that the proposal for registration must be submitted by three persons with Czech citizenship and it must include a list of signatures of at least 300 people who support the registration.

Religious Assemblies declares the right to freedom of thought, conscience and religion. Any religion can still be practised; they are simply not all regulated under the Law on the Freedom of Belief and the Status of Churches and Religious Assemblies.

A definition which set out what comprises a religion or belief would very probably be constitutionally problematic⁴². The constitutional interpretation allows only for a “negative” definition and characterises religious freedom as “forum internum, which means every individual has the freedom to profess a certain religion and third parties and especially public authorities may not encroach on this freedom. It enjoys so-called status negativus, resp. libertatis (G Jellinek), which is characterised by a line demarcating the individual’s free space which public authorities are not permitted to enter...”⁴³ Such an interpretation probably does not allow the State to limit the meaning of the terms “religion and faith” by framing a definition. It should still be the freedom of belief which must be protected, but no-one can predict or determine what and how individuals will believe and what issues may be important for the expression of such beliefs. Such a definition might limit the scope of protection and limiting the protection of freedom of belief would endanger the very basis of the individual’s “forum internum”.

Cases of religious discrimination are rarely discussed in the media, NGOs and other bodies rarely monitor them⁴⁴. Incidents of Muslims being denied services, such as access to state housing have been reported by Muslims themselves, but according to information from employment offices, cases of discrimination on grounds of religion or belief do not occur in the Czech Republic⁴⁵. A group of churches recently won a case before the Constitutional Court when complaining about a breach of their constitutional right to religious freedom. However, this particular case involved the rights of churches to maintain special establishments under privileged conditions. Therefore the merits of this case are not particularly relevant with respect to discrimination on grounds of religion or belief⁴⁶.

Is there a definition of disability on national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

iii. Disability

A range of terms can be found in different laws (e.g. the laws on construction use the phrase “individuals with limited ability of movement and orientation”⁴⁷ without providing a

⁴² Art. 15 Sec. 1 of the Czech Charter of Fundamental rights and freedoms reads as follows: *Freedom of thought, conscience and religion is guaranteed. Everybody has the right to change his/her religion or faith or to be without any religious creed.*

⁴³ Pl.ÚS 6/02, 4/2003 Sb., *Sbírka nálezů a usnesení ústavního soudu*, (Law no. 4/2003 Coll., Collection of Rulings and Resolutions of Constitutional Court no.28, Ruling no. 146, p.295)

⁴⁴ Cases of discrimination against Jehovah’s witnesses have been identified and media coverage of discrimination and prejudice against Muslims is increasing.

⁴⁵ See *Poradna pro občanství, občanská a lidská práva: Hodnocení projevů diskriminace z pohledu Úřadů práce*, [Counselling Centre for Citizenship, Civil and Human Rights: Evaluation of incidents of discrimination from the point of view of the Employment Offices; http://www.poradna-prava.cz/dokumenty/diskriminace_up.doc]

⁴⁶ The Law on Churches and Religious Assemblies required legal persons constituted by churches under more favourable conditions than other legal persons to restrict themselves to non-profit activities. The churches claimed discrimination against their legal persons, alleging that their legal persons were disadvantaged in comparison with others and that the requirement encroached on freedom of belief. The provisions in question were revoked by the Constitutional Court: Pl. ÚS 6/02 Law no. 4/2003 Coll., Collection of Rulings and Resolutions of Constitutional Court no.28, Ruling no. 146, p.295

⁴⁷ *Zákon č. 50/1976 Sb., o územním plánování a stavebním řádu* [Law No. 50/1976 of the Coll., on Spatial Planning and the Construction Law (Collection of Laws 1976 no.9 p.0145)] ; *Zákon č. 369/2001 o obecných technických požadavcích zabezpečujících užívání staveb osobami s omezenou schopností pohybu a orientace* [The Law No. 369/2001 of the Coll., on

definition for this category). Considerable inconsistencies exist in the scope of entitlements because of the various terms used. In general, definitions apply only within the material scope of the specific laws containing them.

The Law on Employment introduces “state of health” instead of “disability” as a prohibited ground of discrimination. The same law then uses the term “disability” for the specific definition of indirect discrimination on the ground of disability. Whether or not the person is “disabled” is determined on the basis of official disability status⁴⁸. Apart from “invalids”, the law recognises as “disabled” persons who are “medically disadvantaged”. These are defined by the Law as *“a person with a health defect such that his/her ability to perform systematic employment or other gainful activity is maintained but his/her options to be or remain in active employment, to perform an existing occupation or benefit from an existing qualification or gain a qualification are substantially limited because of his/her long-term unfavourable state of health.”* A long-lasting adverse state of health for the purposes of the Law on Employment is an *“unfavourable state which should last for more than one year according to medical scientific knowledge and substantially limits physical, psychological or sensory ability and therefore also options for employment activity.”* The fact that a person is disabled must be demonstrated by recognition from or a decision of the social security authorities.

For the purposes of the Law on Pension Insurance, the phrase *“long-lasting adverse state of health”* is defined as *“a state of health that according to medical knowledge should last for more than one year”*⁴⁹. An individual is therefore fully disabled if *“due to his/her long-lasting adverse state of health his/her permanent working ability is decreased by 66% or if, due to disability, he/she can work permanently only under exceptional conditions”*⁵⁰.

The over-complicated definitions will probably not improve the protection of disabled persons. Disability protection is limited to people who are defined as disabled by administrative decision. Therefore, it is also very difficult or almost impossible to compare this practice to the “concept of disability” adopted by the European Court of Justice in case C-13/05, *Chacón Navas*. Indeed, the existing measures do represent rather a “practice of disability identification”, used exclusively for the purposes of awarding certain public benefits and applying specialized policies to certain groups of disabled, rather than being a “concept of disability” to be applied as a part of protection against discrimination. The “concept of disability” according to the European Court of Justice and the Czech legislation measures used for administrative identification of disabled are used for different ends. A person with HIV has no protection against discrimination on the ground of disability according to national law, as he/she does not have limited working ability (before AIDS develops) and no administrative decision on his/her disability has been issued.

The problems generally encountered by disabled individuals with limited ability of movement were demonstrated in European Court of Human Rights case, *Mr and Mrs Zehnal v. Czech Republic*⁵¹ (for details see below).

General Technical Requirements Securing Proper Use of Buildings by People with Limited Ability of Movement and Orientation (Collection of laws 2001, no. 140 p.7902)]

⁴⁸ Disabled persons are persons acknowledged by the social security authorities as being fully or partially disabled or suffering from health disadvantages. The fact that a person is disabled must be demonstrated by recognition by or a decision from the social security authorities. (Sec. 67, para. 2 and 5 of the Law on Employment)

⁴⁹ *Zákon č. 155/1995 Sb., o důchodovém pojištění* [Sec. 26 of Law no. 155/1995 Coll., on Pension Insurance (Collection of laws 1995, no.41 p.1986)]

⁵⁰ See Sec. 39 para 1 of the Law on Pension Insurance

⁵¹ European Court of Human Rights, decision on admissibility No. 38621/97.

According to employment offices, a higher percentage of disabled persons accept jobs that do not correspond to their qualifications. Many of them suffer the consequences of long-term unemployment, resulting in low confidence in their abilities and a loss of capacity to maintain constant employment⁵².

c) Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?

iv. Age

The age of an individual can be determined from any personal documents including information on an individual's date of birth. There exists no definition of age or of age discrimination. Also there are no restrictions related to the scope of 'age' as a protected ground, nor a minimum age below which the anti-discrimination legislation would not apply.

According to the employment office evaluations⁵³, age is one of two most frequently occurring grounds of discrimination (the other being gender). The most common example of age discrimination, as reported by employment offices, is employers' preferences for young women for positions as secretaries (personal assistants) and waitresses in bars, restaurants or clubs. Large international companies (for example, hypermarkets) reportedly discriminate on grounds of age and gender, but employment offices usually do not intervene due to the lack of sufficient evidence. It was also reported that employers often avoid promoting young people, as they find it inappropriate that young people oversee and give instructions to older employees.

v. Sexual orientation

There is no definition of sexual orientation either.

d) Please describe any legal rules (or plans for the adoption of rules) or case-law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination.

There are no rules, nor plans for their adoption, nor case-law dealing with situations of multiple discrimination.

2.1.2 Assumed and associated discrimination

a) Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.

There is no prohibition of discrimination based on assumed characteristics in the legislation currently in force.

b) Does national law or case law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?

⁵² See *Poradna pro občanství, občanská a lidská práva: Hodnocení projevů diskriminace z pohledu Úřadů práce*, [Counselling Centre for Citizenship, Civil and Human Rights: Evaluation of incidents of discrimination from the point of view of the Employment Offices; http://www.poradna-prava.cz/dokumenty/diskriminace_up.doc]

⁵³ Id.

There is also no law, nor case law dealing with discrimination by association.

2.2 Direct discrimination (Article 2(2)(a))

a) How is direct discrimination defined in national law?

The current definitions of discrimination contained in different laws is shown in the table below. In this survey, the problematic aspects of the so-called “*diffusive model*” are striking; there are no two definitions alike. Some require a “comparable situation” to be proved, others do not; some cover only less favourable treatment, others also include a more favourable one. Some definitions refer to the grounds set out by specific laws, but even the list of grounds are not the same in each of these (except that the grounds contained in the Directives are expressly provided for). Finally, parts of the scope of the Directives are covered in existing laws, without however the corresponding definitions of discrimination. DOPLNIT - ZP

	Definition of direct discrimination	Justification
No. 1/1993 Coll., Charter of Fundamental Rights and Freedoms	No definition of direct discrimination.	As regards justification, the Czech Constitutional Court and ordinary courts refer to the justification test provided by the European Court of Human Rights case-law.
Law no. 262/2006 Coll., Labour Code (Labour code 2007)	No definition of direct discrimination	Not set out in legislation and none established by case-law.
Law No. 435/2004 Coll., on Employment (Sec. 4, Para. 5)	Direct discrimination shall be deemed to be any conduct where a natural person is treated less favourably than another is, has been or would be treated in a comparable situation on the grounds defined (Sec.4., Para. 2 - see the table above).	Not permitted.
Law No. 634/1992 Coll., on Consumer Protection	No definition of direct discrimination.	As regards justification, the Czech Constitutional Court and ordinary courts refer to the justification test provided by the European Court of Human Rights case-law.
Law No. 361/2003 on Service by Members of the Security Services Sec. 77 Para. 3	For the purpose of this law direct discrimination shall be deemed to be any conduct whereby a member (<i>of the security services</i>) is treated less favourably than another is, has been or would be treated in a comparable situation on grounds specified in para. 2. (Sec. 77 Para. 2 – see the table of grounds above).	Not permitted.
Law No.	No definition of direct	As regards justification, the

221/1999 Coll., on Service by Members of the Armed Forces	discrimination.	Czech Constitutional Court and ordinary courts refer to the justification test provided by the European Court of Human Rights case-law.
Law No. 218/2002 Coll., on service by officials in state administration and on remuneration of these officials and other employees	No definition of direct discrimination.	As regards justification, the Czech Constitutional Court and ordinary courts refer to justification test provided by the European Court of Human Rights case-law.
School Law No. 561/2004	No definition of direct discrimination.	As regards justification, the Czech Constitutional Court and ordinary courts refer to the justification test provided by the European Court of Human Rights case-law.

b) Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).

In Czech terminology the term “justified discrimination” does not exist, nor is there any term equivalent to “lawful” or “permitted” discrimination. Where there is discrimination, it is always unlawful; if it is justified, it is not discrimination, but differential treatment. This difference is purely matter of legal terminology. With regard to justification, the anti-discrimination clauses in ordinary laws do not logically permit any justification as regards race- but with regard to some other discrimination grounds, they are often needlessly strict – see for example grounds such as age, where no justification is permitted with regard to direct discrimination according to the Law on Employment.

c) In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?

There are no specific guidelines regarding comparison in relation to age discrimination.

2.2.1 Situation Testing

a) Does national law permit the use of ‘situational testing’? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court.

Everybody may do what is not prohibited by law and nobody may be forced to do what the law does not instruct him to do.; the Czech Constitution⁵⁴ guarantees everyone this right, in contrast to public persons and bodies, who are only allowed to act where the law expressly authorises them to act. Therefore the law does not need to permit situational testing or define it – every private person is allowed to perform situational testing in situations when the law does not expressly disapprove or forbid it. However, the legislation places indirect limits on

⁵⁴ Art. 2 Para 4 of the Constitution

recording situational testing (with exceptions related to journalists and press licenses⁵⁵ and other exceptions defined by different laws) especially with regard to the protection of personal honour and dignity, family and private life:

- a. The secrecy of messages delivered has to be respected. Therefore evidence including secret recordings of telephone calls would probably not constitute admissible evidence before the courts. Those breaching this secrecy could be subject to criminal prosecution according to the Criminal Code⁵⁶;
- b. The protection of personal privacy is to be respected; any secret tape recordings made in private places such as households may therefore cause such evidence declared inadmissible before the courts;
- c. The protection of personality is to be respected; video recordings including the person's face or images without his/her consent would therefore probably be problematically admissible evidence before the courts; this does not apply to recordings under press license including the images of persons active in public and political life or performing public duties.

b) Is there any reluctance to use situational testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

No, there was no such reluctance. The national law was not influenced by the evolution in other countries, but it can be said that it was practice of Czech NGOs in this respect, what was strongly influenced by U.S. case law developed in situational testing cases.

c) Outline important case-law within the national legal system on this issue.

The right of the plaintiff to use “situational testing” to prove discrimination was in fact never questioned by Czech courts. There is only one case (to the best of the author's knowledge) where a court made an assessment related to the fact that the evidence in case was collected by using “situational testing”. The court gave this assessment because the respondent referred to the characteristic feature of situational testing in that the plaintiff was prepared in advance to face discriminatory treatment and voluntarily consented to undergo the testing, and therefore his personal dignity could not be affected by discrimination occurring during the situational testing. The court noted that *“it does not question the right of the plaintiff to test the reactions of others, and where, during this testing, an illegal act affecting the plaintiff's personality rights may have taken place (for example denial of service because of his racial or ethnic origin); it is not excluded that this might affect his personality rights protected by the Sec.11 of the Civil Code...”*⁵⁷

d) Outline how situation-testing is used in practice and by whom (e.g. NGOs)

In practice situational testing is used by NGOs in order to prove discrimination in access to employment, services and housing. All cases using situational testing in the Czech Republic recently (2001 – 2005) were carried out with respect to discrimination on the ground of racial or ethnic origin⁵⁸.

⁵⁵ See for example Zákon č. 6/2000 Sb., o právech a povinnostech při vydávání periodického tisku a o změně některých dalších zákonů (tiskový zákon) [Law No. 6/2000, on rights and duties relating to the publication of newspaper periodicals (Collection of Laws 2000, no. 17 p.586)]

⁵⁶ See Sec. 239 of the Criminal Code

⁵⁷ Decision of Municipal Court of Prague, 7.3. 2002, no. 34C 66/2001-42

⁵⁸ The testing is carried out as comparison of situation of two testers who claim the same service or job at the same conditions and in the same time. Discrimination is being established, where for example Roma tester is told that the job is no longer vacant, while the same job is offered immediately afterwards to the Czech tester. Only the testers who could claim to be directly affected by established discrimination (e.g. in this case who were refused services or employment on the ground of their racial or ethnic origin) have standing as plaintiffs before the courts.

2.3 Indirect discrimination (Article 2(2)(b))

- a) *How is indirect discrimination defined in national law?*
 b) *What test must be satisfied to justify indirect discrimination?*
 c) *Is this compatible with the Directives?*

At the current state of legislation, there are only two instances where the definitions of indirect discrimination are set up. These are shown in the table below. The definitions conform to the definitions given in the Directives, however, even these two are not alike. In the rest of legislation governing employment, labour relations and occupation (as well as in all other fields corresponding to the directive 2000/43/EC) the definitions of discrimination are completely missing, and that makes the whole concept of indirect discrimination unclear and somewhat unpredictable with regard to possible judicial interpretation. The Labour code 2007 does not contain the definitions of discrimination at all, referring in this respect to the Anti-discrimination Law, which was not approved. There is also not definition of indirect discrimination in the laws governing education and higher education.

	Definition of indirect discrimination	Justification test
No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms	No definition of indirect discrimination.	Not set out in legislation and none established by case-law.
Law no. 262/2006 Coll., Labour Code (Labour code 2007)	No definition of indirect discrimination	Not set out in legislation and none established by case-law.
Law No. 435/2004 Coll., on Employment (Sec. 4, Para. 6)	Indirect discrimination shall be deemed to be an act or omission where an apparently neutral decision, differentiation or process disadvantages or privileges one natural person in comparison with another, based on the discrimination grounds defined. For more about corresponding grounds, see Table 2.1 above. The refusal or failure to take measures necessary to allow a natural person with a disability access to employment should also be deemed as indirect discrimination on the ground of health.	It shall be not deemed to be indirect discrimination where a neutral provision, differentiation or process are justified by an objective aim and the means of achieving that aim are appropriate and necessary or where, in the case of a person with a disability, the legal or natural person is obliged to take appropriate measures in order to remove disadvantage resulting from such a decision, differentiation or process.
Law No. 634/2002 Coll., on Consumer Protection	No definition of indirect discrimination.	Not set out in legislation and none established by case-law.
Law No. 361/2003 on Service by	Indirect discrimination within the scope of the application of this law shall be deemed to be an apparently	Not permitted.

Members of the Security Services Sec. 77 Para. 3	non-discriminatory act which disadvantages a member (of the security services) in comparison to another member on grounds provided for in Para. 2 (these grounds are: age, race, colour, sex, sexual orientation, religion and belief, political orientation, national origin, ethnic or social origin, property, birth, marital and family status or family duties and membership of trade unions and other assemblies). For more about corresponding grounds, see Table 2.1 above.	
Law No. 221/1999 on service by members of the armed forces	No definition of indirect discrimination.	Not set out in legislation and none established by case-law.
Law No. 218/2002 Coll., on service by officials in state administration and on remuneration of these officials and other employees	No definition of indirect discrimination.	Not set out in legislation and none established by case-law.
School Law No. 561/2004	No definition of indirect discrimination.	Not set out in the legislation and none established by case law.

d) In relation to age discrimination, does the law specify how a comparison is to be made?

The two laws containing definitions do not give details of how the comparison is to be made regarding an individual's more or less favourable situation, nor relevant comparators for any of the specified grounds, including age. In the end it will be up to the courts to determine whether age in a specific case is a factor indicating discrimination or not. The same could be said about "pools of comparators", or reference groups in cases of indirect discrimination claims. The laws do not say whether a significant difference in age is required or whether proof of age disparity should be submitted.

2.3.1 Statistical Evidence

a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court.

According to the Civil Procedure Code⁵⁹, admissible evidence includes all means which can be used to discover the truth, especially witness testimonies, expert reports, other reports and submissions, notary or similar records and other written records and on-the-spot inspections. Although the Civil Procedure Code does not expressly mention statistical evidence, it does not exclude it either, which means that generally speaking it is admissible evidence. But whether a court considers statistical data as convincing evidence in an individual case is another matter.

To the authors' knowledge, there has only been one case where statistical evidence was actually used before Czech courts (specifically, the Constitutional Court) in order to establish indirect discrimination. It originated in 1996 in Ostrava, Czech Republic, and after being held by Constitutional Court inadmissible on procedural grounds (1999), the plaintiffs lodged an application with the European Court of Human Rights in Strasbourg (2000). The Court's second section has made finding of no violation of Art. 14 taken together with Article 2 of Protocol No. 1 (7.2.2006)⁶⁰; appeal was allowed and the case was referred to the Grand Chamber, and the hearing set up for the middle of January 2007.

b) Is the use of such evidence commonly used? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?

No, the evidence is not commonly used. On the other hand, there are not any ethical, nor methodology issues that would prevent using this kind of evidence before the courts. The national law was not influenced by the evolution in other countries, but it can be said that the practice of Czech NGOs in this respect was strongly influenced by U.S. case law in racial segregation cases.

c) Please illustrate the most important case law in this area.

This case concerns the indirect discrimination of Roma children in special schools for the mentally handicapped. Both the petitions filed with the Czech Constitutional Court and the European Court for Human Rights (ECHR) in this case alleged that the Czech educational system, due to general conditions within the school system, including ethnically biased intelligence tests, results in discrimination amounting to the racial segregation of Roma in education. The petitions were based on a comparison of statistical data from eight special schools and 69 primary schools in the City of Ostrava (at that time, Ostrava had 70 primary schools and eight special schools) which pointed to the under-representation of Roma pupils in special schools.

The petitioners used both data they had collected themselves and official data to support their claim. In the first place, they referred to data they had collected in special schools in Ostrava showing that out of a total of 1360 students in Ostrava special schools, 762 (more than 56%) were Roma. They contrasted this evidence with a survey showing the under-representation of Roma in Ostrava primary schools. The data showed that a total of 33,372 students attended the 69 basic schools, of whom only 753 (or 2.26 %) were Roma. The comparison of Roma and non-Roma students was therefore convincing: it indicated that only 1.80% of non-Roma students in Ostrava were in special schools, whereas 50.3% of Ostrava's Roma students were in special schools. Thus, the proportion of the Ostrava Romany school population in special

⁵⁹ Zákon č. 99/1963 Sb., občanský soudní řád [The Law No. 99/1963 of the Coll., the Civil Procedure Code, Section 109 Para 1 letter c) (Collection of Laws 1963, no.56 p.0383)]

⁶⁰ Decision of the Second Section of the Court delivered at 7.2.2006, *D.H. v Czech republic*, (application no. 57325/00)

schools outnumbered the proportion of the Ostrava non-Romany school population in special schools by a ratio of more than 27 to one. Romany children in Ostrava were therefore more than 27 times as likely to end up in special schools than non-Romany children.

The statistics further indicated that although Roma represented less than five percent of all students of primary age in Ostrava, they constituted more than fifty percent of the special school population. The petitioners also referred to official data quoted by the Czech government⁶¹ according to which approximately 75% of Romany children attend special schools, and substantially more than half of all special school students are Roma⁶². They also quoted the Institute of Information in Education yearbook of statistics on the Czech education system for the school year 1996-1997⁶³ according to which 48,473 (4.2%) out of 1,149,609 pupils in primary education were in special schools. The yearbook also contained records of pupils by nationality, based upon declarations made at the time of school registration. According to these figures, there were 1529 Roma in primary education. The petitioners cautioned that this figure was based on voluntary declaration, and was judged by many experts to be 20-30 times lower than the true number of Roma at primary schools, but the fact remains that 956 (62.5%) of those 1529 Romany children were in special schools. The petitioners therefore alleged that Romany children were fifteen times more likely to be in special schools than the national average.

d) Are there national rules which permit data collection? Please answer in respect of all 5 grounds.

Data on ethnic or racial origin, disability, religion or belief or sexual orientation belong to the category of "sensitive data" and according to Section 4 of the Data Protection Law⁶⁴ can be gathered and processed only under very strict conditions (e.g. the consent of the subject is required for collecting and processing sensitive data). Employers are allowed to keep such records when they can prove the express consent of the individual in question, but given this restriction, they prefer not to keep these records at all. According to Sec. 12 Para.2 of the Law on Employment⁶⁵, the employer is prohibited from requesting information regarding nationality, racial or ethnic origin, political orientation, membership of trade unions, religion, belief or conviction, sexual orientation in the course of recruitment if it is not necessary for the reasons allowed by the Law⁶⁶. Similarly, the employer is prohibited from requesting information which is contrary to ethical principles and also personal data which do not serve to fulfil conditions set out by legislation (for example evidence and reporting for the purposes of social and health insurance or taxation). Upon the job applicant's request, the employer is required to prove the necessity of any such request.

⁶¹ Resolution No. 279 of 7 April 1999, "Draft Conception of Governmental Policy towards the Romany Community", Para. 5 (Exhibit 8F) ("three-quarters of Romany children attend special schools for children with a moderate mental deficiency and ... more than 50% (estimations are that it is about three quarters) of all special school pupils are Romany").

⁶² The applicants have also managed to collect data on statistics of Romany children in special schools from other parts of the Czech Republic, for example, Slaný, Sokolov, Kladno, Vítkov, Ústí nad Labem and Teplice: see Exhibits 6A -6G.

⁶³ Ústav pro informace ve vzdělávání, *Statistická ročenka školství 1996/97*. [The Institute for Information in Education, School System Statistical Handbook] pp. C-5, C-45 and F-11.

⁶⁴ *Zákon č. 101/2000 Sb., o ochraně osobních údajů* [Law No. 101/2000 of the Coll., on the Protection of Personal Data (Collection of Laws 2000, no. 32 p.1521)]

⁶⁵ *Zákon č. 435/2004 Sb., o zaměstnanosti* [Law no. 435/2004 Coll., on Employment (Collection of Laws 2004, no.143 p. 8270)]

⁶⁶ The Law on Employment contains reference to substantial occupational requirements and conditions required by legislation for certain occupations.

Health institutions keep information regarding the state of health of individual patients (and therefore data referring indirectly to disability). Such institutions are not allowed to disclose the content of patient records without the consent of the individual concerned⁶⁷.

Information on sensitive data is gathered by censuses on a voluntary basis only (which means individuals may choose whether to answer questions on issues regarded as sensitive). The censuses do not therefore provide accurate data on these points⁶⁸.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

b) Is harassment prohibited as a form of discrimination?

Of the legislation containing anti-discrimination clauses, the Labour Code 2007 does not contain definition of harassment. It refers in this respect to the Anti-discrimination Law, which was not approved. Law on Employment, Law on Service by Members of the Security Services and Law on Service by Members of the Armed Forces all contain a definition of harassment. The specific formulations used are shown in the table below.

Law No. 262/2006 Coll., Labour Code	No definition of harassment
Law No. 435/2004 Coll., on Employment (Sec. 4, Para. 7)	Harassment shall be deemed to be any conduct objectively perceived by another person as unwanted, inappropriate or offensive, with the purpose or effect of violating the dignity of a person or of creating a hostile, degrading or intimidating environment.
Law No. 361/2003 on Service by Members of the Security Services (Sec. 77, Para. 5)	Harassment shall be deemed to be any conduct objectively perceived by a member (of the armed forces) as unwanted, with the purpose or effect of violating the dignity of a person or of creating a hostile or degrading environment.
Law No. 221/1999 on Service by Members of the Armed Forces (Sec.2, Para. 4)	The violation of human dignity shall be deemed also to be any unwanted conduct of a sexual character and all forms of harassment aimed at violating a soldier's human dignity, creating an intimidating, hostile, degrading and humiliating atmosphere and as such is unwanted or inappropriate or can be objectively perceived as undermining decisions and influencing the performance of rights and duties arising from service relations.

Neither harassment in general nor racial harassment constitute a specific criminal offence. Serious instances of racial harassment or harassment on the ground of religion, especially involving racial or religiously motivated hatred or violence, may amount to one of the

⁶⁷ Zákon č. 20/1966 Sb., o péči o zdraví lidu, [Law No 20/1966 Coll., on Public Health, (Collection of Laws 1966 no.7 p.0074)]

⁶⁸ The results of the 2001 Census, if taken at face value, indicate that the Roma minority is the second smallest minority in the Czech Republic. The number of persons identifying themselves as Roma dropped to 11,746, significantly less than the number recorded by the previous Census in 1991 (32 903). See, <http://www.czso.cz/sldb/sldb2001.nsf/tabx/CZ0000> accessed at 20.1.2007. By contrast, the estimates of Roma population are between 150,000 and 300,000 person (For example see : K. Kalibová, "Romové z pohledu statistiky demografie" ("Roma from the point of view of demographic statistics") in: *Romové v České republice, Socioklub*, (Roma in the Czech Republic), p. 107.

criminal offences established by the Criminal Code⁶⁹. Crimes of racial hatred or violence or on the grounds of religion or belief are part of the group of crimes defined as gravely affecting community relations under sections 196, 197, 198 and 198a of the Criminal Code. These are crimes of violence against a group or individual; crimes of defamation of a nation, ethnic group, race, belief or conviction; instigation of hatred against a group of persons; and restriction of the rights and liberties of a group or an individual. Furthermore, support and expressions of support for movements organised to suppress the rights and freedoms of others are punishable according to Sections 260 and 261 of the Criminal Code.

Additionally, there are strict definitions for crimes that are racially motivated or based on religious hatred or belief. They are considered variations of general categories of crimes. These strict definitions of crime concern the most violent crimes affecting life, health or personal freedom (Section 219-235 of the Criminal Code). They include crimes of murder, bodily harm, grievous bodily harm, extortion and targeting property (Section 257 of the Criminal Code).

In areas not covered by laws containing a definition of harassment, redress can only be provided on the basis of provisions concerning personality protection contained in the Civil Code⁷⁰. In a recent Czech court case, a Roma petitioner tried to invoke the definition of harassment given by Directive 2000/43/EC by asserting that creating an intimidating, hostile, degrading, humiliating or offensive environment⁷¹ falls within the framework for the protection of personal integrity. The Roma plaintiff was suing a restaurant owner who, for a long period of time, had displayed on the restaurant premises a statue of a classical goddess holding in one hand a baseball bat with a visible inscription of “Go and get the gypsies”. In accordance with the traditional view of personality protection, the High Court (*Vrchní soud*) in Prague rejected his claim for non-pecuniary damages stating that:

“... the above-mentioned inscription on the baseball bat was a general expression, without any reference to an actual individual; upon application of objective criteria, it could not infringe the petitioner’s personality. It is also not possible to identify it as an unlawful infringement of the personality rights of the petitioner; the subjective feeling of the petitioner that his personality rights had been violated...is not a fact of sufficient significance to qualify in legal terms for the application of objective criteria as required by Section 13 of the Civil Code...Thus, because an unlawful infringement of the petitioner’s personality rights was not proven, the fundamental basis for civil liability is lacking⁷².”

Upon appellate review, the Supreme Court (*Nejvyšší soud*) annulled both preceding judgments and returned the case to the Regional Court in Prague to give a new judgment along the lines of the Supreme Court decision. The judgment expressly includes harassment as an infringement of personality rights and, in the absence of a proper definition, gives basic guidance to the courts on how to identify harassment. Although the decision of Supreme court has crucial importance in respect of the identification of legal provisions encompassing the definition of harassment in a country where the Racial Equality Directive has not been properly transposed, into national law, the lower courts rejected again the petition, and the case is pending at the Supreme court again.

⁶⁹ Law No. 140/1961 of the Coll., the Criminal Code.

⁷⁰ See Section 11 of Law No. 64/1961 Coll., Civil Code

⁷¹ See *Poradna pro občanství, občanská a lidská práva: Hodnocení projevů diskriminace z pohledu Úřadů práce*, [Counselling Centre for Citizenship, Civil and Human Rights: Evaluation of displays of discrimination from the point of view of the Employment Offices; http://www.poradna-prava.cz/dokumenty/diskriminace_up.doc]

⁷² Decision of the High Court of Justice in Prague, No. 1 Co 162/2002 – 64.

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

The Czech legal system does not contain a category similar to “codes of practice”. The purpose of regulations, a common statutory instrument, is to elaborate details of legislative provisions rather than to give practical guidance. Moreover, rights and duties for natural or legal persons cannot be created by regulations. This restriction under the Constitution⁷³ and the Charter⁷⁴ is exercised very strictly; additional duties cannot therefore be imposed over and above the basic duties binding natural and legal persons. For this reason, it might be difficult to employ a “code of practice” approach in the Czech Republic.

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

According to Sec. 16 Para. 2 of the Labour Code 2007, the instruction to discriminate is prohibited by special legislation. By this “special legislation is meant the Anti-discrimination law, which was not passed. The prohibition of instruction to discriminate, therefore, does not have explicit application in the area of labour relations. According to Sec. 2 Para. 3 of the Law on Service by Members of the Armed Forces, any instruction to discriminate is unlawful. Sec. 77 Para. 2 of the Law on Service by Members of the Security Services also prohibits conduct including instigating, instructing or inciting pressure to discriminate. However, in legal obligations arising from both law or contracts, where there are no explicit provisions on instructions to discriminate, the relevant rules on the liability of natural and legal persons for unlawful acts by persons who are acting upon instructions of a superior would apply (see below).

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) How does national law implement the duty to provide reasonable accommodation for disabled people? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of ‘reasonable’. e.g. ➔ does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?

The duty to provide reasonable accommodation is imposed on employers acting within the scope of the Law on Employment and Labour Code (Labour Code 2007). The Law on Employment also contains a specific definition of discrimination on the grounds of disability for this purpose. According to the Labour Code 2007 has the employer obligation to secure for person with disability at his cost necessary accommodation of the workplace, labour conditions, protected workshops and workplaces, special training and guidance.⁷⁵ According to the Law on Employment, the omission to adopt necessary measures to enable a person with disability to have access to employment amounts to indirect discrimination on the ground of state of health. There is also not anything like financial support expressly dedicated to

⁷³ Article 2 Para 3 of the Constitution reads as follows: “State power shall serve all citizens and may be applied only in cases, within limits and by methods defined by law.”.

⁷⁴ Article 2 Para 2 of the Charter reads as follows: “The power of the State may be asserted only in cases and within the limits set by law and in a manner determined by law”

⁷⁵ Sec. 103 para 5 of the Labour Code 2007

accommodation costs – the only exception being allowances under specific provisions under Sec. 78 of the Law on employment (see part 5. Positive action).

b) Does failure to meet the duty count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?

The Law on Employment formulates the duty without giving an indication as to what constitutes “reasonableness” of the accommodating measures or a “disproportionate burden”: **It shall not be deemed to be indirect discrimination where a neutral provision, differentiation or process is justified by an objective aim and the means of achieving that aim are appropriate and necessary or where, in the case of a person with a disability, a legal or natural person is obliged to take appropriate measures in order to remove a disadvantage.** The Anti-discrimination Bill was not passed, and Labour Code 2007 does not contain any details on reasonable accommodation with regard to disability, except of the general clause on imposition of duty to provide reasonable accommodation. As nor Labour, nor Employment law does include any provisions on possible justification by “disproportionate burden”, the law could be viewed on its face as very strict. In reality, the employers rarely employ disabled persons and even more rarely they do provide any accommodation at their own costs.

c) Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?

No.

d) Does national law require buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

Accessibility standards were introduced into legislation on building and construction, such as in the Law on Spatial Planning and Construction (Law No. 50/1976 of the Coll.) and the Decree on the General Technical Requirements Ensuring the Proper Use of Buildings by People with Limited Ability of Movement and Orientation (Decree No. 369/2001 of the Coll.). These laws require structural solutions to enable disabled access to buildings. Regulations apply to the preparation of planning documentation, spatial planning, all stages of construction work and the approval of new buildings for use as well as to structural changes of existing buildings. Products and construction methods used for building must guarantee safety in use, including safety in use by persons with limited ability of movement and orientation⁷⁶. Furthermore, the State Construction Administration terminates building permit procedures if the building documentation does not safeguard conditions for use by persons with limited ability of movement or orientation or if such documentation is not supplied within a set period of time⁷⁷. Requirements also apply to renovation and any other structural changes. In buildings serving the general public, safe access and use by disabled people are required to be provided for areas assigned as public areas⁷⁸.

In practice, disabled people encounter considerable difficulties when accessing buildings (Zehnalová and Zehnal v. Czech Republic)⁷⁹. Practices criticised include builders renting devices to show that they have secured accessibility for disabled people solely for the purpose

⁷⁶ See Sec. 47 Para 1 of Law No. 50/1976 of the Coll., the Law on Spatial Planning and Construction

⁷⁷ See Sec. 60 Para 3 Id.

⁷⁸ See Sec. 68 Para 3. Id.

⁷⁹ European Court of Human Rights, Decision on admissibility No. 38621/97.

of obtaining approval for the premises and for occupancy permit procedures, or removing, rather than repairing, broken devices serving the blind. The complainants, living in the city of Přerov, Czech Republic, asserted that more than 150 public buildings were not accessible by the disabled, including administrative buildings, the post office, the district courts, the police station, medical institution buildings and a public swimming pool. They alleged that Mrs Zehnalová's right to private life was violated, since she had to use the assistance of others, mainly her husband, in accessing these premises.

The complainants referred to Articles 1, 3, 8 and 14 of the European Convention on Human Rights and Articles 12 and 13 of the European Social Charter. They alleged discrimination based on the physical condition of Mrs Zehnalová. The European Court held the complaint inadmissible on reasons which appear rather technical in character. According to the Court, it was not possible to generally apply Article 8 each time the everyday life of the complainant was affected but only in exceptional cases, such as when unsatisfactory access to public buildings and buildings used for everyday life would prevent the complainant from living her life to such an extent that it would endanger her right to personal development and the right to maintain relations with other people and the outside world. The Court concluded that the complainants were not able to provide concrete evidence of the asserted impediments or provide persuasive proofs of the violation of their private life.

Health requirements are laid down in many different laws and statutes, such as Decree No. 48/1982 Coll., the decree laying down the basic requirements to safety of work and technical arrangements, which sets out basic standards for infrastructure. This statute sets out the basic conditions for construction work such as stairs, walls, doors, health protection requirements (e.g. lighting or heating), technical requirements relating to communication equipment and requirements relating to certain machinery and other technical devices. In addition, Governmental Decree No. 178/2001 of the Coll., establishes conditions for employees' health at work. It lists risk factors that influence the health of employees and stipulates how risk factors are to be evaluated.

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for disabled workers?

The conditions for setting up "protected workplaces" (sheltered and semi-sheltered employment) are secured on the basis of agreements. An agreement may be concluded between an employment office and the employer to establish a protected workplace⁸⁰ for a disabled person. Such an agreement may also be concluded between an employment office and a disabled person undertaking self-employment. An employment office can provide a subsidy for establishing a protected workplace. Similarly, the employer may establish on the basis of an agreement with an employment office a "protected workshop", (a room equipped for a handicraft or other manual work specially adapted to the needs of disabled workers)⁸¹ and receive a subsidy from the employment office for this purpose. At least 60% of the people employed in such a workshop must be disabled.

b) Would such activities be considered to constitute employment under national law?

Yes. That of course means that individuals employed in such workshops are covered by the protection of Labour Code and Law on Employment.

⁸⁰ See Sec. 75 of the Law on Employment

⁸¹ See Sec. 76 of the Law on Employment

3. PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

Anti-discrimination provisions apply to every natural and legal person irrespective of nationality, citizenship or residence status. The only exception is a questionable anti-discrimination clause in the School Law, declaring equal access to education for every Czech citizen or national of any other EU Member State without discrimination on grounds of race, colour, sex, language, religion or belief, national origin, ethnic and social origin, property, birth and state of health or other status. Although the formulation sounds strange, it does not mean that nationals of non-EU states can be discriminated against in education, based on the listed grounds. Non-discrimination in access to education is guaranteed by the Charter to everybody and the Charter has precedence over ordinary laws. Therefore a clause such as the one in the School Law does not have real relevance. However, it turns out that this controversial clause indirectly influence the right of third country nationals to equal access to education. While the primary, higher and vocational education is guaranteed also for third country nationals without any restrictions, this is not true as regards preparatory primary education, education in art colleges, so called further education and school services (such as providing educational counselling, college accommodation or meals for reduced price). Third country nationals were requested beginning with the school year 2005/2006 to pay higher prices for use of these educational establishments than are required from Czech and EU nationals⁸². This scheme incorporated in the School law introduced in the Czech republic very strict discriminatory practice, which did not have any traditional ground here previously. Roma do only exceptionally fall victims to this practice, being Czech or EU nationals. It falls most heavily on so called “new minorities” in the Czech republic, mostly Vietnamese, Chinese and Ukrainian citizens and their children. In these groups also quite few people can benefit from family reunification provisions applying to EU nationals and their family members.

3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

There is no difference between natural and legal persons with regard to liability for discrimination, nor liability for damage/non-material injury caused by persons who are under instruction by a superior (see below). The only limitation of legal persons consists of the fact that only natural persons could become employees and enter on this side into the employment contract.

⁸² This practice includes charging higher prices for school children meals or pre-school educational establishments. There are some pre-school establishments charging third country nationals with 3000 CZK per month instead of 350 CZK required to pay by Czech and EU children.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

Civil liability

Liability for discrimination is in the first place interpreted as civil liability. General provisions on civil liability for damages for unlawful acts including acts committed by a third party are contained in the Civil Code⁸³. Each person is liable for damages caused by his/her violation of the law. Natural or legal person are also liable where the damage was caused by operations conducted by persons acting on their behalf. Persons acting on the behalf of a natural or legal person are not themselves liable; however, the natural or legal person may have the right of recourse against these persons, provided they are employed by it. The rules on the liability of natural and legal persons according to Sec. 420 Para.2 apply *per analogiam*⁸⁴ also to liability for non-material damages. Therefore, it does not matter whether the persons acting on their behalf are employees, clients or customers – a person who instructs others to perform actions on his/her behalf is liable. For example, if an employer hires a consultant to conduct recruitment interviews for a vacancy, the employer must be held liable for discrimination during these interviews, although the person who conducted them was not his/her employee, but a freelance consultant. Liability according to Sec. 420 of the Civil Code always applies in civil matters where a different framework of liability is not provided for by specific laws. The liability of trade unions is governed by the general rules on the liability of persons acting on behalf of a natural or legal person, i.e. liability depends on whether or not the person was acting on behalf of the trade union. It is possible for several types of liability to emerge from one act: an unlawful act or damage that results from the instruction to discriminate might give rise to liability under civil law, labour law, different branches of administrative or criminal law, etc.

Even stricter rules on liability apply to businesses, in relation to both natural and legal persons. According to the Commercial Law⁸⁵, persons who have been authorised to conduct certain responsibilities in running a business are authorised to undertake any operation which would normally be associated with their role. For example, it is part of a secretary's duties to order office supplies and to manage small everyday tasks; his/her company is thus liable for discrimination if he/she places a discriminatory job advertisement in a newspaper. Even if an individual transgresses the authorisation granted them, the business is liable for his/her conduct, provided that a third person did not and could not know that there had been a transgression. A business is also liable for any person's conduct on its premises, if others could not know that this person was not authorised to act. For example, if someone at a disco refuses entry to a Roma couple, it is not a relevant defence for the disco owner to prove that this person was not his/her employee and that he/she was even not aware of this person's presence. The owner is liable for discrimination unless he/she can prove that the Roma couple knew that the person at the disco was not authorised by the owner. (However, this liability

⁸³ Zákon č. 40/1964 Sb., občanský zákoník [Law no. 40/1964 Coll., Civil Code, Sec. 420 (Collection of Laws 1964, no. 19 p. 0201)]

⁸⁴ Jehlička O., Švestka J., Škárová M. a kolektiv: Občanský zákoník. Komentář. Str.95 [Jehlička O., Švestka J., Škárová M. and others: Civil Code. Commentary. 8th edition, C. H. Beck, Prague 2003, p. 95]

⁸⁵ Sec. 15 and 16 of the Commercial Law Zákon č. 513/1991 Sb., obchodní zákoník [Law no. 513/1991 Coll., Commercial Law (Collection of Laws 1991, no. 98 p. 2474)]

rule would not apply to a state security office in relation to the conduct of an unauthorised person on its premises, as the state administration is not a business).

Labour law, in general, is governed by the principle of strict employer liability in relation to the employee:

- for damages which arise in the course of employment due to a violation of legal duties or an intentional act contrary to good morals in connection with professional duties;
- for damages which are perpetrated by the employer's employees in the course of employment and in connection with their professional duties and when acting on behalf of the employer⁸⁶. The responsibility of the employer is presumed: the employer can only exculpate himself/herself when he/she proves that the employee who has suffered damage is jointly liable for the damage. The employer has a right of recourse (to recover against a party secondarily liable) against the employee who was responsible for the damage for which the employer is held liable. This damage does not include non-pecuniary damage.
- for damages towards third persons, the employer is responsible for the acts of his/her employee under civil law arising *ex contractu* (providing services, renting premises etc.).

Criminal liability

Liability for administrative offences and crimes is governed by different regulations from civil liability described above. Responsibility for acting upon instruction is expressly defined in the Misdemeanours Law⁸⁷. It lies with the person who gave the instruction. This provision, however, applies only to legal entities and it has a negligible impact because legal entities are themselves not subject to the Misdemeanours Law. Thus, it is applicable only to natural persons who are punishable for misdemeanours committed in their capacity in relation to legal entities.

3.2 Material Scope

Where the national legislation exists, all Art. 13 EC grounds are covered with respects to whole scope of Directives.

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

National legislation applies to all sectors of private employment (all relationships which could be characterized as “dependent work” according to the Labour Code 2007). However, the definitions of discrimination are absent here. It does not apply to contract work, if carried out in independent capacity envisaged by the types of contracts concluded under Civil Code and also self-employment is excluded. The definitions of discrimination are absent, too from the Law on Service by Members of the Armed Forces. As regards public employment, in the national legislation which applies to the state administrative service and special professions such as judges, state attorneys and others, definitions of discrimination are lacking, too.

It is still uncertain, whether the Labour Code 2007, with its definition of labour relations as “dependent work” would apply to specific relationships such as work of prisoners or volunteers. Laws governing the performance of such activities (e.g. the Law on Voluntary

⁸⁶ See Sec. 265 Para 1 and 2 of Law no. 262/2006 Coll., (Labour Code 2007)

⁸⁷ Sec. 6 of Law no. 200/1990 Coll., on Misdemeanours

Service⁸⁸, the Law on the Execution of Imprisonment⁸⁹) do not include any non-discrimination provisions.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

National legislation does not cover access to self-employment nor to profession and, with regard to these two areas, selection criteria, recruitment conditions and promotion are also not covered.

Self-employed occupations in general are governed by the Law on Self-employment⁹⁰, which does not contain a non-discrimination clause. This law excludes from the scope of its application certain defined types of self-employment and professions performed in a self-employed capacity, for example attorneys, medical doctors, interpreters and many others⁹¹ which are governed by specific laws⁹². These laws similarly lack non-discrimination clauses, as well as definitions of discrimination or any regulations on protection against discrimination.

Is the public sector dealt with differently to the private sector?

Professions performed in a public capacity are sometimes governed by special legislation. The most complex rules apply with respect to service in the security forces (such as the police or army) and roles in public administration bodies (such as judges or administration officials). Their relations are governed by special laws, which sometimes do not contain anti-discrimination provisions at all (law governing relations of judges), or do not contain definitions of discrimination (law governing relations of state administration and army service). The self-governing chambers are on the boundary between the private and public sector, as they are in capacity to issue internal rules which are binding on their members and trainees, setting out conditions for training and admittance to the profession, and they also have disciplinary powers. For more details, please see above (3.2.1, 3.2.2.).

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

a) Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

Non-discrimination provisions on equal pay are to be found in the Labour code (Sec. 110 of the Law no. 262/2006 Coll.) and for institutions in public sector, in the Law on Salaries (Law

⁸⁸ Zákon č. 198/2002 Sb., o dobrovolnické službě [Law No. 198/2002 of the Coll., on Voluntary Service (Collection of Laws 2002, no. 82 p. 4835)]

⁸⁹ Zákon č. 169/1999 Sb., o výkonu trestu odnětí svobody [Law No. 169/1999 of the Coll., on the Execution of Imprisonment (Collection of Laws 1999, no. 58 p. 3170)]

⁹⁰ Zákon č. 455/1991 Sb., o živnostenském podnikání [Law no. 455/1991 Coll., on Self-employment Activity (Collection of laws 1991 no. 87 p.2122)]

⁹¹ See Section 3 Para 2 of the Law no. 455/1991 Coll., on Self-employment

⁹² For example Zákon č. 128/1990 Sb., o advokacii [Law No. 128/1990 Coll., on Attorneys (Collection of Laws 1990, no. 26 p. 0554)] Zákon č. 220/1991 Sb., o České lékařské komoře, České stomatologické komoře a České lékárnické komoře [Law no. 220/1991 Coll., on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Pharmacy Chamber (Collection of Laws 1991, no.44 p. 1047)] Zákon č. 36/1967 Sb., o znalcích a tlumočnících [Law No. 36/1967 Coll., on Experts and Interpreters (Collection of Laws 1967, no. 14 p. 0125)]

No. 143/1992 of the Coll.) The Law on Salaries applies to the remuneration of workers in state institutions, those financed from the state budget and other organisations connected to the state budget and sets out salary scales, where the provisions on equal pay for work of equal value should apply. The Labour Code contains detailed provisions on equal pay for work of equal value for women and men and forbids discrimination in working conditions, including pay, dismissals and promotion, on the grounds of racial or ethnic origin, religion or belief, sexual orientation, age, state of health and many other grounds (see table of grounds). The Labour Code 2007, however, does not any more contain the definitions of discrimination.

b) In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 ?

In Czech republic, the system of occupational pensions does not exist. If there would be an employer willing to provide payments of this character even in the absence of specific public regulations on occupational pensions, the payments from occupational pensions would fall in the scope of Labour legislation, which guarantees equal treatment of all employees with respect to remuneration, other financial and natural payments from the employer (Sec. 16, para 1 of the Labour code).

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national Anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities ?

The non-discrimination provisions of the Law on Employment apply to vocational guidance, training and retraining also outside the employment relationship connected to state-subsidised employment programmes and measures. The general non-discrimination clause of the Labour Code (Sec. 16 para 1 of the Labour Code 2007) covers all types of vocational training and practical work experience provided in the course of employment. However, definitions of discrimination are missing in the Labour Code. Specific occupations, conducted on the basis of employment or service contracts, are governed by specific laws establishing different requirements and rules for specific types of vocational training provided during the course of employment. Some of these specific laws have their own non-discrimination clauses (e.g. the Law on Service by Officials of the State Administration and the Law on Service by Members of the Armed Forces). Also these laws do not contain definitions of discrimination.

As regards educational activities covered by the School Law and the Law on Higher Education⁹³, there are no anti-discrimination provisions. National law has not yet implemented the Directives in the area of education.

Access to self-employment and other occupations conducted in a self-employed capacity is often undermined by requirements for specific training and for practical experience of a specified duration. In organisations where members are engaged in particular professions, compulsory training is controlled to a great extent by these organisations. They offer optional

⁹³ Zákon č. 111/1998 Sb., o vysokých školách [Law no. 111/1998 Coll., on Higher Education, (Collection of Laws no.39 p.5388)]

training and vocational training opportunities are offered to their members employed in particular professions.

In this area, the non-discrimination clauses of the Labour Code and the Law on Employment do not apply. Laws governing the area of self-employment and other occupations conducted in a self-employed capacity (mentioned above) do not contain non-discrimination clauses or other provisions providing protection against discrimination.

The problem in this area is that there are frequently differences in application of legislative provisions caused by the difference between subjects who conduct educational and training activities. For example, re-training courses for accountants might be offered to the public as a service by a business entity and at the same time run by employment offices as state-subsidised re-qualification courses. Needless to say, the area of access to services is not covered by national law.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

Workers' and employers' organisations

The establishment and existence of workers' and employers' organisations is governed by the Law on Associations⁹⁴. Membership of and involvement in these organisations is governed by their own statutes. The Law does not contain a non-discrimination clause (such clauses may be contained in the organisations' statutes, but these are not required by the Law). Trade unions usually include non-discrimination clauses in collective agreements but these are primarily of a declaratory nature only. Provisions of collective agreements that are contravene the law are null and void⁹⁵.

Membership of organisations whose members carry out particular professions

The establishment and existence of such organisations are governed by special laws on professional chambers⁹⁶. Membership of these chambers is often obligatory, although some have voluntary membership (e.g. the Czech Chamber of Commerce and the Czech Chamber of Agriculture⁹⁷).

Chambers with obligatory membership perform important disciplinary functions vis-à-vis members and trainees. They also have supervisory functions and in certain cases establish examination conditions, examine trainees and subsequently determine admission to the chamber, determining *conditio sine qua non* performance of the particular occupation. Practising the profession is conditional on being a member of the chamber. However, no non-discrimination provisions exist in the laws governing professional chambers.

⁹⁴ *Zákon č. 83/1990 Sb., o sdružování občanů* [Law no. 83/1990 Coll., on Assemblies (Collection of Laws no. 19 p. 0366

⁹⁵ *Zákon č. 2/1991 Sb., o kolektivním vyjednávání* [Law no. 2/1991 Coll., on Collective Bargaining, Section 4 (Collection of Laws 1991, no. 1 p.0010)]

⁹⁶ For example see *Zákon č. 358/1992 Sb., o notářích a jejich činnosti* [Law No. 358/1992 Coll., on Notaries and their Activity (Collection of Laws 1992, no. 73 p.1999)] Law No. 85/1996 Coll., on Attorneys; Law No. 220/1991 Coll., on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Pharmacy Chamber

⁹⁷ *Zákon č. 301/1992 Sb., o Hospodářské komoře České republiky a Agrární komoře České republiky* [Law No. 301/1992 Coll., on the Chamber of Commerce of the Czech Republic and the Czech Chamber of Agriculture (Collection of Laws 1992 no.62 p. 1683)]

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

Social protection, social security and healthcare are governed by a number of special laws that cover areas such as social benefits⁹⁸, pension insurance⁹⁹, health insurance¹⁰⁰ and healthcare¹⁰¹; but these laws lack non-discrimination provisions.

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

The laws in the area of social security contain no anti-discrimination provisions, not even for the ground of race.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of ‘social advantages’ or if discrimination in this area is likely to be unlawful.

Typical advantages for socially disadvantaged people, e.g. the elderly (special reduction of admission prices or cheap fares), are currently regulated chiefly by the Law on Contracts under the Civil Code. There are no non-discrimination clauses of any sort in this area, except the general provision of the Civil Code stating that in civil relations all parties are equal¹⁰².

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

This covers all aspects of education, including all types of schools. Please also consider cases of segregation in schools, affecting notably the Roma community. If these cases exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

The School Law¹⁰³ contains only general anti-discrimination clause, forbidding discrimination of EU and Czech citizens. The anti-discrimination provisions are completely lacked in the Law on University education.

Because of the problem of segregation of Roma children in so called “special schools” the Czech Republic was subjected to criticism by international bodies. In its second report on the

⁹⁸ For example see *Zákon č. 117/1995 Sb., o státní sociální podpoře* [Law No. 117/1995 Coll., on State Social Support (Collection of Laws 1995, no. 31 p.1634)]

⁹⁹ *Zákon č. 155/1995 Sb., o důchodovém pojištění* [Law No. 155/1995 Coll., on Pension Insurance (Collection of Laws 1995, no.41 p.1986)]

¹⁰⁰ For example see *Zákon č. 54/1956 Sb., o nemocenském pojištění zaměstnanců* [Law No. 54/1956 Coll., on Employees’ Sickness Insurance (Collection of Laws 1956, no. 29 p. 0123)]

¹⁰¹ For example see *Zákon č. 20/1966 Sb., o péči o zdraví lidu* [Law No. 20/1966 Coll., on Healthcare of the Population (Collection of Laws 1966, no. 7 p.0074)]

¹⁰² See Section 4 of Law No. 64/1961 Coll., *Civil Code*

¹⁰³ Law no. 561/2004 Coll., on Pre-school, Primary, Secondary and Higher Vocational and other Education

Czech Republic¹⁰⁴ European Commission against Racism and Intolerance of the Council of Europe (ECRI) expressed its concern regarding the Czech School Law which provides a system of special schools, parallel to the elementary school system, catering for pupils who have mental deficiencies such that they cannot successfully be educated in elementary schools. ECRI draw the attention to the fact that Roma children are vastly overrepresented in these schools. ECRI found that Roma children were channelled into these schools in a quasi-automatic fashion¹⁰⁵. ECRI therefore called for fair testing of children's abilities and their proper evaluation, as well as for elimination of racial segregation in Czech schools. In its third report on the Czech Republic published in June 2004¹⁰⁶, ECRI expressed its concern regarding the fact that Roma children continue to be sent to special schools and that psychological and counselling centres are not obliged to use standardised tests newly developed by the Ministry of Education to improve the assessment of a child's mental level as these are only one of a battery of tools and methods recommended. The report refers to the fact that parents and legal guardians who must consent for their child to be sent to a special school continue to lack information concerning the long-term negative impact these schools can have on children, disadvantaging them for the rest of their lives. Frequently their reasons include a belief that their children will experience difficulties in normal schools, such as a lack of acceptance, discrimination and even violence. Special schools are often presented to parents as an opportunity for their children to receive specialised attention and be with other Roma children¹⁰⁷.

The most serious criticism, however, focused on the fact that graduates from special schools were not entitled to receive proper secondary education, but were only admitted to special vocational training schools. The School Law amendment which entered into force in January 2000¹⁰⁸ provided the opportunity for graduates of special schools to apply for admission to secondary schools. This option has remained largely theoretical, as there were no measures to provide additional education to special schools graduates in order to bring them up to the educational level allowing them to pass exams for admission to regular secondary schools. The new School Law, which was adopted in 2004 and came into effect from 1 January 2005, replaced the former system with right of children with special educational needs, including "socially disadvantaged" children to be accommodated by "special educational arrangements". No special actions or measures were taken to accompany the new legislation, except those already in effect (for example preparatory classes or class teacher assistants). See also above, 2.3.1, 3.2.4.

3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

The Law on Consumer Protection contains a general clause prohibiting discrimination against consumers on any ground in the area of provision of goods and services. In this respect

¹⁰⁴ European Commission against Racism and Intolerance, *Second report on the Czech Republic*, adopted on 18 June 1999, Strasbourg, 21 March 2000, http://www.coe.int/T/e/human_rights/ecri/5-Archives/1-ECRI%27s_work/1-Country_by_country/Czech_Republic_CBC_1.asp#TopOfPage

¹⁰⁵ *Second Report on the Czech Republic*, sec. L. 33

¹⁰⁶ European Commission against Racism and Intolerance, *Third report on the Czech Republic*, adopted on 5 December 2003, Strasbourg, 8 June 2004

¹⁰⁷ *Third Report on the Czech Republic*, sec. 106-108.

¹⁰⁸ Zákon č. 19/2000 Sb., kterým se mění zákon č. 29/1984 Sb., (školský zákon) [Law no. 19/2000 Coll., amending the Law no. 29/1984 of the Coll., (School Law), Collection of Laws 2000, no. 7, p. 254]

discrimination means any differentiation between consumers which could be not justified by legitimate reason. The Law does not contain definitions of discrimination. Its application is limited to persons who meet the definition of “consumer” contained in the Law on Consumer Protection. Only persons who acquire goods and services for their own use are included. There are no rules governing the operations of private associations, as very few such organisations exist. The distinction is whether or not such operations are conducted or offered publicly or whether there is a justified claim to privacy of such operations. For example, the owner of a gambling club who holds a state licence cannot limit attendance to a type of “membership”. Holding a state licence to run an enterprise and create a profit is tied to the obligation to offer goods and services publicly. In contrast, if members of a tennis club keep their own tennis court for their exclusive use only, this exclusion is justified by the non-profitable and leisure character of their activity, which is protected by the right to private life. Nobody can force them to open their tennis court to the public.

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

To which aspects of housing does the law apply? Are there any exceptions?

The Law on Consumer Protection does not apply to housing, which instead is governed by a number of specific laws regulating rent¹⁰⁹, ownership¹¹⁰ and co-operative housing¹¹¹. These laws do not contain non-discrimination provisions.

4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

Genuine and determining occupational requirements are defined in Sec. 16 Paragraph 3 of the Labour Code (Labour Code 2007) and Sec. 4 Paragraph 3 of the Law on Employment. The formulation in the Labour Code is as follows: “*Differential treatment shall not constitute discrimination where, by reason of the nature of labour activities or context in which they are to be carried out, it follows that such a ground constitutes a genuine and determining occupational requirement, provided that the objective for such exception is legitimate and the requirement is proportionate.*” The wording of the Law on Employment is very similar.

Various laws have laid down large numbers of specific occupational requirements (usually called “specific preconditions of vocational capability”), including requirements for a certain level of education, state of health, and criteria and conditions for recruitment. Some also contain age limits, not formulated as specific preconditions of vocational capability, but as a prerequisite for being appointed to specific occupations (for example judges and state attorneys). These provisions are usually motivated by public security or requirements for a good moral character. Because such requirements are laid down by special laws, it is not possible to apply tests of objective justification or to challenge these criteria – so the

¹⁰⁹ For example see Law No. 40/1964 Coll., the Civil Code; *Zákon č. 128/2000 Sb., o obcích* [Law No. 128/2000 Coll., on Municipalities (Collection of Laws 2000, no.38 p.1737)]

¹¹⁰ For example see *Zákon č. 72/1994 Sb., o vlastnictví bytů* [Law No. 72/1994 Coll., on Home Ownership, Collection of Laws 1994 no. 22 p. 552)]

¹¹¹ For example see Law no. 40/1964 Coll., Civil Code; *zákon č. 513/1991 Sb., obchodní zákoník* [Law No. 513/1991 Coll., the Commercial Code (Collection of Laws 1991, no. 98 p.2474)]

exclusion mentioned above represents a special exception in addition to the exception for genuine and determining occupational requirements.

4.2 Employers with an ethos based on religion or belief

a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?

b) Are there any specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination?

There are no specific provisions on the nature of admissible material reasons, such as the religious ethos of organisations. The legislation currently in force does not have any exception for employers with a religious ethos. Any exemption based on religious ethos must therefore comply with general conditions established for genuine and determining occupational requirements, which apply to all employers, regardless of whether they are religious organisations or not – otherwise it could be declared discriminatory.

Registered churches and religious assemblies as legal entities *sui generis* are endowed with special rights, e.g. the right to teach religion in schools, the right for their priests/ministers to be paid by the State, the right to confidentiality of information with regard to the police and other parts of the official administration etc. Freedom of religion is not limited only to churches and religious assemblies registered with the State in the special register. Other religions can still be practised; they are simply not regulated by these laws and do not have access to the special rights guaranteed by the State for registered churches and religious assemblies

There are exemptions which are not seen as general occupational requirements, but rather as general exemptions for the religious acts of individuals from state interference which are, according to official interpretation, applicable to the clerics of churches and other religious assemblies. It cannot be said with certainty, whether the Labour Code 2007 new definition of labour relations, defining these relations as “dependent work” - that means terminologically “work performed upon an instruction” - might have any implications for case law with respect to application of labour rules to clerics in churches and religious assemblies. The Constitutional Court held that labour disputes involving clerics are inadmissible in the civil courts and that labour law does not apply at all in labour relationships involving clerics:

“The civil courts cannot decide disputes in the employment relationships of clerics because it would represent inadmissible interference with the internal autonomy of the church¹¹² and intrusion into its independent decision-making capacity... The decision-making process is thus not governed by labour law but by internal instructions approved for this purpose by the competent statutory body of the Union of Brethren.”¹¹³

This case was against the Union of Brethren, one of the Czech Protestant churches, which had been sued by a parson who claimed unlawful dismissal in a labour dispute. Both the civil courts and the Constitutional Court declared that labour disputes involving clerics as employees of churches cannot be adjudicated by the civil courts (unlike labour disputes involving other employees). The case mentioned here did not involve discrimination; but, for

¹¹² The fact that only “churches”, not other religious assemblies, are mentioned here does not mean that the religious assemblies other than churches would be treated differently, but that this case only involved the Protestant church, and not any other religious assembly.

¹¹³ See the decision of the Constitutional Court No. III.ÚS 136/2000.

example, if a cleric was to be unfairly dismissed because of his/her sexual orientation, the practice of the Czech courts of refusing to adjudicate labour disputes involving clerics might be found to be incompatible with Art. 9.1 of the Directive 2000/78.

4.3 Armed forces and other specific occupations

a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?

The laws governing service by members of the armed forces and security forces do not provide for age and disability as protected grounds within the scope of these laws (fire fighters, customs officers, prison officers, the Security Information Service, officials of the Office for International Contacts and Information, police officers¹¹⁴ and soldiers¹¹⁵).

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

These laws lay down large numbers of specific occupational requirements (usually called “specific preconditions of vocational capability”), detailed in various regulations, listing many health conditions which exclude applicants for recruitment. These conditions are sometimes serious, sometimes of quite a minor nature and sometimes states subsequent to disability or illness are also listed (if the person has completely recovered from illness or disability)¹¹⁶. These laws do not contain age limits, but their anti-discrimination clauses do not list age as a discrimination ground. In the regulation governing fitness for army members applicants are excluded from army service for “*defects of sexual preference*”. The regulation explicitly states that sexual orientation as such is not regarded as a defect, but it does not say what the term means. Recently, a transsexual woman applying for a post in the army was turned down because of her transsexuality, although she successfully passed all the required tests, even though the army is in need of additional recruits.

The Ministry of Finance regulation establishing the conditions for recruiting customs administration officials also includes among the health criteria characteristics such as “*sexual preference defect*”, “*defects of psychology and behaviour (sexual development and orientation)*” and “*sexual identity defect*”. This regulation does not contain any explicit statement that this characteristic cannot be applied to homosexuality. Transsexuality is not perceived as a sex ground or sexual orientation ground of discrimination where the standards of anti-discrimination protection apply. As for disability, there is no protection against discrimination on this ground within the scope of laws governing service in the army and the security forces.

4.4 Nationality discrimination

¹¹⁴ Sec. 77 Paragraph 2 of Law no. 361/2003 Coll., on Service by Members of the Security Services

¹¹⁵ Zákon č. 221/1999 Sb., o vojácích z povolání, [Sec. 2, Paragraph 3 of Law no. 221/1999 Coll., on Service by Members of the Armed Forces (Collection of Laws 1999, No. 76 p. 3722)]

¹¹⁶ For example see Vyhláška č. 89/2003 Sb., kterou se stanoví požadavky na zdravotní způsobilost příslušníků Celní správy České republiky a vady a stavy, které vylučují přijetí uchazeče do služebního poměru nebo vylučují nebo omezují výkon služby [Regulation no. 89/2003 Coll., establishing requirements for fitness of customs administration officials and defects and states of health, excluding recruitment of an applicant to the service or excluding or limiting the service (Collection of Laws 2003, No. 38, p. 2598)]; Vyhláška Ministerstva obrany č.103/2005 Sb., o posuzování zdravotní způsobilosti k vojenské činné službě [Regulation of Ministry of Defence no. 103/2005 Coll., on Assessment of Fitness for Active Service by Soldiers (Collection of Laws 2005, No.31 p.861)]

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Art 3(2) in both Directives).

a) How does national law treat nationality discrimination?

b) Are there exceptions in anti-discrimination law that seek to rely on Art 3(2)?

See above, 3.1.1 There are no further provisions in the national law relating to nationality discrimination. Anti-discrimination clause in the School law does not apply to third country nationals.

4.5 Work-related family benefits

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

(a) Does national law permit an employer to provide benefits that are limited to those employees who are married?

The law does not impose any restrictions on employers in this sense. Because this type of benefit is provided on the principle of private contract, generally the employer is allowed to provide any benefits and set any conditions he/she finds appropriate (unless these contradict other legislation – for example because of their humiliating and degrading character, discrimination etc.). The work-related benefits extended to married couples usually include their children and are provided especially in the area of free or discounted travel or similar benefits provided to employees. Opposite-sex couples who are not married are, with regard to such family benefits, in the same situation as same-sex couples. For example, if a public transport company provides a family travel discount to its employees, the discount includes parents, their children and the wife or husband. If there is a non-married same-sex couple raising one partner's child, the discount will be only extended to the child, and the same would happen in the case of an unmarried opposite-sex couple. In a specific case, the conditions concerning the provision of benefits may be evaluated by a court if a private actor files a case (an employee who feels himself/herself wronged/discriminated against because of conditions under which such benefits are provided). As regards health insurance, health insurance cannot cover an insured person's partner in the Czech Republic.

(b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?

The private employer does not need any legislative permission to act, except when the legislation expressly forbids an activity. But in practice such conduct would probably not occur.

4.6 Health and safety

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

The Labour Code contains general rules defining an employer's obligation to ensure employees' health and safety and to prevent possible risks to their life and health in job-related activities¹¹⁷. With regard to health and safety of disabled persons, Sec. 103 para 5 of the Labour Code 2007, requires the employer to secure on their own costs reasonable accommodation of working place, working conditions, establishment of protected workplaces vocational training.

The employer's obligation applies to all persons in the workplace to the best of his/her knowledge. Employers also have a duty to prevent employees from carrying out tasks that do not correspond to their abilities and occupational health¹¹⁸.

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

The law does not have any provisions ruling on the exceptions described. In practice, employers sometimes require a certain mode of dress and pay special allowances to employees for this purpose.

4.7 Exceptions related to discrimination on the ground of age

4.7.1 Direct discrimination

a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?

b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

National law, although it does not define any justification grounds for direct discrimination on the ground of age, permits differences of treatment based on age in many respects. The general test of lawful differential treatment applied by the Constitutional Court given in 1995 was broad in character: *"It is for the State to lay down conditions under which one group of persons is given more advantages than are enjoyed by others on the pre-condition that this occurs in the public interest and for public benefit..."*¹¹⁹ It cannot be said that such a test, if applied now, would be along the lines of the European Court of Justice judgment in the case C-144/04 (Mangold).

1. Directly fixed conditions of age:

- Minimum age requirements for employment/self-employment.
- Maximum age limits set for certain professions.

2. Indirectly fixed conditions of age:

- Conditions of pay depending on years of experience.

¹¹⁷ See Part five, Sec. 101-108 of the Law no. 262/2006 Coll., Labour Code

¹¹⁸ See Sec. 103 Para 1 of Law no. 262/2006 Coll., Labour Code

¹¹⁹ See the decision of the Constitutional Court No. Pl. ÚS 9/95. The amendment of the Law on Service by Members of the Armed Forces omitted certain periods when calculating serving soldiers' entitlements to some occupational benefits.. A group of MPs called for the repeal of this Law with the right to fair remuneration for work according to Article 28 of the Charter. The Constitutional Court upheld the Law and rejected the complaint.

- Minimum age requirements set indirectly for professions requiring a certain level of education and a minimum period of training.
- Age requirements set indirectly for professions requiring specialist skills.

These requirements are, in theory, justified by the State's interest in the responsible performance of certain important occupations and the State's interest in public safety. Because the requirements are laid down in special laws, it is not possible to apply any objective justification test or challenge the criteria through the ordinary courts.

In more than one of its later judgements, the Constitutional Court admitted that arbitrariness should also be avoided, thus acknowledging that stricter tests are applied by other bodies: *"...in repeatedly expressed opinions of the UN Committee for Human Rights, inequality is admitted.... only on the pre-condition of non-arbitrariness, that is, that the inequality is based on reasonable and objective criteria."*¹²⁰ However, it seems that the opinion of the Committee did not fully change the opinion of the Constitutional Court: *"It is for the State to decide whether one group of people will be provided with more advantages than another in the interest of ensuring the functions of the State. The State shall not proceed in a completely arbitrary manner; the law can only award benefit to one group and at the same time place disproportionate duties on others with reference to public values."*¹²¹

To challenge statutory requirements before the Constitutional Court would be difficult due to the *non-direct applicability* status of social and economic rights outlined by the Charter (see above, 1. General Legal Framework – these rights can be claimed only within the limits of ordinary laws implementing them). Such limits could be removed or changed by Parliament, but under current legislation there is almost no room for the judiciary to solve possible conflicts between laws by repealing them in part or in full. In the event of conflict between the provisions of two laws, one of the conflicting provisions must be applied according to general interpretation rules *lex posterior derogat legi priori* or *lex specialis derogat legi generali*.

c) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it taking up the possibility provided for by article 6(2) ?

There is not system of occupational pensions in operation in the Czech republic.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

The special conditions for younger workers are discussed below (point 4.7.3). However, it is hard to decide whether or not their purpose is to promote vocational integration. Rather they

¹²⁰ See the decision of the Constitutional Court No. Pl. ÚS 33/96.

¹²¹ Id. By the amendment to the Law on Higher Education¹²¹, permanent employment contracts of teachers in higher education institutions were changed to contracts terminating on 30 September 1994. A group of MPs called for the amendment to be revoked, appealing to the Charter and international agreements, for example ILO Discrimination Convention No. 111 (Employment and Occupation). The Constitutional Court upheld the constitutional conformity of the Law and rejected the complaint.

seem to be in place to protect the healthy development of children and people under 15. Special protection is provided for parents of children under ten years of age in order to enable them to organise their caring responsibilities around their economic activity (support when caring for a member of a family). The law also makes provision for caring for another family member whose state of health means it is necessary for somebody to care for him/her. The carer is entitled to sickness benefits which are regarded as a salary substitute. But the amounts provided are quite small. The protection applies only to dependent employment, not to self-employment¹²². There are no special conditions in order to protect older workers.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

1. Directly fixed conditions for age

Minimum age requirements for employment/self-employment

The Labour Code sets a general minimum age of 15 for persons entering into labour contracts. Work by children younger than 15 is forbidden, except for artistic, cultural, advertising or sporting activities regulated by conditions established by the Law on Employment. Such activity must be proportionate to the child's age, not dangerous, must not endanger his/her education, school attendance or presence in educational programmes and must not be harmful for his/her healthy physical, psychological or moral development. This activity may be carried out by the child only on the basis of permission issued by employment offices¹²³.

The age threshold differs for specific professions, with the minimum age often set at 18 and usually dependent on some material condition for performing a specific type of work. Certain types of employment are prohibited for workers under the age of 18¹²⁴. The general minimum age for self-employment is 18¹²⁵, but in specific cases it can differ according to the special requirements of various types of self-employment, for example training or qualifications necessary for the activities involved to be carried out properly.

Employees younger than 18 have a set length of working day and certain working conditions: the Labour Code prohibits night work and work exceeding normal working hours for workers younger than 18, and requires employers to secure a medical examination of employees younger than 18 in certain circumstances¹²⁶.

- **Maximum age limits set for certain professions**

There are maximum age limits for some professions; for example the Law on Courts and Judges sets a maximum age of 70 for judges (the minimum age for judges is established by this Law at 30 years)¹²⁷. A judge's function terminates *ex lege* at the end of the year when he/she reaches this age. Similarly, a state attorney's contract is terminated on 31 December of the year in which they reach the age of 70 years.¹²⁸

These requirements are in place in order to guarantee that tasks necessitated by the most important functions of state administration are properly carried out.

¹²² Law No. 54/1956 Coll., on Sickness Insurance for Employees

¹²³ See sec. 121-124 of Law no. 435/2004 Coll., on Employment

¹²⁴ See sec. 244 - 246 of Law no. 262/2006 Coll., Labour Code

¹²⁵ See sec. 6 of Law No. 455/1991 Coll., on Self-employment

¹²⁶ See sec. 247 of Law no. 262/2006 Coll., of the Labour Code

¹²⁷ See the Sec. 60 and Sec. 94 of Law no. 6/2002 Coll., on Judges, Assistant Judges and State Administration of the Courts

¹²⁸ See Sec. 21 of Law no. 283/1993 Coll., on the Public Attorney's Office

2. Indirectly fixed conditions of age:

- Conditions of pay depend on years of experience:

The Law on Salaries¹²⁹ governs the pay of state employees, employees of state organisations and local government. Pay is determined according to set categories and minimum pay rates, for which employees qualify according to a combination of criteria relating to qualifications and years of experience.

- Minimum age requirements set indirectly for professions requiring a certain level of education and a minimum period of training:

Indirect minimum age requirements are common for professions and occupations governed by special laws, for instance, occupations that require a specific type of education and additional periods of training. Such requirements apply to medical doctors, judges, attorneys, prosecutors and many other professions. A minimum age requirement is indirectly set by the years necessary to complete the required education and training.

- Age requirements set indirectly for professions requiring specialist skills:

These requirements are indirectly derived from the required skills to perform the profession. For instance, different types of services, such as the fire service, prison service or army, require certain occupational skills determined by law and requiring a certain physical, health and psychological condition to perform the profession. These laws usually do not include age as a protected ground of discrimination (see above 2.1.).

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

a) Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

There is a pensionable age at which the state pension is payable, but in the Czech Republic there is no compulsory retirement age, and if an individual wishes to work for longer, he/she can choose to defer retirement, and also to receive a pension and still work. In practice, individuals often choose to defer retirement, even when it would seem more practical to receive a pension and be paid a salary at the same time. However, according to the Law on Pensions, an individual can be in receipt of a pension and work at the same time only if the work is performed according to a fixed term contract¹³⁰. The pensionable age is 60 years for men¹³¹; for women it depends on the number of children they have raised. After 31 December 2012 the pensionable age will be 63 years for men, and it will be reduced for women depending on the number of children raised. It is exclusively up to the employee to decide whether he/she will retire when reaching the pensionable age. If a man raises children as a lone parent, the

¹²⁹ Zákon č. 143/1992 Sb., o platu a odměně za pracovní pohotovost v rozpočtových a v některých dalších organizacích a orgánech [Law No. 143/1992 Coll., on Pay and compensation for being on duty in institutions fully funded from the state budget and some other institutions and bodies (Collection of Laws 1992, no. 32 p. 0791)]

¹³⁰ Sec. 37 Para 1 Zákon č. 155/1995 Sb., o důchodovém pojištění [Law no. 155/1995 Coll., on Pension Insurance (Collection of Laws 1995, no.41 p.1986)]

¹³¹ Law no. 155/1995 Coll., on Pension Insurance

Law does not allow his pensionable age to be reduced in the same way as for women. There is an ongoing political discussion regarding pension reform and a further rise in the retirement age, but without any clear outcome at the moment. Protection against unlawful dismissal applies to every worker irrespective of age. Specific laws provide for *ex lege* termination of specific functions upon reaching a certain age (see above 4.7.).

b) Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

In the Czech Republic, there are no occupational pension schemes nor employer-funded pension arrangements. However, the employer can contribute to employees' private pension insurance, which is the subject of a contract between an employee and a private pension fund.

c) Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?

There are only mandatory retirement ages for judges and state attorneys, whose office is terminated *ex lege* at the end of the year in which they reach 70 years of age. There are no changes planned in this respect in the near future.

d) Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?

No, national law does not allow this.

e) Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of whether they have attained pensionable age or another age (with the exceptions mentioned above).

For these above questions, please indicate whether the ages are different for women and men.'

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

National law does not permit such characteristics as age or seniority to be taken into account in selecting workers for redundancy. However, in practice seniority might be taken into account in the practical process of selection for redundancy because senior workers are paid higher salaries than younger ones. Because of dependent labour in the Czech Republic is subject to high taxation, this criterion might be decisive in certain circumstances, especially when the employer is encountering economic difficulties. Compensation for redundancy is only indirectly affected by age. Where the law requires the employer to pay compensation, the

employee must receive an amount corresponding to three average monthly salaries¹³². The collective agreement may contain more favourable conditions. The compensation for senior workers might therefore be higher than for younger ones.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?

All existing exceptions of this kind were already mentioned (see 4.3., 4.7.3.).

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

All existing exceptions have already been discussed.

5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic.

Eith respect to positive action, Czech legislation provides general regulations in the Law on Employment, Sec. 2 Paragraph 1 j) and k) and Labour Code, Sec. 16, para 3. The Law on Employment defines positive measures as supporting equal treatment of women and men, disabled people, equal treatment of persons disadvantaged because of their racial or ethnic origin, and other groups of people in a disadvantaged position in the labour market, as regards access to employment, re-qualification, vocational training, access to specialised re-qualification courses and measures to encourage employment of these persons. According to Sec. 6 and 8 of the above-mentioned Law, the Ministry of Labour and Social Affairs and the employment offices are competent to adopt measures for positive action to support equal treatment of women and men, and of all people irrespective of their national origin, racial or ethnic origin, disability and of other groups of people in a disadvantaged position in the labour market, as regards access to employment, re-qualification, training for work and specialised re-qualification courses. The provisions of Labour Code provide basis for positive action only with respect to the ground of sex.

b) Do measures of positive action exist in your country? Which are the most important? Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market and any related to Roma.

Mandatory quota system for disabled workers

The duty of employers to compensate for disadvantages linked to disability is governed by a type of quota system. Companies with more than 25 employees must apply one of three measures¹³³:

¹³² See Sec. 67 of Law no. 262/2006 Coll., the Labour Code

¹³³ See Sec. 81 Para 2 of the Law on Employment

- employing a certain percentage of disabled employees (4% of employees);
- commissioning goods or working programmes from employers who employ more than 50% disabled employees;
- payments to the state budget. (The payment becomes a part of general state income and is not earmarked for any specific purpose. For example, there is no requirement to develop programmes to assist disabled people.)

Employers also have a duty to report job vacancies appropriate for disabled persons to employment offices.

The State pays allowances to employers whose staff comprise more than 50% disabled employees¹³⁴. The allowances provided constitute a 0.66 multiple of the average wage in the Czech Republic in the preceding year for a person classified as fully disabled. For a person classified as partially disabled or disadvantaged on health grounds, the allowances constitute a 0.33 multiple of the average wage.

The quota system was criticised for its lack of effectiveness by organisations for disabled people. Criticism has focused on employers' preference for making payments to the government over employing persons with "altered working ability" (the term used by the former Law on Employment for "disability"). According to research conducted by the National Council for Disabled Persons, out of 43 state institutions (central state institutions, regional offices, courts, state-owned enterprises), the legal duty to employ 4% of persons with "altered working ability"¹³⁵ was not met by 20 of them, including the Czech Senate, Chamber of Deputies and the Office of the Government. All together they paid penalties of ten million CZK (€322,580)¹³⁶.

• Other positive action for disabled people

People recognised by the state social security service as disabled have the right to employment rehabilitation¹³⁷, provided by employment offices. This includes vocational counselling, selection of appropriate employment or self-employment, theoretical and practical preparation for employment or occupation or for changing employment or occupation. (For the legislation on sheltered or semi-sheltered employment please see 2.7.)

• Positive action programmes for Roma

Such programmes have no basis in legislation but are usually established by governmental decrees or resolutions. A type of programme that could perhaps be described as a positive measure is the system supporting Roma students in higher education through special state financial subsidies¹³⁸. Currently these programmes include mainly state funding for social services for excluded communities programme, implemented by Ministry of Labour.

¹³⁴ See Sec. 78 of the Law on Employment

¹³⁵ At the time of research described here was conducted, Law no.1/1991 Coll., on Employment was still in force. According to Sec. 24, every employer with more than 25 employees has a duty to employ 4% of persons with altered working ability. If this number is not met, the employer has to pay 150% of the average wage to the state budget.

¹³⁶ Hospodářské noviny, 3.-5. září 2004: *Úřady nestojí o postižené a platí pokuty* (Hospodářské noviny newspaper, 3-5 September 2004: *State administration does not want disabled workers and pays penalties*).

¹³⁷ See Sec. 69 of the Law on Employment

¹³⁸ The scheme operates as one of supporting measures for members of national minorities. Who is a member of national minority is defined by the Law no. 273/2001 Coll., on rights of members of national minorities; [Zákon č. 273/2001 Sb, o právech příslušníků národnostních menšin a o změně některých zákonů. Collection of laws no. 2001, No. 104 p. 6461] Member of national minority "differs from other citizens by common ethnic origin, language, culture and traditions, create a minority of inhabitants and at the same time they show a will to be regarded national minority in order to preserve their own identity, language and culture and to express and protect interests of the historically created community". In practice, the

6. REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?

b) Are these binding or non-binding? Binding.

➔ Can a person bring a case after the employment relationship has ended? The possibility of bringing a case cannot be influenced by whether or not the working relationship has since been terminated.

In relation to each, please note whether there are different procedures for employment in the private and public sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

1. Judicial civil procedures (tort claim)

Currently, there are two options for bringing an action alleging discrimination. A victim discriminated against in access to employment can bring an action according to special provisions of the Law on Employment¹³⁹. Labour Code 2007 does not contain specific anti-discrimination action any more. A case in other fields than is access to employment can be filed under provisions on infringement of personal integrity¹⁴⁰. The Civil Procedure Code¹⁴¹ and the shift of the burden of proof apply in both cases.

Section 11 of the Civil Code provides protection of the personal rights of individuals, mainly to life, health, civil integrity and human dignity, privacy, his/her name and expressions of personal character. It does not contain an explicit guarantee of protection against discrimination. Courts hold that direct discrimination always constitutes unlawful infringement. In 2002, the High Court in Prague (see above, 0.3.) ruled:

“[t]he petitioner’s dignity had been gravely humiliated by... an unlawful act by the defendant, aimed against the human dignity protected by Article 10 of the Charter... as well as by the provisions of Section 11 of the Civil Code. According to the opinion of the appeal court, this fact is to be qualified as an infringement of the dignity of the person concerned...to a significant extent.....it is necessary to refer to Article 24 of the Charter, that membership of a national or ethnic minority shall not injure anyone. This provision is related to Article 3 Para 1 and Article 3 Para 2 of the Charter and specifies the prohibition of any discrimination for membership of an ethnic or national minority¹⁴².”

There is no case law available on cases of indirect discrimination. And because there is no definition of indirect discrimination in the applicable laws, it is very likely that actions alleging indirect discrimination in access to goods and services, including housing, education,

declaration of individual as a member of national minority is satisfactory qualification to be included in the specific programmes to support Romany education. The programme usually consist of subsidies of the type of social benefits to help the student to maintain himself/herself during studies.

¹³⁹ See sec. 4 Para 10. of the Law on Employment

¹⁴⁰ See sec. 11 of the Civil Code

¹⁴¹ Law No. 99/1963 Coll., Civil Procedure Code

¹⁴² Decision of the High Court in Prague, decision No. 1 Co 62/2002-63.

health, state social security and social benefits as well as self-employment and occupations carried out in a self-employed capacity, would be rejected by the Czech courts.

Criminal judicial procedures

The Criminal Code¹⁴³ sets penalties for crimes relating to racial discrimination and discrimination on the grounds of religion or belief.

The Criminal Code covers only the most serious incidents, such as those involving racial hatred or violence and acts motivated by hatred or violence on grounds of religion or belief. Crimes of racial hatred or violence or on the grounds of religion or belief are part of a group defined as crimes which gravely affect community relations, under sections 196, 197, 198 and 198a of the Criminal Code. These are crimes of violence against a group or an individual as a member of that group; crimes of defamation of a nation, ethnic group, race, belief or conviction; instigation of hatred against a group of persons and restriction of the rights and liberties of a group or an individual as a member of that group. Furthermore, support and expressions of support for movements aiming to suppress the rights and freedoms of others are punishable according to Sections 260 and 261 of the Criminal Code.

Administrative judicial procedures

Procedures are governed by the Code on Administrative Court Procedure¹⁴⁴, in force since 1 January 2003. The Code regulates the judicial review of administrative decisions. In theory, the revision of administrative decisions can be a result of discriminatory practice; on the other hand, the Court is also reviewing the decisions of administrative bodies, who identified as discriminatory certain practice of a petitioner.

2. Administrative procedures

Administrative procedures cover both misdemeanours and administrative offences. Relevant administrative procedures provide investigative powers for administrative bodies and inspectorates, as established within the scope of specific laws. They are empowered to impose sanctions for prohibited activities and violations of obligations.

Employment offices and Labour Inspectorates, using their powers in the area of employment and labour relations, and the Czech Trade Inspectorate, which controls access to goods and services, are competent to investigate misdemeanours and administrative offences involving discrimination and to impose sanctions. Natural or legal persons or employers who violate the Law on Employment or the Labour Code's provisions on discrimination may be fined up to 1 million CZK (approx. €31,949)¹⁴⁵. The Law on Employment defines the competencies of employment offices¹⁴⁶ and the Administrative Code¹⁴⁷ governs their procedures. Procedures can be initiated by a complainant or on an employment office's own initiative. In the event that a complaint is initiated, the complainant is not an actual party in the administrative procedure. Penalties become income for the state budget.

¹⁴³ Law No. 140/1961 Coll., the Criminal Code.

¹⁴⁴ *Zákon č. 150/2002 Sb., soudní řád správní* [Law No. 150/2002 Coll., the Code on Administrative Court Procedure Collection of Laws 2002, no.61 p.3306]

¹⁴⁵ See sec. 139 and 140 of Law no. 435/2004 Coll., on Employment

¹⁴⁶ See sec. 7 Id.

¹⁴⁷ *Zákon č. 500/2004 Sb., správní řád* [Law No. 500/2004 Coll., the Administrative Code (Collection of Laws 2004, no. 174 p. 9782)]

Where the powers of other specialised inspectorates or administrative bodies do not apply, local government authorities are vested with the competency to investigate acts of discrimination (misdemeanour commissions).

Administrative bodies and inspectorates established in other fields besides employment and trade inspection that fall within the scope of Directives 2000/43/EC and 2000/78/EC do not have administrative procedures to protect against discrimination. This is mainly due to the lack of material provisions in specific laws. The same situation occurs with regard to professional self-governing organisations established to supervise specific occupations (e.g. the Czech Bar Association, the Union of Judges, the Czech Medical Chamber and many others).

The Law on Service by Officials of the State Administration (Law No. 218/2002) provides for special investigative powers to be given to the State Service Office. The effect of the Law was postponed to 1.1.2009.

Czech Trade Inspectorate

The monitoring of discrimination with regard to access to goods and services is governed by the Law on Consumer Protection which refers to the powers of the Czech Trade Inspectorate (CTI). Under the Law on the Czech Trade Inspectorate, the CTI is authorised to inspect legal entities and individuals that sell or deliver products or services and goods. The Law presupposes that investigations and sanctions must always be linked to findings by the CTI's inspectors, and does not allow administrative proceedings to be launched in response to petitions filed and evidence produced by other legal entities and individuals. Though the CTI is required to collaborate with civic associations and use in its work complaints, information and petitions from private citizens, it can only initiate administrative proceedings after an inspection has been conducted. Evidence produced by the consumer can only serve as a reason to carry out an inspection.

Municipal Office's Misdemeanour Commissions

Only natural persons can be subjected to misdemeanour procedures. The material scope of misdemeanours is covered by special procedures under the Law on Misdemeanours. Acts of discrimination can be sanctioned according to the provisions on misdemeanours against community relations¹⁴⁸. According to the law it is an offence to restrict or to deny the assertion of rights by members of a national minority or to cause harm to an individual because of his/her membership of a national minority, his/her ethnicity, race, colour, sex, sexual orientation, language, belief or religion. As with administrative proceedings, the complainant is not a party in this procedure (the one exception is where material damage was caused to his/her property by the misdemeanour).

Legal aid

Legal aid is provided in very limited circumstances through court advocates and the bar association. The Court procedure, especially with regard to personality protection cases, is financially burdening and long. Processing of cases can last 3 years, but also 6 years is not quite exceptional period. The protraction is heightening costs to unbearable risky levels, what means that it is hardly possible for a victim (unsupported by NGO or Trade union) to bear these difficulties alone for longer time.

¹⁴⁸ See Law No. 200/1990 Coll., on Misdemeanours, Section 49.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

Please list the ways in which associations may engage in judicial or other procedures

a) in support of a complainant

The entitlement of associations with a legitimate interest to engage in judicial procedures is regulated as a special type of representation under Section 26 of the Civil Procedure Code. In matters regarding discrimination on grounds of gender, racial or ethnic origin, religion, conviction, disability, age or sexual orientation, a party can be represented in proceedings by a legal entity established according to a special law¹⁴⁹, where the protection against such discrimination is part of this legal entity's activities. Trade unions can also represent their members as parties to proceedings on any matter, with the exception of business or trade disputes. The entitlement of trade unions to engage in proceedings is not limited to matters of protection against discrimination.

The provisions on the right of associations to represent victims were inserted into the Civil Procedure Code in 2002, but associations and trade unions do not make use of it. Victims still have to face interrogation by the discriminator and his/her attorney in court, and must pay costs if they lose the case. NGOs or trade unions for their part can contract attorneys to litigate cases, but cannot employ them. Attorneys cannot work under an employment contract. Any insurance covering damages caused hypothetically to the client in the course of litigation is not available to NGOs or trade unions. All attorneys are insured. Strategic litigation thus takes place without the use of the explicit right to representation. The NGOs usually contract attorneys and cover their remuneration for representing an individual victim in court. The representation takes place on the basis of powers given directly by the victim to the attorney.

b) on behalf of one or more complaints (please indicate if class actions are possible)

The class action is not allowed in the Czech republic.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

A shift of the burden of proof in discrimination cases is permitted by the Sec. 133a of the Civil Procedure Code. For labour matters, the shift of the burden of proof is applicable in cases of direct or indirect discrimination on grounds of gender, racial or ethnic origin, religion, belief, conviction, disability, age or sexual orientation. The burden of proof is shifted in cases of direct or indirect discrimination on grounds of racial or ethnic origin in the provision of health and social care, access to education and vocational training, access to public commissions, access to membership of employer and employee organisations, access to membership of professional organisations and professional associations, and the supply of goods or services. Matters related to housing are not included. The provisions on the shift of the burden of proof can only apply where substantive law exists (such as definitions of direct and indirect discrimination) and that is not the case in some areas covered by Directive 2000/43/EC. In its recent judgment, the Constitutional court declared the Czech provisions on

¹⁴⁹ Law No. 83/1990 Coll., on Citizens Assembly

burden of proof compatible with the guarantees of fair trial vested in Czech charter¹⁵⁰. Still, problems might arise where it is difficult to determine the division of the burden of proof.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, or person that help the victim of discrimination to present a complaint)

Under the Labour Code, there does not exist explicit protection against victimisation. The explicit provisions on protection against discrimination, contained in Labour Code 2006, are not repeated in Labour code 2007. The Sec. 16 para 2 refers with respect to victimization to special law – Antidiscrimination Bill, which was not approved. Theoretically, the victimized employee can claim protection for himself/herself only under Sec. 14 para 2 of the Labour Code: employer cannot sanction an employee or put him/her at a disadvantage because of his/her actions taken with respect to his/her lawful claims or rights. In special types of labour relations (service relations) where the Labour Code is not applicable, similar provisions do exist to provide protection against victimisation (the Law on Service by Members of the Armed Forces and the Law on Service by Officials of the State Administration). None of these provisions do apply to certain labour relations, such as those regulated by the Law on State Prosecution, the Law on Courts and Judges and the Law on Voluntary Service. These laws do not have any prohibiting victimisation.

All protection in the area of labour law is restricted to persons in a labour relationship with one employer. Protection does not apply to matters concerning access to employment, to other persons who are not employees and to other aspects included in the scope of both Directives.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

c) Is there any information available concerning:

- the average amount of compensation available to victims
- the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?

Administrative sanctions according to specific laws and the Law on Misdemeanours.

Administrative sanctions in the area of access to employment and labour law range up to 1 million CZK (approx. €31,949). The same level of sanctions can be imposed by the Czech Trade Inspectorate. These administrative sanctions cannot be considered as dissuasive, effective and proportionate. Administrative bodies often cite by way of an explanation that discrimination is hard to prove or that they are unable to identify any evidence of discrimination and the investigations often end in the misdemeanour or administrative procedure being terminated.

Criminal sanctions according to the Criminal Code

In criminal procedures, courts can impose the following penalties: imprisonment, community work, loss of honorary titles and awards, loss of military rank, bans on certain activities,

¹⁵⁰ For more, see point 0.3

property confiscation, financial penalties, confiscation of items, the penalty of expulsion for a determined or undetermined period (which would result in deportation) and a ban on residence¹⁵¹. In cases concerning criminal acts related to ethnic or religious violence and hatred, punishments primarily consist of imprisonment. In less severe cases involving skinheads or extremist attacks committed by young people, the courts will assign community work.

Civil sanctions (claim of material damages and non-pecuniary damages)

While material damages can generally be claimed by individuals who suffer material losses due to unlawful acts or any other violation of a duty established by law or a contract, non-pecuniary damages can only be claimed when this is expressly permitted by law. In cases where non-pecuniary damages are caused by acts of discrimination, the Law on Employment and the Civil Code (in provisions concerning personality protection) allow for non-material damages to be claimed. The amount of non-pecuniary damages awarded in such a procedure is determined by the court which takes into account the seriousness of the damage and the circumstances of the case¹⁵². The court can award non-pecuniary damages of up to the amount requested by the petitioner, but can also award a lower amount. The amounts vary considerably – the courts have awarded the plaintiffs in discrimination cases amounts ranging from 20,000 CZK to 200,000 CZK (€45 to €451).

7. SPECIALISED BODIES

Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question if there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

- a) Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin?*
- b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.*
- c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*
- d) Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?*
- e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*
- f) Is the work undertaken independently?*

A specialised body has not yet been established in the Czech Republic.

8. IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe briefly the action taken by the Member State

¹⁵¹ See Sec. 27 of Law no. 140/1961 Coll., the Criminal Code

¹⁵² See Section 13 Para 3 of Law no. 64/1961 Coll., Civil Code, Sec. 4 Para. 11 of Law no. 435/2004 Coll., on Employment

- a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)
- b) to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and
- c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

In 2006, the most important activity of the Government to disseminate information about legal protection against discrimination was the Anti-Racist campaign. In 2006, the PR-campaign aimed at wide public was accompanied by the educational and publication activities targeting legal public. These activities focused on all grounds covered by the Art. 13 of the EC Treaty. Promoting dialogue between social partners with regard to principle of equal treatment within workplace practices is a task belonging to the competence of Tripartite Agreement (associating key actors in the area of labour market – employers, trade unions and government) and Ministry of Labour. However, there were not any considerable developments with regard to equal treatment in 2006 on this floor.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

- a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posterior derogat legi priori (more recent rules prevail over less recent rules).*

There are not any such mechanisms explicitly created to meet this aim. The principles *lex specialis* and *lex posterior* are neutral principles of formal precedence, and their effect can be either to suppress the equality principle as to make it prevail. The clauses of contracts which are contravene the law or are against ethical principles, can be declared void by the courts. But there are no other instruments than individual court petition for changing the internal rules of enterprises and the rules of independent professions and associations. There are provisions outlining penalties for rules which are discriminatory (for example, an employer can be penalised for maintaining internal regulations which contradict the principle of equal treatment) but typically there is little scope to force self-governed entities, such as chambers or trade unions, to change their rules.

- b) *Are any laws, regulations or rules contrary to the principle of equality still in force?*

It is hard to guess how many laws, regulations or rules are contrary to the principle of equality, as there is no research or case law in this area.

9. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Employment and labour relations – Ministry of Labour and Social Affairs

www.mpsv.cz

Service by members of the security forces – Ministry of Interior

www.mvcr.cz

Service by members of the armed forces – Ministry of Defence

www.army.cz

Self-governing professional chambers – Ministry of Health, Ministry of Justice

www.mzcr.cz, www.justice.cz

Housing - Ministry for Local Development

www.mmr.cz

Education – Ministry of Education

www.msmt.cz

Anti-discrimination Bill – Ministry of Justice (the Minister of Justice is responsible for presenting the bill to Parliament)

www.justice.cz

Annex

1. Table of key national anti-discrimination legislation

2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country **Czech republic**

Date 08-01-07

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services	e.g. prohibition of direct and indirect discrimination or creation of a specialised body
No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms, Art.3 Para.1	1.1.1993	Sex, race, colour, language, religion or belief, political or other orientation, national or social origin, adherence to national or ethnic minority, property, birth or other status.	x	Fundamental rights declared by the Charter	Prohibition of discrimination
Law No. 262/2006 Coll., Labour Code Sec. 16	1.1.2007	Open-ended; obligation of equal treatment with all employees	Labour law	Public and private employment (partially)	Prohibition of discrimination
Law No. 435/2004 Coll., on Employment Sec. 4., Para. 2	1.10.2004	Sex, sexual orientation, racial or ethnic origin, national origin, nationality, social	Labour law, administrative law	Recruitment, public and private employment (partially)	Prohibition of direct and indirect discrimination

		origin, birth, language, state of health, age, religion and belief, property, marital and family status or family duties, political or other views, membership of political parties and movements, trade unions or employers' organisations.			
Law No. 143/1992 Coll., on Pay Sec. 4a, Para 1 (as amended by Law no.217/2000 Coll.)	1.1.2001	Sex	Labour law	Public employment	Prohibition of discrimination
Law No. 634/1992 Coll., on Consumer Protection Sec. 6 (as amended by Law no. 104/1995 Coll.)	1.7.1995	No ground explicitly provided for	Administrative law	Access to goods and services	Prohibition of discrimination
Law no. 361/2003 Coll., on Service by Members of the Security Services Sec.77	1.1.2007	Age, race, colour, sex, sexual orientation, religion and belief, political orientation, national origin, ethnic or social origin, property, birth, marital and family status or family duties, membership of trade unions and	Labour law	Public employment	Prohibition of direct and indirect discrimination

		other assemblies			
Law no. 221/1999 Coll., on Service by Members of the Armed Forces Sec. 2., Para 3 -5 (Law no. 254/2002 Coll.)	28.6.2002	Race, colour, sex, sexual orientation, religion and belief, national origin, ethnic or social origin, property, birth, marital and family status and family duties, pregnancy or motherhood or breastfeeding (female soldiers).	Labour law	Public employment	prohibition of discrimination
Law No. 218/2002 Coll., on Official Service in State Administration and on Remuneration of these Officials and other Employees, Sec. 80	1.1.2009	Race, colour, sex, sexual orientation, language, religion or belief, political or other orientation, membership of political parties or movements, trade unions and other assemblies, national origin, ethnic or social origin, property, birth, state of health, age, marital and family status or family obligations	Labour law	Public employment	Prohibition of discrimination

School Law No. 561/2004 Coll., Sec. 2, Para. 1, subsection a)	1.1.200 5	Race, colour, sex, language, religion or belief, national origin, ethnic and social origin, property, birth, and state of health or other status	Administrative law	Education	Prohibition of discrimination
--	--------------	--	--------------------	-----------	-------------------------------

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country

Czech republic

Date 08-01-07

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	YES	YES	NO	YES	YES
Protocol 12, ECHR	YES	NO	NO	NO	NO
Revised European Social Charter	YES	NO	NO	Ratified collective complaints protocol? NO	NO
International Covenant on Civil and Political Rights	YES	YES	NO	YES	YES
Framework Convention for the Protection of National Minorities	YES	YES	NO	NO	Theoretically YES, but it contains obligations of result which are formulated in such a way as to exclude direct applicability in my opinion.
International Convention on Economic, Social and Cultural Rights	YES	YES	NO	NO	YES

Convention on the Elimination of All Forms of Racial Discrimination	YES	YES	NO	YES	YES
Convention on the Elimination of Discrimination Against Women	YES	YES	NO	YES	YES
ILO Convention No. 111 on Discrimination	YES	YES	NO	There is no right to individual petition (?)	YES
Convention on the Rights of the Child	YES	YES	NO	There is no right to individual petition (?)	Theoretically YES, but it contains obligations of result which are formulated in such a way as to exclude direct applicability in my opinion.