



REPORT ON MEASURES TO COMBAT DISCRIMINATION

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

COUNTRY REPORT 2007

Czech Republic

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State of affairs up to 29 February 2008

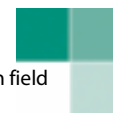
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INTRODUCTION

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 hierarchy. ³ 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 must prevail in the event of a conflict with ordinary laws. 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 cases of 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 the 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 grounds of sexual orientation, age or disability. 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 Court.⁴ 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 the Equality Directives, except on that of sex.

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)]. For English translation of Constitution see: <http://www.psp.cz/cgi-bin/eng/docs/laws/1993/1.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 rulings of the Constitutional Court shall be binding for all agencies and individuals'.



Anti-discrimination clauses (sometimes enumerative, sometimes open-ended) can be found in various ordinary laws governing employment and labour relations (for concrete enumerative lists of grounds related to different pieces of national legislation, see Sec. 2.1 Grounds of unlawful discrimination). During the period 2003–2004, the definitions of discrimination required by the Racial Equality and Employment Equality Directives were inserted into the Labour Code,⁵ the new Law on Employment⁶ and the Law on Service by Members of the Security Services.⁷ While the Labour Code applies to contractual labour relations, the Law on Employment applies to employment-related affairs preceding or outside labour relations, such as recruitment and vocational training, and within the area of labour relations to certain positive obligations of employers towards the workforce. In a second attempt to ensure the conformity of the Czech legal system with the Equality Directives, the Anti-discrimination Bill was approved by 111 votes (out of 200) by the deputies of the lower chamber of the Czech Parliament on 19 March 2008. It was placed on the agenda of the Czech Senate, the second parliamentary chamber, for the session starting on 24 April 2008. This bill is widely expected to secure implementation of anti-discrimination legislation in full accordance with the Equality Directives.

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 01 January 2007, the new Labour Code comes into force.⁸ This law replaces the Labour Code 2006. With respect to the Equality Directives, it was intended to be supplemented by the Anti-discrimination Law; but this bill has not yet been approved. Unlike Labour Code 2006, Labour Code 2007 only 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 provisions on judicial anti-discrimination action are missing. The same could be said of legislation governing the establishment of organisations of employers and employees.⁹

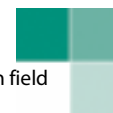
⁵ Zákon č. 46/2004 Sb., kterým se mění zákon č. 65/1965 Sb., zákoník práce [Law no. 46/2004 Coll., amending Law no. 65/1965 Coll., Labour Code (Collection of Laws 2004, no.14 p. 746)]. (Further referred to as Labour Code 2006.)

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)].



Access to employment and occupation

- There are no anti-discrimination provisions or definitions of discrimination in the laws governing the labour relations of judges,¹⁰ state attorneys,¹¹ members of parliament,¹² members of local government,¹³ volunteers,¹⁴ and prisoners. The provisions of the 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 lawyers,¹⁵ medical doctors,¹⁶ notaries¹⁷ and many others).
- In the Law on Employment, (which also deals with certain entitlements of self-employed persons to vocational training and re-qualification), the term ‘state of health’ is considered a protected ground in the context of direct discrimination, while the term ‘disability’ is only used by national legislation to define indirect discrimination on the ground of disability (Art. 2 para. 1 subsection b) ii)). It is, of course, self-evident that the term ‘state of health’ is very general, and therefore also encompasses disability. However, a social security office has the authority to issue a decision recognising a person as ‘disabled’. For other people, disability-related entitlements do not apply. Apart from employment-related entitlements, these include mainly social services and state contributions for necessary aids and tools. 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 the laws on self-employment,¹⁸ 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.

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)].

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)].

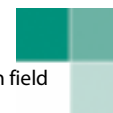
¹⁴ *Zákon č. 198/2002 Sb., o dobrovolnické službě* [Law no. 198/2002 Coll., on Voluntary Service (Collection of Laws 2002 no. 82 p. 4835)].

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)].



Vocational training and education

- The Directives have not been transposed into laws governing vocational training, education and access to education.¹⁹ There are no definitions of discrimination, except in the case of vocational training, which is covered by the Law on Employment (retraining, and special forms of retraining 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 professional entities, such as the chambers for medical and legal professions.

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

Directive 2000/43/EC

Social protection, including social security

The Directive has not been transposed into laws on social protection, including social security. 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. No definitions of discrimination are given by these laws.

Healthcare

The Directive has not been transposed into laws on healthcare and access to healthcare.²⁰ The material scope of existing laws covers all agencies involved in the 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. No definitions of discrimination are given by these laws.

Education

- The Directive has not been transposed into laws on education and access to education.²¹ 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). No definitions of discrimination are given by these laws.

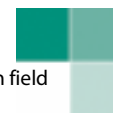
Social advantages

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

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)].

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 01 January 2005 (Collection of Laws 2004, no. 190 p. 10 324)].



Access to goods and services

- The Directive has not been transposed into laws on access to goods and services and consumer protection.²² The material scope of existing laws covers all agencies involved in the system of public services provision, as well as private providers. No definitions of discrimination are given by these laws.

Housing

- The Directive has not been transposed into laws on access to housing. 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). No definitions of discrimination are given by these laws.

Anti-discrimination body/bodies

- No anti-discrimination body meeting the requirements of Article 13 of the Race Directive has yet been established.

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)

Constitutional Court in Brno

Decision of the Plenary, 26. 04. 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

Proposal of the Regional Court in Ústí nad Labem for annulment of 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 trial.²³ It first pointed to the wording of the 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 the 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).

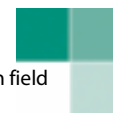
²² For example *Zákon č.634/1992 Sb., o ochraně spotřebitele* [Law no. 634/1992 Coll., on Consumer Protection (Collection of Laws 1992, no. 130 p. 3811)].

²³ Art. 96, para 1 of Czech Constitution (1/1993 Coll.): All parties to judicial proceedings shall have equal rights.



➔ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the 2 Directives, even if it does not relate to the legislation transposing them (e.g. if it concerns previous legislation unrelated to the transposition of the Directives)

There are no Travellers in the Czech Republic. Data on litigation involving Roma are not available. Most litigated cases include denial of services in hotels, restaurants and discos. One important body of cases includes claims of involuntary sterilisation of Roma women in hospitals. To the best of the author's knowledge, official figures or data on the volume of litigated cases are not available. Neither the courts, nor the Ministry of Justice gather separate data on anti-discrimination litigation. This is mainly because there is no single category for general anti-discrimination actions, and therefore the prevailing numbers of anti-discrimination cases are litigated under protection of personal rights provisions and general tort actions.



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 Freedoms.²⁵ The Charter prohibits discrimination in regard to basic rights and freedoms in respect of sex, race, colour, language, religion or belief, political or other orientation, national or social origin, adherence to national or ethnic minority, property, birth or any other status. In theory, other grounds, such as disability, age, or sexual orientation, might also fall under ‘other status’, if the treatment in question were to be identified as discriminatory by the courts. According to the Czech Constitution, the Charter forms part of the constitutional order, which has precedence over ordinary laws.²⁶ The material scope set out in the EC Directives corresponds in the main to the rights guaranteed by the fourth chapter of the Charter (social, economic and cultural rights).²⁷

- 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).

²⁴ 1/1993Sb., 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.

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.

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 that 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).

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 Charter.³¹ In the event of a contradiction between an international treaty and an ordinary law, the ordinary courts will refer the case to the Constitutional Court.³² 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). However, where there is a contradiction between the two, the ordinary courts must submit a petition to the Constitutional Court to cancel the ordinary law or provision.³³ The existence of a contradiction between an ordinary law and 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 only.³⁴

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

A distinction must be made between the indirect applicability of socio-economic rights mentioned above and the direct and indirect effect of constitutional provisions, that is to say the applicability of constitutional provisions to the State on the one hand and to private entities on the other. While there is no doubt that constitutional provisions do apply directly to the State, the same cannot be said of their applicability to private persons or entities.

³⁰ Article 10 of the Constitution reads as follows: ‘Promulgated international agreements, 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 a law, the international agreement shall be applied.’

³¹ From 01 June 2002, a 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 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.’

³⁴ Art. 95 of the Constitution reads as follows: ‘In his/her decision-making, a judge is bound by the law and international agreements constituting part of the legal order; he/she is entitled to assess the conformity of a different legal regulation with the law or with such international agreement.

Should a court conclude that the law to be applied in deciding a case contravenes the constitutional order, it shall submit the issue to the Constitutional Court.’ *Zákon č. 182/1993 Sb., o Ústavním soudu* [Law no. 182/1993 Coll., on the 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.



The Constitution does not make any declaration of the direct effect of its provisions on private persons, nor does it contain specific provisions on any constitutional duties of private persons that might have such effect. In the Czech republic, constitutional provisions do apply to private persons in the form of indirect effect. First of all, they apply to them through the decision making of state bodies, such as courts or administrative bodies, who are directly bound by the Constitution. This is the necessary ground which allows constitutional provisions to ‘radiate’ through the formulations of ordinary laws, which are directly binding on private persons. However, such ‘radiation’ of the anti-discrimination clause through the Civil Code provisions on protection of personal rights also brings with it certain difficulties. It follows from the very nature of the ‘radiation’ effect that the content of ordinary laws and the nature of constituted claims, through which constitutional provisions radiate, play a decisive role. The ‘radiation’ of constitutional principles does not in itself exclude a number of interpretations, and it is the nature of the ordinary provision in question which identifies the type and form of the ‘radiation’ effect. However, thanks to the ‘radiation’ effect, the Czech courts have identified protection against discrimination as an integral part of protection of the personal rights of the individual according to the Civil Code, in situations where no provision of the Civil Code prohibits discrimination on any of the grounds prohibited by the Charter, and the Anti-discrimination Law has not yet been approved.³⁵

³⁵ See decision of the Constitutional Court 07 December 2005, sp. zn. IV. ÚS 412/04, Sb.n.u.ÚS, č. 39, roč. 2007, page 353. The Constitutional Court concludes that the effect of constitutional guarantees is stronger in vertical relations, in relations between the state and the individual. In these relations all basic rights apply directly, because the state is directly bound by constitutional duties. In horizontal relations, where there is interference with individual rights by a person other than the state, protection is provided through the provisions of Section 11 of the Civil Code. However, in this respect, the Constitutional Court finds the Civil Code protection to be unsatisfactory.

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, ³⁶ property, birth.
Law No. 262/2006 Coll., Labour Code, Sec. 16 para 1	<u>General equality clause</u> ; 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 obligations, political or other views, membership of political parties and movements, trade unions or employers' organisations. Disability ground is expressly covered under definition of indirect discrimination, as a special variant of discrimination on the ground of state of health.
Law No. 143/1992 Coll., on Pay Sec. 3, para 3	Equal pay clause.	Sex.
Law No. 634/1992 Coll., on Consumer Protection	Open-ended <u>prohibition of discrimination</u> .	No ground explicitly provided for.

³⁶ 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)]. Members of a national minority 'differ 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 an individual as a member of a national minority would be regarded as satisfactory to meet the requirements of this definition.

Sec. 6		
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 of 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 equality clause. It applies only to EU and Czech citizens. ³⁷	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 Code.³⁸ 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 Law.³⁹

Due to the disjointed manner in which anti-discrimination provisions have been incorporated into specific laws, legislative gaps and inconsistencies are quite common, and non-discrimination clauses are not always accompanied by definitions of discrimination and procedural provisions.

³⁷ 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 to third country nationals against racial or other discrimination to the same extent as to EU and Czech nationals. For example, if a child was racially harassed in 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.

³⁸ *Zákon č. 140/1961 Sb., trestní zákon* [Law No. 140/1961 Coll., the Criminal Code (Collection of Laws 1961, no. 65 p. 0465)].

³⁹ *Zákon č. 200/1990 Sb., o přestupcích* [Law No. 200/1990 Coll., (Collection of Laws 1990, no. 35 p.0810)].



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 in the strict sense of any of these grounds.

- 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'; or a 'disability', sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national legislation against discrimination?*

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 which 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 any 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 no longer be regarded as 'sensitive'. In practice, incidents of racial discrimination are widely identified by the media and NGOs.⁴⁰ Czech jurisprudence and its interpretation by national courts do not use the concept of 'disadvantaged group', nor are specific characteristics linked to such groups acknowledged. There are no echoes of the jurisprudence of the European Court of Human Rights in this respect in case-law in the Czech courts.

ii. Religion or belief

Detailed regulations on churches and religious assemblies exist,⁴¹ but their purpose is to regulate the existence of churches and religious assemblies as legal entities *sui generis*,⁴² 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 Religious Assemblies, declares the right to freedom of thought, conscience and religion. Any religion can still be practised; they are simply not all subject to regulation under the Law on the Freedom of Belief and the Status of Churches and Religious Assemblies.

⁴⁰ 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 08.01.2007.

⁴¹ 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)].

⁴² 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.

A definition which sets out what comprises a religion or belief would very probably be constitutionally problematic.⁴³ 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...’.⁴⁴ Freedom of belief should still 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. Cases of religious discrimination are rarely discussed in the media, and are rarely monitored by NGOs and other bodies.⁴⁵ Incidents have occasionally 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 Republic.⁴⁶ In 2002 a group of churches 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 belief.⁴⁷

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’*,⁴⁸ without providing a 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.⁴⁹

⁴³ 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.’

⁴⁴ *Pl.ÚS 6/02, 4/2003 Sb., Sbírka nálezů a usnesení ústavního soudu* [Law no. 4/2003 Coll. (Collection of Rulings and Resolutions of the Constitutional Court no.28, Ruling no. 146, p.295)].

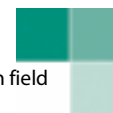
⁴⁵ Cases of discrimination against Jehovah’s Witnesses have been identified, and media coverage of discrimination and prejudice against Muslims is increasing.

⁴⁶ 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

⁴⁷ 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)].

⁴⁸ *Zákon č. 50/1976 Sb., o územním plánování a stavebním řádu* [Law No. 50/1976 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* [Law No. 369/2001 Coll., on 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)].

⁴⁹ The law does not define ‘state of health’, nor has jurisprudence developed any specific interpretation.



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 status.⁵⁰ 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’.⁵¹ 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 per cent or if, due to disability, he/she can work permanently only under exceptional conditions’.⁵²

These over-complicated definitions will probably not improve the protection of people with disabilities. Disability protection is limited to people who are defined as disabled by administrative decision.

The material definition of disability contained in the draft Anti-discrimination bill, directly inspired by the disability concept adopted by the Court of Justice of the European Communities in case C-13/05, *Chacón Navas v Eurest Colectividades SA* might be more helpful. Conversely, the currently valid provisions represent rather a ‘practice of disability identification’—a purely procedural condition—used exclusively for purposes of awarding certain public benefits and applying specialised policies to certain groups of people with disabilities. The problems generally encountered by individuals with limited ability of movement were demonstrated in the European Court of Human Rights case *Zehnalová and Zehnal v Czech Republic*.⁵³ According to employment offices, a higher percentage of people with disabilities accept jobs that do not correspond to their qualifications. Many of these suffer the consequences of long-term unemployment, resulting in low confidence in their own abilities and a loss of capacity to maintain continuous employment.⁵⁴

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)?*

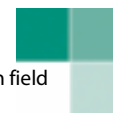
⁵⁰ Disabled persons are persons acknowledged by the social security authorities as being fully or partially disabled or suffering from health disadvantages. The fact that a person is disabled must be demonstrated by recognition by or a decision from the social security authorities. (Sec. 67, paras 2 and 5 of the Law on Employment)

⁵¹ *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)].

⁵² See Sec. 39 para 1 of the Law on Pension Insurance.

⁵³ European Court of Human Rights, decision on admissibility No. 38621/97, further mentioned in footnote 84.

⁵⁴ 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].



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. In addition, 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 employment office evaluations,⁵⁵ 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 the preference of employers for young people for positions as secretaries (personal assistants) or personnel for bars and restaurants. Large international companies (e.g., hypermarkets) reportedly discriminate on grounds of age and gender, but employment offices usually do not intervene due to 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.

Recital 17 of Directive 2000/78/EC is not reflected in national anti-discrimination legislation, nor in draft legislation.

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. Sec. 2 para. 5 of the draft Anti-discrimination Law does provide for prohibition of discrimination on the ground of assumed characteristics.

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?

There is no law or case-law dealing with discrimination by association. The draft Anti-discrimination Law does not provide for prohibition of discrimination on the ground of association.

⁵⁵ Id.

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 are 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, being complemented by the corresponding definitions of discrimination. It should be also pointed out that ‘state of health’ always encompasses disability, but on the other hand it also includes people suffering from ordinary or serious illness, post-illness symptoms or traumatic states.

	Definition of direct discrimination	Justification
No. 1/1993 Coll., Charter of Fundamental Rights and Freedoms	No definition of direct discrimination.	The Czech Constitutional Court developed its own reasonable justification and proportionality test. ⁵⁶
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 table above).	Not permitted.
Law No. 634/1992 Coll., on Consumer Protection	No definition of direct discrimination.	The Czech Constitutional Court developed its own test of justification, quite similar to the test applied by European Court of Human Rights case-law. Ordinary courts apparently do not use any specific justification tests. Occasionally, references to human dignity (in the sense of whether or not the differential

⁵⁶The type of ground is always of importance for application of the judicial test. The Constitutional Court always has the power to implement stricter criteria in respect of a legitimate aim, proportionality and ‘necessity in democratic society’ with respect to ‘suspect’ grounds, similar to the power vested in the European Court of Human Rights.

		treatment affects the human dignity of an individual) appear in the reasoning.
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. 221/1999 Coll., on Service by Members of the Armed Forces	No definition of direct discrimination.	The Czech Constitutional Court developed its own test of justification, quite similar to the test applied by 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 <u>Entry into force postponed until 01.01.2009.</u>	No definition of direct discrimination.	
School Law No. 561/2004	No definition of direct discrimination.	The Czech Constitutional Court developed its own test of justification, quite similar to the test applied by European Court of Human Rights case-law. Ordinary courts apparently do not use any specific justification tests. Occasionally, references to human dignity (in the sense of whether or not the differential treatment affects the human dignity of an individual) appear in the reasoning.

- 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 lawful differential treatment. This difference is purely a 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 according to the Law on Employment no justification is permitted with regard to direct discrimination.

- 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. For what discrimination grounds is situation testing permitted? If all grounds are not included, what are the reasons given for this limitation?*

Every person may do what is not prohibited by law and no person may be forced to do what the law does not instruct him/her to do; the Czech Constitution⁵⁷ guarantees every individual person 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 where the law does not expressly disapprove or forbid it. However, the legislation places certain limitations on *recording* situational testing (with exceptions related to journalists and press licenses⁵⁸ 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 Code.⁵⁹
- 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 to be declared inadmissible before the courts.
- c. The protection of personality is to be respected; video recordings including a person’s face or image without his/her consent would therefore probably be problematically admissible evidence before the courts. This does not apply to recordings under press license, including images of persons active in public and political life, or performing public duties.

⁵⁷ Art. 2 para 4 of the Constitution.

⁵⁸ 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 Coll., on Rights and Duties Relating to the Publication of Newspaper Periodicals (Collection of Laws 2000, no. 17 p.586)].

⁵⁹ See Sec. 239 of the Criminal Code.



- 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. National law was not influenced by evolution in other countries. The practice of Czech NGOs in this respect has been strongly influenced by USA case-law developed in cases involving situational testing.

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

The right of a plaintiff to use ‘situational testing’ to prove discrimination has in fact never been questioned by Czech courts. There are only two cases where a court assessment of such evidence was expressly provided for. In the first of these, the Municipal Court in Prague gave an assessment in a case where the respondent interpreted situational testing as voluntary consent by the plaintiff to possible racially discriminatory treatment, whereby the plaintiff’s personal dignity could not be affected by discrimination occurring during 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 personal 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 personal rights as protected by Section 11 of the Civil Code...’.⁶⁰

In the second case, the High Court in Prague assessed contradictions in evidence submitted by the plaintiffs with regard to the fact that it was obtained by situational testing thus. ‘When assessing the course of events, [...] the Appellate Court also took into consideration contradictions in the testimonies of the plaintiffs themselves [...] the court dismisses as ungrounded the plaintiffs’ objection, that these contradictions were caused by the extensive time-span between the incident and the interrogation before the court of first instance, especially because the plaintiffs themselves admitted that they went to the restaurant in order to test discrimination and were therefore prepared for the situation beforehand.’⁶¹

- 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. As far as the author of this report is aware, all cases of situational testing in the Czech Republic in recent years (2001–2007) were carried out with respect to discrimination on the ground of racial or ethnic origin.⁶²

⁶⁰ Decision of the Municipal Court of Prague, 07.03. 2002, no. 34C 66/2001–42.

⁶¹ Decision of the High Court in Prague, 17.08.2003, č.j. 1 Co 321/2003–196.

⁶² Testing is carried out as a comparison of the situation of two testers who claim the same service or job under the same conditions and at the same time. Discrimination is established, where for example a Roma tester is told that the job is no longer vacant, while the same job is offered immediately afterwards to a Czech tester. Only those 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?

In the current state of legislation, definitions of indirect discrimination are provided only in the Law on Employment and the Law on Members of the Security Services. These definitions conform to the definitions given in the Directives. However, in the remaining legislation governing special types of employment, labour relations and occupation (as well as in all other fields corresponding to Directive 2000/43/EC), indirect discrimination is not expressly prohibited by the law. The Labour Code 2007 does not contain any definitions of discrimination, referring in this respect to the Anti-discrimination Law, which is still undergoing the legislative process prior to approval. In addition, there is no 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 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, 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 Members of the Security Services	Indirect discrimination within the scope of the application of this law shall be deemed to be an apparently non-discriminatory act which disadvantages a member (of the	Not permitted.

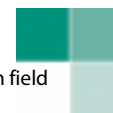
Sec. 77, para. 4	security services) in comparison to another member on grounds provided for in para. 2 (these grounds are: age, race, colour, sex, sexual orientation, religion and belief, political orientation, national origin, ethnic or social origin, property, birth, marital and family status or family 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.

- b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

No definite answer can be given in this respect, as there is no case-law on indirect discrimination in the Czech Republic.

- c) *Is this compatible with the Directives?*

With the exception of the areas covered by the Law on Employment and the Law on Service by Members of the Security Services (which covers the police and other state security bodies), there are no definitions of indirect discrimination. This is not compatible with the Directives.



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 comparisons are to be made regarding an individual's more or less favourable situation, nor any relevant comparators for any of the specified grounds, including age. Ultimately it will be up to the courts to determine in a specific case whether or not age is a factor indicating discrimination. 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.

e) Have differences in treatment based on language been perceived as indirect discrimination on the grounds of racial or ethnic origin?

Case-law in the respect of language discrimination does not exist.

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 Code,⁶³ 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. However, whether a court considers statistical data as convincing evidence in an individual case is a matter to be assessed on a case-by-case basis.

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?

Such evidence is not commonly used. On the other hand, there are no ethical or methodology issues that would prevent using this kind of evidence before the courts. National law was not influenced by evolution in other countries, but it can be said that the practice of Czech NGOs in this respect has been strongly influenced by USA 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. It originated in 1996 in Ostrava, Czech Republic, and after being held inadmissible on procedural grounds by the Constitutional Court (1999), the plaintiffs lodged an application with the European Court of Human Rights in Strasbourg (2000). 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.

⁶³ Zákon č. 99/1963 Sb., občanský soudní řád [Law No. 99/1963 Coll., the Civil Procedure Code, Section 109 para 1 letter c) (Collection of Laws 1963, no.56 p.0383)].

The petitions were based on a comparison of statistical data from 8 special schools and 69 primary schools in the City of Ostrava (at that time, Ostrava had 70 primary schools and 8 special schools) which pointed to the over-representation of Roma pupils in special schools. The proportion of the Ostrava Roma school population in special schools outnumbered the proportion of the Ostrava non-Roma school population in special schools by a ratio of more than 27 to 1. Roma children in Ostrava were more than 27 times as likely to end up in special schools as non-Roma children. The statistics further indicated that although Roma represented less than 5 per cent of all students of primary age in Ostrava, they constituted more than 50 per cent of the special school population.

The petitioners also referred to official data quoted by the Czech government,⁶⁴ according to which approximately 75 per cent of Roma children attend special schools, and substantially more than half of all special school students are Roma.⁶⁵ The renowned *D.H. and Others v. the Czech republic* judgment delivered by the Grand Chamber of the European Court of Human rights⁶⁶ was perceived by the wider general public throughout the Czech Republic as a totally unexpected and shocking outcome to the Ostrava case. In contrast, Czech civil society organisations contended with satisfaction that the European Court of Human Rights had seized an opportunity⁶⁷ which was unlikely to be repeated in future. On the basis of persuasive evidence consisting of statistical data, the Court identified the racially discriminatory impact of a superficially neutral practice, and for the first time in its history declared indirect racial discrimination as non-justifiable in a democratic society.⁶⁸ Given the current situation in many post-transitional countries, including the Czech Republic, where ethnic data are nowadays regarded as sensitive and are therefore not allowed to be collected without the consent of the persons concerned, it seems quite unlikely that it will be possible in future to litigate cases using the same approach as that of the architects of the *D.H. and Others* case.

d) *Are there national rules which permit data collection? Please answer in respect to all 5 grounds. The aim of this question is whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*

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 Law⁶⁹ can be gathered and processed only under very strictly controlled conditions (e.g. the consent of the subject is required for collecting and processing sensitive data). Employers are allowed to keep such records where they can prove the express consent of the individual in question, but given this restriction, they prefer not to keep these records at all.

⁶⁴ Resolution No. 279 of 07 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’).

⁶⁵ The applicants have also managed to collect data on statistics of Roma 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.

⁶⁶ *D.H. and Others v. Czech republic*, [GC] No. 57325/00.

⁶⁷ See, for example, the commentary to the 2006 ECHR Senate judgment: B.Čechová, ‘ESLP: umístění dětí romského původu do zvláštních škol’, in M.Bobek, P.Boučková, Z. Kühn (eds), *Rovnost a diskriminace* [B. Čechová, ‘ECHR: Placement of Roma children in special schools’, in: M.Bobek, P. Boučková, Z. Kühn (eds), *Equality and Discrimination* (Prague: C.H. Beck, 2007)].

⁶⁸ ECHR Judgment of 13 November 2007, *D.H. and Others v. the Czech Republic*, No. 57325/00, § 176.

⁶⁹ *Zákon č. 101/2000 Sb., o ochraně osobních údajů* [Law No. 101/2000 Coll., on the Protection of Personal Data (Collection of Laws 2000, no. 32 p.1521)].

According to Section 12 para. 2 of the Law on Employment,⁷⁰ an employer is prohibited from requesting information regarding nationality, racial or ethnic origin, political orientation, membership of trade unions, religion, belief or conviction, or sexual orientation in the course of recruitment if it is not necessary for the reasons allowed by the law.⁷¹

Similarly, an 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 (e.g. evidence and reporting for the purposes of social and health insurance or taxation). At the request of job applicants, employers are required to prove the necessity for collection of such information.

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 concerned.⁷²

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). Censuses do not therefore provide accurate data on these points.⁷³ There are no laws and regulations providing for positive measures, and therefore there is also no data collection for this purpose.

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 which contains anti-discrimination clauses, the Labour Code 2007 does not contain any definition of harassment. It refers in this respect to the terms of the Anti-discrimination Law, which has not yet been approved. The Law on Employment, the Law on Service by Members of the Security Services and the Law on Service by Members of the Armed Forces all contain a definition of harassment. The specific formulations used are shown in the following table:

⁷⁰ Zákon č. 435/2004 Sb., o zaměstnanosti [Law no. 435/2004 Coll., on Employment (Collection of Laws 2004, no.143 p. 8270)].

⁷¹ The Law on Employment contains reference to substantial occupational requirements and conditions required by legislation for certain occupations.

⁷² 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)].

⁷³ 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 on 20.01.2007. By contrast, the estimates of Roma population are between 150,000 and 300,000 persons. See, for example, K. Kalibová, 'Romové z pohledu statistiky demografie', in *Romové v České republice*, Socioklub, Praha 1999 ['Roma from the point of view of demographic statistics' in *Roma in the Czech Republic*, Socioklub, Prague 1999], p. 107.

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 criminal offences established by the Criminal Code.⁷⁴ 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 260–261 of the Criminal Code.

Additionally, there are strict definitions for crimes that are racially motivated or based on religious hatred or belief. These are considered variations of general categories of crimes. These strict definitions of crimes 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 the protection of personal rights of individuals contained in the Civil Code.⁷⁵

⁷⁴ Law No. 140/1961 Coll., the Criminal Code.

⁷⁵ See Section 11 of Law No. 64/1961 Coll., Civil Code.



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 environment⁷⁶ 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 reading ‘Go and get the gypsies’.

In accordance with the traditional view of protection of personal rights, the *Vrchní soud* [High Court] 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 personal rights of the petitioner; the subjective feeling of the petitioner that his personal 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 personal rights was not proven, the fundamental basis for civil liability is lacking.’⁷⁷

Upon appellate review, the *Nejvyšší soud* [Supreme Court] 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 personal 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 again rejected the petition, and the case is once again pending at the Supreme Court.

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

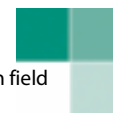
The Czech legal system does not contain a category similar to ‘codes of practice’. The purpose of regulations, a common statutory instrument, is to elaborate details of legislative provisions rather than to give practical guidance. Moreover, rights and duties for natural or legal persons cannot be created by regulations. This restriction under the Constitution⁷⁸ and the Charter⁷⁹ 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.

⁷⁶ 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

⁷⁷ Decision of the High Court of Justice in Prague, No. 1 Co 162/2002 – 64.

⁷⁸ 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.’

⁷⁹ Article 2 para 2 of the Charter reads as follows: ‘State authority may be asserted only in cases and within the bounds provided for by law and only in the manner prescribed by law’. <http://www.psp.cz/cgi-bin/eng/docs/laws/1993/2.html>



2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

According to Section 16 para. 2 of the Labour Code 2007, instruction to discriminate is prohibited by ‘special legislation’. This reference to ‘special legislation’ means the Anti-discrimination Law, which has not been approved. Therefore the prohibition of instruction to discriminate does not have explicit application in the area of labour relations. According to Section 2 para. 3 of the Law on Service by Members of the Armed Forces, any instruction to discriminate is unlawful. Section 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 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). According to the Section 4, paras 4 and 5 of the draft Anti-discrimination Law, both incitement and instruction to discriminate are deemed unlawful.

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 people with disabilities? 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 the 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, employers are obliged at their own cost to secure for persons with disabilities the necessary workplace accommodation, labour conditions, protected workshops and workplaces, special training and guidance.⁸⁰ As case-law is non-existent, it is not clear whether the courts would deny protection to persons who are not classified as disabled by the social security authorities if they claim reasonable accommodation. However, they would in any case be disadvantaged in any litigation because of their lack of administrative status as disabled. According to the Law on Employment, omitting to adopt the measures necessary to enable a person with disabilities to have access to employment amounts to indirect discrimination on the ground of state of health. There is also a lack of financial support expressly dedicated to accommodation costs—the only exception being allowances under the specific provisions of Section 78 of the Law on Employment (see Part 5. Positive action). The draft Anti-discrimination Law provides for a special definition of the ground of disability, independent of social security administrative status and inspired by the ECJ interpretation of disability in its judgement on the *C-13/05, Chacón Navas* case. It also provides the general basis for evaluation of what might be regarded as a ‘disproportionate burden’ in the context of the duty to provide ‘reasonable’ accommodation. Particular attention should be paid to:

⁸⁰ Sec. 103 para 5 of the Labour Code 2007.

- the extent to which the measure would accommodate the needs of the disabled person;
 - the financial and other costs which would be incurred in taking the measure and any disruption to the natural or legal person's activities;
 - the availability of financial or other assistance for taking the measure;
 - the adequacy of an alternative provision or arrangements to accommodate the needs of the disabled person.
- 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 accommodation measures or a 'disproportionate burden' thus:

'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.'

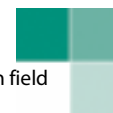
The Labour Code 2007 does not contain any details on reasonable accommodation with regard to disability, except for the general clause on imposition of duty to provide reasonable accommodation. As neither labour nor employment law include any provisions on possible justification of 'disproportionate burden', on the face of it the law could be viewed as very strict. In reality, however, employers rarely employ people with disabilities and even more rarely do they provide any accommodation at their own cost. The failure to provide genuine accommodation is a form of discrimination in the majority of employment relations, except those where the Law on Employment does not apply.

- 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 services available to the public, 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 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 Coll.). These laws require structural solutions to enable people with disabilities to access 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 to 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 orientation.⁸¹

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 time.⁸² Such requirements also apply to renovation and any other structural changes. In buildings serving the general public, provisions for safe access and use by people with disabilities are required for areas designated as public areas.⁸³

In practice, people with disabilities encounter considerable difficulties when accessing buildings (*Zehnalová and Zehnal v. the Czech Republic*).⁸⁴ Practices criticised include builders renting devices to show that they have secured accessibility for people with disabilities solely for the purpose of obtaining approval for the premises and for occupancy permit procedures, or removing, rather than repairing, broken devices serving the blind. The complainants in this case, residents of the city of Přerov, Czech Republic, asserted that more than 150 public buildings were not accessible to people with disabilities, 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 for reasons which appear rather technical in character. According to the Court, it was not possible to apply Article 8 generally 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.

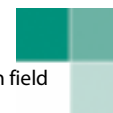
Health requirements are laid down in many different laws and statutes, such as Decree No. 48/1982 Coll., the decree laying down the basic requirements for safety at work and technical arrangements, which sets out basic standards for infrastructure. This statute sets out the basic conditions for construction 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 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.

⁸¹ See Sec. 47 para 1 of Law No. 50/1976 Coll., the Law on Spatial Planning and Construction.

⁸² See Sec. 60 para 3 Id.

⁸³ See Sec. 68 para 3. Id.

⁸⁴ European Court of Human Rights, Decision on admissibility No. 38621/97.



- e) *Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?*

As well as the legislation providing for accessibility for people with disabilities, the Law on Employment provides for ‘protected workplaces’ and a mandatory quota system for people with disabilities. These measures are dealt with in the appropriate sections of this report. However, these could be classified as specific positive measures rather than as ensuring the specific rights of individuals.

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?*

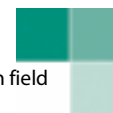
The conditions for setting up ‘protected workplaces’ (sheltered and semi-sheltered employment) are secured on the basis of agreements. An agreement may be concluded between an employment office and an employer to establish a protected workplace⁸⁵ for a disabled person. Such an agreement may also be concluded between an employment office and a disabled person undertaking self-employment. An employment office can provide a subsidy for establishing a protected workplace. Similarly, on the basis of an agreement with an employment office, an employer may establish a ‘protected workshop’, (a room equipped for a handicraft or other manual work specially adapted to the needs of disabled workers)⁸⁶ and receive a subsidy from the employment office for this purpose. At least 60 per cent of the employees in such a workshop must be people with disabilities.

- 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 the Labour Code and the Law on Employment.

⁸⁵ See Sec. 75 of the Law on Employment.

⁸⁶ 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. According to the amended School Law, effective from 01 January 2008,⁸⁷ equal access to education is guaranteed to every Czech citizen, EU national and any lawfully residing foreigner. In respect of primary education, the law guarantees its provision irrespective of the legality of the foreigner's stay.

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 from a superior (see below). The only limitation on legal persons consists of the fact that only natural persons can become employees and enter into that side of an employment contract.

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 Code.⁸⁸ Each person is liable for damages caused by his/her violation of the law. Natural or legal persons 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 such persons, provided that they were employed to act on their behalf.

⁸⁷ Sec. 20 of the Amendment to the School Law No. 343/2007 Coll.

⁸⁸ Zákon č. 40/1964 Sb., občanský zákoník [Law no. 40/1964 Coll., Civil Code, Sec. 420 (Collection of Laws 1964, no. 19 p. 0201)].

The rules on the liability of natural and legal persons according to Section 420 para. 2 also apply *per analogiam*⁸⁹ 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 Section 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, various 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 Law,⁹⁰ persons who have been authorised to take 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 the conduct of any person 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 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).

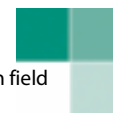
In general, labour law is governed by the principle of strict employer liability in relation to the employee:

- 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 employer.⁹¹ 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.

⁸⁹ Jehlička O., Švestka J., Škárová M. a kolektiv: *Občanský zákoník. Komentář. Str.95* [O.Jehlička, J.Švestka, M.Škárová and others, *Civil Code. Commentary*. 8th edition (Prague: C. H. Beck, 2003)] p. 95.

⁹⁰ 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)].

⁹¹ See Sec. 265 paras 1 and 2 of Law no. 262/2006 Coll., (Labour Code 2007).



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 Law.⁹² It lies with the person who gave the instruction. However, this provision 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 liable for punishment for misdemeanours committed in their capacity in relation to legal entities.

3.2 Material Scope

Where national legislation exists, all EC Article 13 grounds are covered with respect to the full scope of the 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?

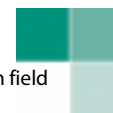
National legislation applies to all sectors of private employment (all relationships which could be characterised as ‘dependent work’ according to the Labour Code 2007). However, definitions of discrimination are absent both in the Labour Code and related legislation. The Labour Code does not apply to contract work, if carried out in an independent capacity as envisaged by the types of contracts concluded under Civil Code, and to self-employment (conducted under specific administrative registration for freelance occupation). In the Civil Code and the laws governing a diverse range of self-employment activities, anti-discrimination provisions to implement the Equality Directives are absent. 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 also lacking.

It remains uncertain whether the Labour Code 2007, with its definition of labour relations as ‘dependent work’, would apply to specific relationships such as the work of prisoners or volunteers. Laws governing the performance of such activities (e.g. the Law on Voluntary Service,⁹³ the Law on the Execution of Imprisonment⁹⁴) do not include any non-discrimination provisions.

⁹² Sec. 6 of Law no. 200/1990 Coll., on Misdemeanours.

⁹³ Zákon č. 198/2002 Sb., o dobrovolnické službě [Law No. 198/2002 Coll., on Voluntary Service (Collection of Laws 2002, no. 82 p. 4835)].

⁹⁴ Zákon č. 169/1999 Sb., o výkonu trestu odnětí svobody [Law No. 169/1999 Coll., on the Execution of Imprisonment (Collection of Laws 1999, no. 58 p. 3170)].



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 or to professions, nor are selection criteria, recruitment conditions and promotion in respect of these two areas covered. Self-employed occupations in general are governed by the Law on Self-employment,⁹⁵ which does not include 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 others⁹⁶ which are governed by specific laws.⁹⁷ These laws similarly lack non-discrimination clauses, as well as definitions of discrimination and 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 in regard 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 any 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 sectors, as they have the capacity to issue internal rules which are binding on their members and trainees, setting out conditions for training and admission 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))

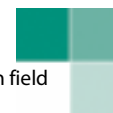
a) Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

Non-discrimination provisions on equal pay are to be found in the Labour Code (Section 110 of the Law No. 262/2006 Coll.), and for institutions in the public sector, in the Law on Salaries (Law No. 143/1992 Coll.)

⁹⁵ 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)].

⁹⁶ See Section 3 para 2 of Law no. 455/1991 Coll., on Self-employment.

⁹⁷ 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)].



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). However, the Labour Code 2007 no longer contains 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 the Czech Republic, a system for occupational pensions does not exist. If an employer were to be willing to provide payments of this type, even in the absence of specific public regulations on occupational pensions, payments from such occupational pensions would fall within the scope of labour legislation, which guarantees equal treatment of all employees with respect to remuneration, and other financial and natural payments from the employer (Section 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))

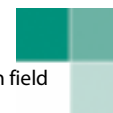
Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination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

The non-discrimination provisions of the Law on Employment apply to vocational guidance, training and retraining, including outside the employment relationship, connected to state-subsidised employment programmes and measures. The general non-discrimination clause of the Labour Code (Section 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 absent from 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). These laws also lack definitions of discrimination.

As regards educational activities covered by the School Law and the Law on Higher Education,⁹⁸ there are no anti-discrimination provisions. National law has not yet implemented the Directives in the area of education.

⁹⁸ *Zákon č. 111/1998 Sb., o vysokých školách* [Law no. 111/1998 Coll., on Higher Education, (Collection of Laws no.39 p.5388)].



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 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 the 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 Associations.⁹⁹ 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 contravene the law are null and void.¹⁰⁰

Membership of organisations whose members carry out particular professions

The establishment and existence of such organisations are governed by special laws on professional chambers.¹⁰¹ Membership of these chambers is often obligatory, although some have voluntary membership (e.g. the Czech Chamber of Commerce and the Czech Chamber of Agriculture¹⁰²).

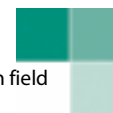
Chambers with obligatory membership perform important disciplinary functions vis-à-vis members and trainees. They also have supervisory functions and in certain cases establish examination conditions, examine trainees and subsequently determine admission to the chamber, determining *conditio sine qua non* performance of the particular occupation.

⁹⁹ Zákon č. 83/1990 Sb., o sdružování občanů [Law no. 83/1990 Coll., on Assemblies (Collection of Laws no. 19 p. 0366)].

¹⁰⁰ 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)].

¹⁰¹ 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.

¹⁰² 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)].



Practising the profession is conditional on being a member of the chamber. However, no non-discrimination provisions exist in the laws governing professional chambers.

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 benefits,¹⁰³ social services,¹⁰⁴ pension insurance,¹⁰⁵ health insurance¹⁰⁶ and healthcare,¹⁰⁷ 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 on any grounds, not even on 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 reductions on admission prices or cheap fares), are currently regulated principally 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 equal.¹⁰⁸

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 and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

¹⁰³ 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)].

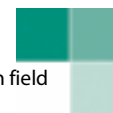
¹⁰⁴ *Zákon č. 106/2006 Sb., o sociálních službách* [Law No. 106/2006 Coll., on Social Services (Collection of Laws 2006, no.37 p. 1257)].

¹⁰⁵ *Zákon č. 155/1995 Sb., o důchodovém pojištění* [Law No. 155/1995 Coll., on Pension Insurance (Collection of Laws 1995, no.41 p.1986)].

¹⁰⁶ 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)].

¹⁰⁷ 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)].

¹⁰⁸ See Section 4 of Law No. 64/1961 Coll., Civil Code.



The School Law¹⁰⁹ contains only a general anti-discrimination clause, forbidding discrimination against EU and Czech citizens. Anti-discrimination provisions are completely lacking in the Law on University Education.

Because of the problem of segregation of Roma children in so-called ‘special schools’, the Czech Republic has been criticised by many international institutions, most recently by the European Court of Human Rights (ECHR). However, although the ECHR contended that the special schools system in the Czech Republic was indirectly discriminatory, the argument about its racially segregative character made by the applicants was not expressly endorsed by the ECHR decision. Long before the ECHR decision, segregation in special schools was subject to criticism by international bodies. In its second report on the Czech Republic,¹¹⁰ the 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 learning difficulties such that they cannot be successfully educated in elementary schools. ECRI draws the attention to the fact that Roma children are vastly over-represented in these schools. ECRI found that Roma children were channelled into these schools in a quasi-automatic fashion.¹¹¹

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 2004,¹¹² 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 represent only one of a battery of tools and methods recommended. The report refers to the fact that parents and legal guardians, who must give 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 for consent 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 children.¹¹³

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 2000¹¹⁴ provided the opportunity for graduates of special schools to apply for admission to secondary schools.

¹⁰⁹ Law no. 561/2004 Coll., on Pre-school, Primary, Secondary and Higher Vocational and other Education.

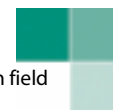
¹¹⁰ *European Commission against Racism and Intolerance, Second report on the Czech Republic*, adopted on 18 June 1999, Strasbourg, 21 March 2000. http://www.coe.int/T/e/human_rights/ecri/5-Archives/1-ECRI%27s_work/1-Country_by_country/Czech_Republic/CBC_1.asp#TopOfPage

¹¹¹ *Second Report on the Czech Republic*, Sec. L. 33.

¹¹² *European Commission against Racism and Intolerance, Third report on the Czech Republic*, adopted on 05 December 2003, Strasbourg, 08 June 2004.

¹¹³ *Third Report on the Czech Republic*, sec.106-108.

¹¹⁴ *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)].



This option has remained largely theoretical, as there were no measures to provide additional education to graduates of special schools in order to bring them up to the educational level allowing them to pass examinations for admission to regular secondary schools. The new School Law, which was adopted in 2004 and came into effect from 01 January 2005, replaced the former system and gave children with special educational needs, including ‘socially disadvantaged’ children, the right 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 teaching 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 discrimination means any differentiation between consumers which could be not justified by legitimate reasons. 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? Please also consider cases and patterns of housing segregation and discrimination of the Roma and other minorities or groups.

The Law on Consumer Protection does not apply to housing, which is instead governed by a number of specific laws regulating rent,¹¹⁵ ownership¹¹⁶ and cooperative housing.¹¹⁷ These laws do not contain non-discrimination provisions. As yet there is no anti-discrimination law in the Czech Republic. The draft Anti-discrimination Law proposes to define the material scope of ‘housing’ within the wider scope of services provided and offered to the public.

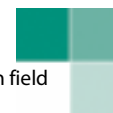
¹¹⁵ For example see Law No. 40/1964 Coll., the Civil Code; *Zákon č. 128/2000 Sb., o obcích* [Law No. 128/2000 Coll., on Municipalities (Collection of Laws 2000, no.38 p.1737)].

¹¹⁶ 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)].

¹¹⁷ 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)].



The draft law does not contain any specific prohibition of segregation in housing. Czech cases of discrimination in housing in regard to Roma have been concerned with privately offered housing of a lower standard, of a type most suited to provision of temporary or short-term shelter accommodation. Such housing is usually provided on the basis of contracts to provide ‘accommodation’ only, instead of full tenancy agreements. These accommodation contracts also provide lower levels of legal security for the person occupying the accommodation than tenancy agreements do. However, Roma encounter discrimination on the part of both other tenants and private providers of housing accommodation. This leads to Roma being concentrated in segregated areas with high levels of criminality. On the other hand, this can also be attributed to the total lack of social housing programmes in the municipalities. In respect to municipal housing, there is a minimal chance for any municipal citizen, regardless of his/her ethnicity, to have access to municipal housing at any type of ‘social’ rent level. In the Czech Republic, ‘municipal’ and ‘social’ housing are not the same. Flats offered at ‘regulated’ rents are usually reserved for employees of the municipality (such as members of the town police or administrative employees). For other residents of the municipality only ‘public competition rental’ is available. This means that flats are offered for rent to the highest bidder. Social housing programmes are almost non-existent, and municipalities do not receive resources for this purpose from the state, supported by satisfactory guarantees that housing built expressly as social housing will not subsequently be sold or used for other purposes.



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 Section 16, paragraph 3 of the Labour Code (Labour Code 2007) and Section 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 prerequisites for appointment 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. The exclusion mentioned above represents a rank of special lawful exceptions, existing besides the exception for genuine and determining occupational requirements, which can be only challenged before the courts on the claim of unconstitutionality.

4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

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?*

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. The draft Anti-discrimination Law contains an exception for employers with an ethos based on religion or belief. It states that this exception applies to ‘dependent work in churches or religious assemblies, where from the character of such work or the circumstances in which it is carried out, it follows that religious belief or other conviction constitutes a genuine and determining, justified and legitimate occupational requirement with respect to the ethos of the church or religious assembly.’

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?*

Because of the lack of specific legislation, any exemption based on religious ethos must 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. However, religious establishments would be unlikely to attempt to select people for employment on the basis of their religion as a requirement, even in their private institutions, as they might find that they have no eligible candidates who also meet the other criteria for a job. Nevertheless, advertisements for the most important posts in religious institutions (such as director of a Catholic charity, or of a private school owned by a church), usually make provision for ‘knowledge of the church environment’ as an additional valuable asset for applicants.

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, among others. 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 new definition of labour relations in the Labour Code 2007, defining these relations as ‘dependent work’—that means terminologically ‘work performed upon an instruction’—might have any implications for case-law in respect of the application of labour rules to clerics in churches and religious assemblies. The Constitutional Court has 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 church¹¹⁸ 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.’¹¹⁹

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

¹¹⁸ The fact that only ‘churches’, not other religious assemblies, are mentioned here does not mean that religious assemblies other than churches would be treated differently, but that this case only involved the Protestant church, and not any other religious assembly.

¹¹⁹ See the decision of the Constitutional Court No. III.ÚS 136/2000.



4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

- 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 services 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 officers¹²⁰ and soldiers¹²¹).

- 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 from recruitment. These conditions are sometimes serious, sometimes of a quite minor nature and sometimes states subsequent to disability or illness are also listed (if the person has completely recovered from illness or disability)¹²². 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 exclusion criteria health 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.

¹²⁰ Sec. 77 para 2 of Law no. 361/2003 Coll., on Service by Members of the Security Services.

¹²¹ *Zákon č. 221/1999 Sb., o vojácích z povolání*, [Sec. 2, para 3 of Law no. 221/1999 Coll., on Service by Members of the Armed Forces (Collection of Laws 1999, No. 76 p. 3722)].

¹²² 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 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)].

- c) *Are there cases where religious institutions can select people (on the basis of their religion) to hire or to dismiss from a job - when that job is in a state entity, or in an entity financed by the State (example: the Catholic church in Italy or Spain can select religious teachers in state schools)? In what conditions is that selection done ? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both ?*

These circumstances do not constitute any real issue in the Czech republic, which is an extremely secularised society. Here, all religious institutions are in fact institutions of *minorities*. Religious teachers in state schools could be selected freely by all churches and religious assemblies who are holders of one of the ‘special rights’ according to the Law on Churches and Religious Assemblies—the right to teach religion in state schools. However, the problem is not so much that of appointing a religious teacher, but rather that of gathering the minimum number of pupils required to open a religious class on state school premises.¹²³ Consequently, there is only a minimal number of state schools, especially in Bohemian regions, where religion is taught. Churches and religious assemblies can freely empower their ministrants to gain access to prisons, hospitals and other institutions run by the state.

4.4 Nationality discrimination (Art. 3(2))

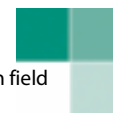
Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

- a) *How does national law treat nationality discrimination? Does this include stateless status?*
What is the relationship between ‘nationality’ and ‘race or ethnic origin’, in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (ie where nationality discrimination may constitute ethnic discrimination as well) ?

There are no further provisions in national law relating to nationality discrimination, with the exception of those dealt with in 3.1.1 above. The anti-discrimination clause in the School Law does not apply to third country nationals. The draft Anti-discrimination Law should also apply to discrimination on grounds of nationality, with the exception of the application of immigration rules. There is no obvious reason why prohibition of nationality discrimination should not apply to statelessness (with the exception of the application of immigration rules). In the case of the grounds of nationality and racial or ethnic origin, there could be significant overlap, especially in cases of indirect discrimination.

Certainly in practice there could be an overlap in case law between discrimination on grounds of nationality and ethnicity. For example, in the case of a resident with Vietnamese nationality applying for admission to the Czech police. There is a considerable problem in communication between the Czech police and the Vietnamese minority, as there is lack of members of the police from this minority, simply because significant numbers of settled Vietnamese do not have Czech citizenship.

¹²³ In order to establish a religious class in a state school, the School Law prescribes a minimum number of seven pupils per school year per whole school.



People of Vietnamese origin with Czech citizenship could be admitted to the Czech police and establish effective communication between the police and the Vietnamese community.

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

There is an exception applying to immigration rules, proposed in the draft Anti-discrimination Law.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

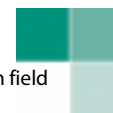
Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners 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. In regard to such family benefits, opposite-sex couples who are not married are 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). Czech law does not, therefore, make it *prima facie* unlawful for an employer to provide benefits to married employees and exclude all who are unmarried. The employers do not maintain practices reserving certain benefits to married employees. Whether or not marriage and registered partnership are in this respect comparative legal concepts in the Czech Republic is far from clear at present. In any case, registered partnership does not constitute any claim to state pensions or other state security entitlements, and occupational pension systems do not operate in the Czech Republic.

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?*

A private employer does not need any legislative permission to act, except when the legislation expressly forbids an activity. The law does not stipulate conditions on which an employer should distribute benefits to employees. Distribution of benefits only to opposite-sex partners would probably be contrary to the anti-discrimination clause in the Law on Employment, forbidding discrimination on ground of sexual orientation, and in labour law, prescribing equal treatment for all employees. In practice, providing benefits only to employees with opposite-sex partners or reserving them for those who are married is quite improbable, and only a theoretical possibility in the Czech Republic.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

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 activities.¹²⁴ With regard to the health and safety of people with disabilities, Section 103, paragraph 5 of the Labour Code 2007 requires the employer to secure at his/her own cost reasonable accommodation in the workplace, suitable working conditions, establishment of protected workplaces and 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 health.¹²⁵

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 (Art. 6 Directive 2000/78)

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 ?*

¹²⁴ See Part 5, Sec. 101–108 of Law no. 262/2006 Coll., Labour Code.

¹²⁵ See Sec. 103 para 1 of Law no. 262/2006 Coll., Labour Code.

Although it does not define any justification grounds for direct discrimination on the ground of age, national law 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...’¹²⁶ The test of the Czech Constitutional Court corresponds more closely to the position taken by the European Court of Justice in case C-411/05, *Félix Palacios de la Villa v Cortefiel Servicios SA*, than to the test applied by the ECJ in case C-144/04 *Mangold*. . The draft Anti-discrimination Law provides for a justification test which is along the lines of Article 6 of Directive 2000/78.

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

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.
- 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 its interest in public safety. Because these requirements are laid down in special laws, it is not practically 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.’¹²⁷ However, it seems that the opinion of the UN 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’.¹²⁸

¹²⁶ See the decision of the Constitutional Court No. Pl. ÚS 9/95. The amendment to 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.

¹²⁷ See the decision of the Constitutional Court No. Pl. ÚS 33/96.

¹²⁸ Id. As a result of an amendment to the Law on Higher Education, 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 (Employment and Occupation) Convention No. 111. The Constitutional Court upheld the constitutional conformity of the law and rejected the complaint.

To challenge statutory requirements before the Constitutional Court would be difficult, but is not completely excluded—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). There is, however, no case-law arising from the Constitutional Court or ordinary courts which would support the application of justification tests that are more sophisticated than those mentioned above. Otherwise, the limits set up by the legislation could be removed or changed by Parliament, but in the Czech constitutional system there is relatively restricted, although gradually increasing space for the judiciary to consider whether or not the limits set by national legislation meet the justification criteria of the courts.¹²⁹

- 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 no 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.

Special conditions for younger workers are discussed below (see 4.7.3). However, it is difficult to decide whether their purpose is to promote vocational integration. Rather they seem to be in place to protect the healthy development of children and young people under 15 years of age. 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. However, the amounts provided are quite small. This protection applies only to dependent employment, not to self-employment.¹³⁰ There are no special conditions for protection of 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?

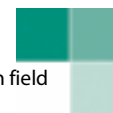
1. Directly fixed conditions for age

Minimum age requirements for employment/self-employment

The Labour Code sets a general minimum of 15 years of age for persons entering into labour contracts.

¹²⁹ Decision of the Constitutional Court No. Pl. ÚS 53/04, 341/2007 Coll., Decision of the Constitutional Court No. Pl. ÚS 42/04, 405/2006 Coll.

¹³⁰ Law No. 54/1956 Coll., on Sickness Insurance for Employees.



Work by children younger than 15 years of age 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. Such activity may be carried out by the child only on the basis of permission issued by employment offices.¹³¹

The age threshold differs for specific professions, with the minimum age often set at 18 years, 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 18 years.¹³² The general minimum age for self-employment is 18 years,¹³³ but in specific cases it can differ according to the special requirements of various types of self-employment, for example the training or qualifications necessary for certain activities to be carried out properly.

Employees younger than 18 years of age 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 years of age, and in certain circumstances requires employers to secure medical examination of employees younger than 18 years of age.¹³⁴

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 years for judges (the minimum age for judges is established by the same law at 30 years).¹³⁵ 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 he/she reaches the age of 70 years.¹³⁶

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

2. Indirectly fixed conditions of age:

- Conditions of pay depend on years of experience:
The Law on Salaries¹³⁷ 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.

¹³¹ See Sec. 121–124 of Law no. 435/2004 Coll., on Employment.

¹³² See Sec. 244–246 of Law no. 262/2006 Coll., Labour Code.

¹³³ See Sec. 6 of Law No. 455/1991 Coll., on Self-employment.

¹³⁴ See Sec. 247 of Law no. 262/2006 Coll., of the Labour Code.

¹³⁵ See Sec. 60 and Sec. 94 of Law no. 6/2002 Coll., on Judges, Assistant Judges and State Administration of the Courts.

¹³⁶ See Sec. 21 of Law no. 283/1993 Coll., on the Public Attorney's Office.

¹³⁷ *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)].

- 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 imposed 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 skills required to perform the profession. For instance, in order to perform their professional duties, different types of services, such as the fire service, prison service or army, require certain occupational skills determined by specific laws, and requiring certain physical and psychological health conditions. These laws usually do not include age as a protected ground of discrimination (see above 2.1).

4.7.4 Retirement

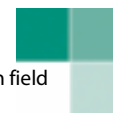
In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which 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 continue to 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 such work is performed according to a fixed term contract.¹³⁸ The pensionable age for men is 60 years;¹³⁹ and for women it depends on the number of children they have raised. This condition does not apply to men, even if a man has brought up a child or children as a lone parent. 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 they have raised. It is exclusively up to the employee to decide whether he/she will retire when reaching the pensionable age. There is an ongoing political discussion regarding pension reform and a further rise in the retirement age, but without any clear outcome at present. 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.).

¹³⁸ 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)].

¹³⁹ Law no. 155/1995 Coll., on Pension Insurance.



In addition to the requirements of the state administration, other exceptional circumstances where an employer imposes a mandatory retirement age, usually on safety grounds, could exist. An example could be that of Czech Airlines requiring their pilots to stop flying when they reach 65 years of age.

- 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 or employer-funded pension arrangements. However, employers can contribute to their employees' private pension insurance provision, which is the subject of a contract between an individual 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?*

The only state-imposed mandatory retirement ages are those 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 (see 4.7.3 above). 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 contain any specific provision in this respect. However, exceptional circumstances where an employer imposes a mandatory retirement age, usually on safety grounds, could exist. An example would be that of Czech Airlines, whose contracts require their pilots to stop flying when they reach 65 years of age.

- 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 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 times their average monthly salary.¹⁴⁰ The applicable collective agreement may contain more favourable conditions. 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?

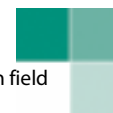
All existing exceptions of this kind have already been mentioned (see 4.3, 4.7.3 above).

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.

¹⁴⁰ See Sec. 67 of Law no. 262/2006 Coll., the Labour Code.



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*

With respect to positive action, Czech legislation provides general regulations in the Law on Employment, Section 2, paragraph 1 j) and k), and the Labour Code 2007, Section 16, paragraph 3. The Law on Employment defines positive measures as supporting equal treatment of women and men, people with disabilities, 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 Sections 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, or 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 the Labour Code provide a basis for positive action only in respect of the ground of sex.

- b) *Do measures of positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted., classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. 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, any related to Roma and regarding minority rights based measures.*

Mandatory quota system for people with disabilities

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 measures:¹⁴¹

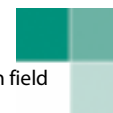
- employing a certain percentage of disabled employees (4 per cent of employees);
- commissioning goods or working programmes from employers who employ more than 50 per cent disabled employees;
- making payments to the state budget. (The payment becomes a part of general state income and is not earmarked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

Employers also have a duty to report job vacancies appropriate for people with disabilities to employment offices.

The state pays allowances to employers whose staff comprise more than 50 per cent disabled employees.¹⁴² 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.

¹⁴¹ See Sec. 81 para 2 of the Law on Employment.

¹⁴² See Sec. 78 of the Law on Employment.



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 people with disabilities. 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 People with Disabilities, out of 43 state institutions (central state institutions, regional offices, courts, state-owned enterprises), the legal duty to employ 4 per cent of persons with 'altered working ability'¹⁴³ was not met by 20 of them, including the Czech Senate, the Chamber of Deputies and the Office of the Government. In total, they paid penalties of CZK ten million (EUR 322,580).¹⁴⁴

Other positive action for people with disabilities

People recognised by the state social security service as disabled have the right to employment rehabilitation,¹⁴⁵ 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 above)

Social policy measures with respect to Roma

These policies do not often have a basis in legislation, but are usually established by governmental decrees or resolutions. Currently these programmes mainly involve provision of state funding for social services for excluded communities, implemented by the Ministry of Labour. One 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 subsidies.¹⁴⁶

In respect of Roma, no measures which can be labelled as 'positive action' in the strict sense exist. Nevertheless, the police have established the posts of contact officer for minorities and of assistant to the police for work with socially excluded communities. The tasks of the contact officer for minorities include preventive activities in respect of members of the Roma community. The tasks of the assistant include cooperation with the contact officer, and contact and communication with local communities, especially in localities with high risks of latent criminality. Posts for assistants were established in Ostrava and Cheb in 2006.

¹⁴³ At the time the 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 per cent of persons with altered working ability. If this number is not met, the employer has to pay 150 per cent of the average wage to the state budget.

¹⁴⁴ *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').

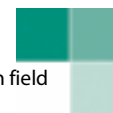
¹⁴⁵ See Sec. 69 of the Law on Employment.

¹⁴⁶ The scheme operates as one of the supporting measures for members of national minorities. *Zákon č. 273/2001 Sb, o právech příslušníků národnostních menšin a o změně některých zákonů* [Law no. 273/2001 Coll., on rights of members of national minorities (Collection of laws no. 2001, No. 104 p. 6461)] defines who is a member of a national minority. Members of a national minority 'differ 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 as a national minority in order to preserve their own identity, language and culture and to express and protect interests of their historically created community'. In practice, the declaration of an individual as a member of a national minority is a satisfactory qualification to be included in the specific programmes to support the education of Roma. These programmes usually consist of subsidies of the type of social benefits to help a student to maintain himself/herself during studies.



During 2002, regional coordinators for Roma counsellors were appointed for all 14 regions. After reform of the state administration took place in 2003, Roma counsellors, who had operated within district offices from 1997 to 2002, were mostly transferred to the municipalities. However, the transfer of Roma counsellors to the municipalities had a rather negative impact on their competencies and work performance. Their responsibilities were not specified unambiguously, and the municipalities defined their workloads in a variety of ways. The majority of them have been allocated additional functions, which often conflict, or have client groups who should not be brought together (e.g. Roma and drug addicts).

According to the current School Law (Law no. 561/2004 Coll.), school directors can establish posts for teaching assistants for work with children from socio-culturally disadvantaged backgrounds. In state schools, these assistants are to be paid from the publicly funded school budget.



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.
- c) *Can a person bring a case after the employment relationship has ended?*

It is possible to bring a case whether the employment relationship has been terminated or not.

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)?

Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

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 in accordance with special provisions of the Law on Employment.¹⁴⁷ The Labour Code 2007 no longer contains specific anti-discrimination action. A case in fields other than access to employment can be filed under provisions on infringement of personal rights and integrity.¹⁴⁸ The Civil Procedure Code¹⁴⁹ and the shift of the burden of proof apply in both cases.

Section 11 of the Civil Code provides for 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 0.3 above) 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.

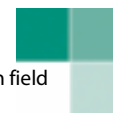
*This provision is related to Article 3, para. 1 and Article 3, para. 2 of the Charter and specifies the prohibition of any discrimination for membership of an ethnic or national minority.'*¹⁵⁰

¹⁴⁷ See Sec. 4 para 10 of the Law on Employment.

¹⁴⁸ See Sec. 11 of the Civil Code.

¹⁴⁹ Law No. 99/1963 Coll., Civil Procedure Code.

¹⁵⁰ Decision of the High Court in Prague, decision No. 1 Co 62/2002-63.



Criminal judicial procedures

The Criminal Code¹⁵¹ 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

The Code on Administrative Court Procedure¹⁵² 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 provisions of the Labour Code on discrimination may be fined up to CZK 1 million (approx. EUR 31,949).¹⁵³ The Law on Employment defines the competencies of employment offices¹⁵⁴ and the Administrative Code¹⁵⁵ 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.

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).

¹⁵¹ Law No. 140/1961 Coll., the Criminal Code.

¹⁵² *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)].

¹⁵³ See Sec. 139 and 140 of Law no. 435/2004 Coll., on Employment.

¹⁵⁴ See Id., Sec. 7.

¹⁵⁵ *Zákon č. 500/2004 Sb., správní řád* [Law No. 500/2004 Coll., the Administrative Code (Collection of Laws 2004, no. 174 p. 9782)].

Administrative bodies and inspectorates established in fields other than 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 application of this law has been postponed, and it will not enter into force until 01 January 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 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.

Misdemeanour Commissions in Municipal Offices

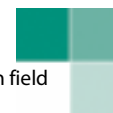
Only natural persons can be subjected to misdemeanour procedures. The material scope of misdemeanours is covered by special procedures under the Law on Misdemeanours. Acts of discrimination can be sanctioned according to the provisions on misdemeanours against community relations.¹⁵⁶ According to the 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 cases involving protection of personal rights, is financially onerous and long. Processing of cases can last three years, and up to six years is not an exceptional period. Such protracted cases raise costs to insupportably risky levels, which means that it is scarcely possible for a victim (who is not supported by an NGO or trade union) to bear these difficulties alone for longer periods.

¹⁵⁶ See Sec. 49, Law No. 200/1990 Coll., on Misdemeanours.



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 law,¹⁵⁷ 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 (disputes other than labour disputes regulated by Commercial or Civil law). 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 rarely make use of it. NGOs usually contract attorneys and cover their remuneration for representing an individual victim in court. Such 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)

Class actions are not permitted 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 Section 133a of the Civil Procedure Code. The Constitutional Court declared the Czech provisions on burden of proof compatible with the guarantees of fair trial provided by the Czech Charter.¹⁵⁸ While approving the Anti-discrimination Law, parliamentary deputies also approved amendments to the current provision of Section 133a of the Civil Procedure Code, which is to be replaced with new wording more in keeping with that used by the Directives. The newly drafted provision states that where facts from which it may be presumed that there has been direct or indirect discrimination are established before the court, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

¹⁵⁷ Law No. 83/1990 Coll., on Citizens Assembly.

¹⁵⁸ For more, see point 0.3.



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 is no explicit protection against victimisation. The explicit provisions on protection against discrimination contained in Labour Code 2006 are not repeated in Labour Code 2007. In regard to victimisation, Section 16, paragraph 2 of Labour Code 2007 refers to special legislation—meaning the Anti-discrimination Bill, which was not approved. Theoretically, a victimised employee can claim protection for himself/herself only under Section 14, paragraph 2 of the Labour Code, which states that an employer cannot sanction an employee or put him/her at a disadvantage because of his/her actions taken in 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 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. The draft Anti-discrimination Law proposes to provide protection against victimisation without reducing the current level of protection of the complainant.

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 CZK 1 million (approx. EUR 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, property confiscation, financial penalties, confiscation of items, the penalty of expulsion from the Czech Republic for a determined or undetermined period (which would result in deportation) and a ban on residence.¹⁵⁹

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 where 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 protection of personal rights) allow for non-material damages to be claimed. The amount of non-pecuniary damages awarded in such procedures is determined by the court, which takes into account the seriousness of the damage and the circumstances of each case.¹⁶⁰ 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—courts have awarded plaintiffs in discrimination cases amounts ranging from CZK 20,000 to CZK 200,000 (EUR 645 to EUR 6,451).

¹⁵⁹ See Sec. 27 of Law no. 140/1961 Coll., the Criminal Code.

¹⁶⁰ See Section 13 para 3 of Law no. 64/1961 Coll., Civil Code and Sec. 4 para. 11 of Law no. 435/2004 Coll., on Employment.



7. SPECIALISED BODIES

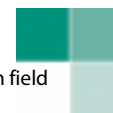
Body for the promotion of equal treatment (Article 13 Directive 2000/43)

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?*
- g) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

The Czech Republic does not have specialised bodies. The draft Anti-discrimination Law proposes that the role of anti-discrimination body will be awarded to the Public Defender of Rights (Czech ombudsman). The Public Defender of Rights shall be awarded responsibility on all grounds covered by the Equality Directives to provide support to individuals when filing discrimination complaints, to conduct research and publish reports and recommendations. Currently, the remit of the Czech ombudsman encompasses protection against unlawful acts of state administration. In 2007, the Office of the Public Defender of Rights registered only a small number of complaints made on the ground of racial discrimination. However, the office does not gather any statistical data which could be analysed.¹⁶¹ A small amount of additional funding and some new posts will be awarded to the Public Defender of Rights in respect of these new tasks. Claims of involuntary sterilisation of Roma women in hospitals represent the most important group of complaints.

¹⁶¹ Šestá a sedmá periodická zpráva o plnění závazků plynoucích z Mezinárodní úmluvy o odstranění všech forem rasové diskriminace, Sekretariát Rady vlády ČR pro lidská práva, Praha 2007, str. 25 [Sixth and Seventh periodical report on obligations following from the International Convention on the Elimination of All Forms of Racial Discrimination, Sekretariát Rady vlády ČR pro lidská práva, Prague 2007, p.25.]. See http://www.vlada.cz/assets/cs/rvk/rp/dokumenty/mezinarodni_uumlavy/cerd/6.7CERD_CZ_2.pdf



8. IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State

- 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)
- d) to specifically address Roma and Travellers

In 2007, activities associated with the Year of Equal Opportunities for All represented the major action to disseminate information about legal protection against discrimination. These activities focused on all the grounds covered by Article 13 of the EC Treaty, and included promotional activities, conferences, festivals, analysis and training programmes and activities. Promoting dialogue between social partners with regard to the principle of equal treatment in practices within the workplace is a task belonging to the competence of the Tripartite Agreement (associating key actors in the area of labour market—employers, trade unions and the government) and the Ministry of Labour. However, there were no significant developments on this level with regard to equal treatment in 2007.. There are no Travellers in the Czech Republic. The main actions of the government include educational activities targeting youth, and professional groups such as police, members of the armed forces, judges and state prosecutors. Educational activities for professional groups typically include training and seminars on racially motivated crimes. Police education includes instruction on the problematics of national and ethnic minorities at all levels of professional police training provision: basic training for new police members, follow-up training and specific training.

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 posteriori derogat legi priori (more recent rules prevail over less recent rules).*

There are no 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 or to make it prevail. The clauses of contracts which contravene the law or are against ethical principles can be declared void by the courts. However, there are no instruments other 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-governing 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 difficult 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. OVERVIEW

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

This could also be used to give an overview on the way (and if at all) national law has given rise to complaints or changes, including, eventually a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

At the beginning of 2007, the Czech Republic had not implemented most of the EU equality legislation. The law does not protect victims of direct and indirect discrimination, victimisation and harassment in fields such as access to housing, health, social protection and social advantages. It is only unlawful to discriminate on the grounds stipulated by the Equality Directives in the areas of employment and (in part) of vocational training. It is only in these areas that victims of discrimination have access to special enforcement measures against discrimination. It is hoped that the Anti-discrimination Bill, re-introduced in June 2007 to the Czech parliament, will remove all legal inconsistencies—if approved. In the 2007 Migrant Integration Policy Index, the Czech Republic was ranked as last but one in the area of anti-discrimination¹⁶². In the same survey, it received a 0 per cent score on equality policies. The Czech Republic has not yet established an equality body. Victims of discrimination do not receive appropriate advice, assistance and support. Under current laws, the State does not have the duty to mainstream equality principles, establish public dialogue on equality or inform the public about their rights.

¹⁶² Migrant Integration Policy Index, Czech Republic, British Council, Migration Policy Group, 2007.
www.integrationindex.eu



10. 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

Czech Republic

Date 29 February 2008

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 (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate 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.		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 for 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,	Labour law, administrative law	Recruitment, public and private employment	Prohibition of direct and indirect discrimination

		national origin, nationality, social 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.		(partially)	
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	Labour law	Public employment	Prohibition of direct and indirect discrimination

		status or family duties, membership of trade unions and other assemblies			
Law no. 221/1999 Coll., on Service by Members of the Armed Forces Sec. 2, paras 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	Labour law	Public employment	Prohibition of discrimination

		obligations			
School Law No. 561/2004 Coll., Sec. 2, para. 1, subsection a)	1.1.2005	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

Czech Republic

Date 29 February 2008

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, in my opinion, are formulated in such a way as to exclude direct applicability.
International Convention on Economic, Social and Cultural Rights	YES	YES	NO	NO	Theoretically YES, but it contains obligations of result which, in my opinion, are formulated in such a way as to

					exclude direct applicability.
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	NO	YES
Convention on the Rights of the Child	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.
Convention on the Rights of Persons with Disabilities	<u>YES</u>	<u>NO</u>	<u>NO</u>	<u>NO</u>	<u>NO</u>