



REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2010

CZECH REPUBLIC

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State of affairs up to 1st January 2011

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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 among 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'.

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 the 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.



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. The Constitutional Court adjudicated already on discrimination on the grounds included in the Equality Directives, with respect to sex, age and racial or ethnic origin ground.

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 various laws, namely the Law on Employment⁵ and the Law on Service by Members of the Security Services.⁶ The Labour Law does not currently contain implementation of the directives. It extends the prohibition of discrimination in labour relations to any ground not covered by the Anti-discrimination Law.

The Anti-discrimination Law No. 198/2009 Coll. came into effect from 01.09.2009, with the provisions governing the Czech equality body, Veřejný ochránce práv [Public Defender of Rights], coming into force on 01.12.2009. It provides for definitions of discrimination, including harassment, indirect discrimination and victimisation, on seven grounds: racial/ethnic origin, sex, disability, sexual orientation, age and religion or belief. The ground of 'colour' is included within the racial / ethnic origin ground. The Anti-discrimination Law also covers 'nationality' (in Czech: *národnost*) as a separate ground. In the Czech language, this term is not identical to 'citizenship' (in Czech: *občanství*). The sense of the term is closer to 'national origin' but does not mean exactly the same. According to the Czech Constitution, *národnost* could be freely chosen by the individual. This ground therefore covers both national and ethnic origin, regardless of whether by birth or simply chosen by the individual. It establishes the Public Defender of Rights (Czech ombudsman) as the Czech Republic's anti-discrimination body.

The bill was drafted to implement fully the EU secondary anti-discrimination legislation, including Directive 2004/113/EC of 13.12.2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. This means that the law has quite broad scope, covering work and employment relations, access to employment, self-employment and occupation, health care and education, social security and social protection, social advantages and services including housing for all grounds to the same extent, and the law therefore goes beyond the requirements of directives.

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.'

⁵ *Zákon č. 435/2004 Sb., o zaměstnanosti* [Law no. 435/2004 Coll., on Employment (Collection of Laws 2004, no. 143 p. 8270)].

⁶ *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)].



0.2 Overview/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.

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 (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

The EU equality legislation is implemented by Law no. 198/2009 Coll., the Anti-discrimination Law. From 01.09.2009, when this law came into force, it secured protection for victims of direct and indirect discrimination, victimisation and harassment in all fields as required by the EU directives, including employment, access to housing, health, social protection and social advantages. The Anti-discrimination Law also guarantees access to special enforcement measures against discrimination. It is widely expected that the Anti-discrimination Law will improve the situation in the Czech Republic with respect to equality policies. In the 2007 Migrant Integration Policy Index, the Czech Republic was ranked as last but one in the area of anti-discrimination.⁷ In the same survey, it received a 0 per cent score on equality policies. Victims of discrimination do not receive appropriate advice, assistance and support. The law imposed new duties on the state with respect to the mainstreaming of equality principles, public dialogue on equality, and information about the rights of members of the public.

Labour relations

- The Labour Code is supplemented by the Anti-discrimination Law, which contains definitions of discrimination applicable to labour relations.⁸ The Labour Code states that employers are obliged to secure equal treatment of any employee, and that any discrimination in labour relations is forbidden. The Labour Code does not implement the directives, the implementation is contained in the Anti-discrimination Law.

⁷ British Council, Migration Policy Group (2007) *Migrant Integration Policy Index, Czech Republic*, 2007, available at www.integrationindex.eu

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 also referred to as Labour Code 2007).



The Anti-discrimination Law is in the position of *lex specialis* to the Labour Code with respect to anti-discrimination protection implementing EU law. The Anti-discrimination Law prohibits discrimination with respect to the membership of organisations of employers and employees.⁹

Access to employment and occupation

- The provisions of the Anti-discrimination Law apply to labour relations in respect to judges,¹⁰ state attorneys,¹¹ members of parliament,¹² members of local government,¹³ volunteers,¹⁴ and prisoners, as well as 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 Law applies.
- 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 both direct and indirect discrimination, while 'disability' is only classified as a protected ground prohibiting indirect discrimination (Art. 2, paragraph 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, only a social 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 in the Law on Employment is compatible with the directives, and that is also the case with respect to access to reasonable accommodation. However, the Anti-discrimination Law also secures full implementation of the directives for the ground of disability, in respect of definition of both reasonable accommodation and indirect discrimination.

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

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

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

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

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)].



Self-employment

- The Anti-discrimination Law applies to self-employed activity. The material scope of the laws in the area of self-employment¹⁵ includes all types of self-employment and occupations carried out in a self-employed capacity.

Vocational training and education

- The Anti-discrimination Law transposes the directives with respect to vocational training, education and every aspect of access to education.¹⁶ The material scope of different laws governing this area includes all agencies involved in the vocational training and education systems, and private, state or self-governing professional entities, such as the chambers for medical and legal professions.

Directive 2000/43/EC

Social protection, including social security

The Anti-discrimination Law transposes the directives with respect to 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.

Healthcare

The Anti-discrimination Law transposes Directive 2000/43/EC with respect to health care and access to health care.¹⁷ The material scope of existing laws covers all agencies involved in the health care system—state and self-governed agencies as well as private agencies empowered by law or contracted to provide services in the fields of health care, preventative health care or public health protection.

Education

The Anti-discrimination Law transposes the directives with respect to education and access to education.¹⁸ 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).

¹⁵ 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)].

¹⁶ 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)].

¹⁷ 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)].

¹⁸ 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 01.01.2005 (Collection of Laws 2004, no. 190 p. 10 324)].



Social advantages

The Anti-discrimination Law transposes the directives with respect to social advantages. Benefits generally falling within the scope of social advantages are generally awarded in relations governed by the Civil Code (*law of contracts*).

Access to goods and services

The Anti-discrimination Law transposes the directives with respect to access to goods and services and consumer protection.¹⁹ The material scope of existing laws covers all agencies involved in the system of public services provision, as well as private providers.

Housing

The Anti-discrimination Law transposes the directives with respect to the laws on access to housing. The material scope includes laws governing both privately owned and rented housing (the Czech Republic does not have special laws covering social housing). The material scope of existing laws covers private and public owners (the largest public owners being municipalities).

Anti-discrimination body/bodies

The Anti-discrimination Law establishes the Public Defender of Rights as the national body providing assistance to the victims of discrimination.

The relevant provisions of the Anti-discrimination Law came into force 01.09.2009.

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:

Name of the court

Date of decision

Name of the parties

Reference number (or place where the case is reported).

Address of the webpage (if the decision is available electronically)

Brief summary of the key points of law and of the actual facts (no more than several sentences)

➔ 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 two Directives (also beyond employment on the grounds of Directive 2000/78/EC), 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

¹⁹ 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)].



Name of the court: Constitutional Court in Brno

Date of decision: 27 January 2009

Name of the parties: František Krosčén, constitutional complaint against the decision of the Supreme Court and High Court in Prague

Reference number: (or place where the case is reported) II.ÚS 1174/09

Address of the webpage: (if the decision is available electronically)

<http://nalus.usoud.cz/Search/Search.aspx>

Brief summary: The claimant brought a constitutional complaint against the decisions of ordinary courts, which dismissed his claim for compensation for racially motivated infringement of his personal rights. According to his assertions, the infringement consisted in the conduct of a restaurant owner, who displayed in his restaurant premises a statue of an ancient Greek goddess holding in her hand a baseball bat with the visible inscription 'Go and get the gypsies'. The Krajský soud [Regional Court] and the Vrchní soud [High Court] rejected his claim. Both found the defendant's act 'inappropriate', but refused to hold the defendant liable for infringement of personal rights. According to established case law, the scope of personal rights protection provision did not cover harassment. The Constitutional Court reversed the decision. It acknowledged that, when deciding on incidents which took place before the accession of the Czech Republic to the European Union, it is necessary for domestic courts to take into account the norms of the *acquis communautaire* when applying the law. This also applies to protection of personality rights in accordance with the Civil Code, which also covers racial harassment. In the case discussed above, the ordinary courts, when deciding on merits, concluded that there was no racial harassment, although they did not support this conclusion by any relevant argumentation. At the same time, it is evident from the definition of harassment itself, that in the given circumstances, harassment according to the definition of Directive 2000/43/EC was *prima facie* not excluded in the case. In other words, the Constitutional Court said that the ordinary courts cannot interpret the provisions of Czech laws (i.e. personal rights protection provisions) without any regard to EU law, where *prima facie* racial harassment is concerned, even when the acts concerned date from the period before Czech accession to the EU. The Constitutional Court therefore cancelled the decisions of ordinary courts, and the ordinary courts have to decide the cases anew, along the lines of Constitutional Court ruling.

Name of the court: Supreme Court in Brno

Date of decision: 9 October 2009

Name of the parties: (according to Czech rules, the names of the parties are anonymised.)

Reference number: (or place where the case is reported) 30 Cdo 4431/2007

Address of the webpage: (if the decision is available electronically)

<http://www.nsoud.cz/rozhod.php>

Brief summary: In 2005, the Regional Court in Ostrava decided in favour of a group of Roma plaintiffs who were denied services in a restaurant in Ostrava, and awarded compensation of CZK 50,000 (approx. EUR 2,000) to each of them. In response to the appeal by the defendants the High Court in Olomouc reduced the amount awarded to CZK 5,000 (approx. EUR 200) to each of the plaintiffs.

The plaintiffs submitted an appeal to the Supreme Court on points of law against the judgment of the High Court, challenging the compensation ruling. The Supreme Court cancelled the decision of the High Court in Olomouc on the points of law and returned the case to the High Court for a new decision, rejecting the grounds given by the High Court for reducing the amounts of compensation. According to the Supreme Court, it was irrelevant that the plaintiffs were conducting testing of restaurant premises. According to the Supreme Court, the personal motivation of plaintiffs was irrelevant. These facts do not in any case mitigate the extent of protection of the personal rights of the plaintiffs. In addition the intensity of the violation of the plaintiffs' personal rights is not decreased by the fact that the incident was not noisy and that the restaurant personnel did not behave especially rudely towards the plaintiffs. The dispute was subsequently settled by out of court settlement. According to the term of settlement, each of the plaintiffs received in compensation 20 000 CZK (approx. EUR 820).

Name of the court: Constitutional Court in Brno

Date of decision: 30 April 2009

Name of the parties: (according to Czech rules, the names of the parties are anonymised.)

Reference number: (or place where the case is reported): II. ÚS 1609/08

Address of the webpage: (if the decision is available electronically):

<http://nalus.usoud.cz/Search/Search.aspx>

Brief summary: The complainant was dismissed from a Czech governmental office in 2004, formally on redundancy grounds. He alleged that his dismissal from the department was, in fact, based on his age, and the job was immediately taken by younger applicants. He referred to statistics proving that 80 per cent of employees dismissed from this department on the ground of redundancy were older than 50, while 93 per cent of newly admitted employees were younger than 28. The Constitutional Court declared the statistics submitted by the applicant to be *prima facie* proof in the case. On this ground, the burden of proof should have been shifted to the defendant to prove the objective reason for the differential treatment of the applicant. The ordinary courts failed to inquire into the criteria for selecting people for redundancy. The ordinary courts also did not inquire about the character of new employment positions, and how they differed from those abolished. This would help the ordinary courts to decide whether new qualification criteria really had the sole purpose of concealing the real ground for dismissal—the age of the employees subject to discrimination.

Name of the court: Supreme Administrative Court

Date of decision: 17 January 2010

Name of the parties: Ministry of Interior ca. The Worker's Party

Reference number: (or place where the case is reported): Pst 1/2009-348

Address of the webpage: (if the decision is available electronically):

http://www.nssoud.cz/docs/Delnicka_strana_original.pdf

Brief summary: The Court dissolved The Worker's Party (political party) because of its programmatic focus in spreading racial hatred, xenophobia and instigating violence against certain groups of inhabitants, such as Roma or migrants.



In its decision, the Court relied to a great extent on the recent ECHR judgment in case *H. Batasuna and Batasuna v. Spain*, no. 25803/04 and 25817/04. The party serves as an umbrella organization for cooperating neo-nazi groups, and it is capable to aggregate considerable resources to instigate violence. It glorifies individuals committing armed racial attacks. The conduct of party leaders, who were found to approve and celebrate acts of racial violence on many occasions, was found to be a part of political programme, which in its essence is contrary to basic principles of democracy. According to the conclusion of the Court, the democracy in such situation cannot wait until such a party will be raised to the power and starts to realize its political programme.

Name of the court: Regional court in Ostrava

Date of decision: 20 October 2010

Name of the parties: Czech republic ca. David Vaculík, Jaromír Lukeš, Ivo Müller and Václav Cojocar

Reference number: (or place where the case is reported):

Address of the webpage: (if the decision is available electronically):

Brief summary: In April 2009, three members of a Roma family in Vítkov, Czech republic, were seriously wounded by a fire set up on their house in the middle of the night. The most seriously wounded, Natalie, nearly two years old child, suffered from burnings on 80% of her body. The child was rescued by the hospital personnel, but she will bear consequences of her injuries for her whole life, including pain and physical disfigurement. Later, four right wing extremists were identified by the Police as perpetrators of the crime, and charged with attempted murder with racial motivation. The court of first instance found all four men guilty. They were sentenced to 20 – 22 years of confinement respectively. The four should also pay jointly 9,5 million CZK (aprox. 413 043 EUR) to Natalie as non-material compensation. The compensation awarded to Natalie is exceptionally high. The same can be said about the punishment for the culprits. The consequences of the crime were exceptional: the family was selected for the attack only because they were Roma, the attack was carried out during the night and so planned as to give the people in house, including small children, minimal chance to escape. All four men appealed, and the case will be referred to the High court in Olomouc as the Court of Appeal.

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

There are no figures currently available on these issues. Cases brought by Roma typically include issues such as access to employment, housing and services. Usually the issues relate to racially motivated denial of services and housing, or racial motivation behind not recruiting an applicant for employment.



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 Constitution²⁰ lacks a specific provision prohibiting discrimination, a general anti-discrimination clause can be found in the Charter of Fundamental Rights and Freedoms.²¹ 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.²² 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).²³

- 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).²⁴ 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'.²⁵ All other rights guaranteed by the Charter (fundamental, political and civil rights) and the Constitution can be directly invoked.

²⁰ 1/1993Sb., *Ústava České republiky* [No. 1/1993 Coll., Constitution of the Czech Republic (Collection of Laws 1993, no. 1 p. 001)].

²¹ 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)].

²² 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.

²³ See Articles 26-35 of the Charter.

²⁴ 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.

²⁵ Czech Republic/Ústavní soud/Decision of the Constitutional Court No. Pl. ÚS 35/95 (206/1996 of the Coll.), Pl. ÚS 45/2000.



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—infringement of the right to private and family life). However, if the same person is discriminated against in his occupation as a dentist (for example, if an insurance company refuses to insure him because in their view he is at higher risk than heterosexuals of contracting HIV/AIDS and endangering the health of his patients) he may be refused when attempting to invoke the Charter directly (Article 3, in conjunction with Article 26—right to choice of profession and self-employment). This is because the right to the choice of profession and self-employment belongs to the category of social and economic rights, where the Charter requires the rights to be made concrete by legislation and invoked within the framework and limits set by that legislation.

The Constitution²⁶ 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.²⁷ 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.²⁸ 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.²⁹

²⁶ 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.’

²⁷ From 01.06.2002, a petition to the Constitutional Court to assess the conformity of international treaties with the constitutional order was introduced to the Law on the Constitutional Court by its 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)].

²⁸ *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)].

²⁹ 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.’



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.³⁰

- 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. 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 apply to private persons in the form of indirect effect.

First of all, they apply to private actors through decision-making by state bodies, such as courts or administrative bodies, which are directly bound by the Constitution. This is the necessary basis 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 this 'radiation' effect.

³⁰ 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.



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, applicable in situations where no provision of the Civil Code prohibited discrimination on any of the grounds prohibited by the Charter, and before the Anti-discrimination Law was approved.³¹

³¹ See decision of the Constitutional Court 07.12.2005. Ústavní soud/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 a national or ethnic minority, ³² 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. The disability ground is expressly covered under the definition of indirect discrimination, as a special variant of discrimination on the ground of state of health.

³² 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 as a 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.



Law No. 143/1992 Coll., on Pay, Sec. 3 para 3	Equal pay clause.	Race, colour, ethnic origin, nationality, sex, sexual orientation, age, disability, religion or belief
Law No. 34/1992 Coll., on Consumer Protection, Sec. 6	Open-ended <u>prohibition of discrimination.</u>	No ground explicitly provided for.
Law no. 361/2003 Coll., on Service by Members of the Security Services, Sec. 77 para. 2	Enumerative.	Sex, sexual orientation, language, religion and belief, political or other opinion, membership 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, ethnic origin, sex, sexual orientation, national origin (<i>národnost</i>), religion and belief, 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. ³³	Race, colour, sex, language, religion or belief, national origin, ethnic and social origin, property, birth and state of health or any other status.

³³ According to Section 20(1) of this 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.



Law No. 198/2009 Coll., Anti-discrimination Law, Sec. 2 para 3	Enumerative	Race, colour, ethnic origin, nationality, sex, sexual orientation, age, disability, religion or belief
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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.³⁴ 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.³⁵

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.

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?*
Is there a definition of disability at the 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"?

With the exception of the definition of disability in Section 5 paragraph 6 of the Anti-discrimination Law, there are no definitions in the strict sense of any of these grounds.

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'.

³⁴ Zákon č. 40/2009 Sb., trestní zákoník [Law No. 40/2009 Coll., the Criminal Code (Collection of Laws 2009, no. 11 p. 354)].

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



In practice, incidents of racial discrimination are widely identified by the media and NGOs.³⁶ 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.

Religion or belief

Detailed regulations on churches and religious assemblies exist,³⁷ but their purpose is to regulate the existence of churches and religious assemblies as legal entities *sui generis*,³⁸ 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.

A definition which sets out what comprises a religion or belief would very probably be constitutionally problematic.³⁹ 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), and as such it is perceived not as a "positive" right, but as a right of "defensive" character. It is characterised by a line demarcating the individual's free space which public authorities are not permitted to enter...'.⁴⁰

³⁶ See for example: Centre for Citizenship, Civil and Human Rights, Prague (2001) '*Shall we take discrimination seriously?*', available at: http://www.poradna-prava.cz/dokumenty/mame_brat_diskriminaci_vazne.PDF (08.01.2007).

³⁷ 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)].

³⁸ The status of churches and religious assemblies as legal entities *sui generis* is created by their registration with the state. It is up to churches and religious assemblies to decide whether to register. Those which 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.

³⁹ 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.'

⁴⁰ 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)].

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.⁴¹ 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.⁴² 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.⁴³

Disability

Section 5 paragraph 6 of the Anti discrimination Law defines disability as physical, sensory, mental, psychological or other disability, which restrains or can restrain individuals from exercising their right to equal treatment within the scope of the Anti-discrimination Law. In other words, the law says that individuals, who because of their disability are restricted in their right to equal treatment, are protected by the law. This disability must be long-term, when it is lasting, or it should last according to medical knowledge for a minimum of one year. This concept is compatible with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas.

- 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' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

⁴¹ Cases of discrimination against Jehovah's Witnesses have been identified, and media coverage of discrimination and prejudice against Muslims is increasing.

⁴² 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], available at: http://www.poradna-prava.cz/dokumenty/diskriminace_up.doc

⁴³ 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)].



Disability

Besides the definition provided by the Anti-discrimination Law, a range of terms can be found in different laws (e.g. the legislation governing construction use the phrase 'persons with limited movement and orientation ability',⁴⁴ 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.⁴⁵ 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.⁴⁶ The Law on Employment is a law governing a range of issues and relations connected to employment, it is not an anti-discrimination statute. Nevertheless, it also contains anti-discrimination provisions, and definitions of discrimination which apply within its scope. However, it cannot define grounds for purposes of anti-discrimination protection in general. These are defined by the Anti-discrimination Law and also apply to the field of employment.

The Law on Employment recognises persons who are 'medically disadvantaged' as 'disabled'. These are defined by this 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 according to medical scientific knowledge should last for more than one year, 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 by the social security authorities.

⁴⁴ Vyhláška č. 398/2009, o obecných technických požadavcích zabezpečujících bezbariérové užívání staveb [Decree No. 398/2009 Coll., on general anti-barrier accessibility requirements (Collection of Laws 2009, no. 129 p. 6621)] states, that this category includes persons with physical-, sight-, hearing- or mental disability, elderly, pregnant women, persons accompanying child in a coach or child younger than three years of age.

⁴⁵ The law does not define 'state of health', nor has jurisprudence developed any specific interpretation.

⁴⁶ 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)

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'.⁴⁷

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'.⁴⁸

These over-complicated, overlapping and sometimes also conflicting definitions will probably not improve the protection 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*.⁴⁹ 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.⁵⁰

Sexual orientation

There is no definition of sexual orientation.

Recital 17 of Directive 2000/78/EC is not expressly reflected in national anti-discrimination legislation.

- 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)?*

The age of an individual can be determined from any personal documents including information on an individual's date of birth. No definition of age or of age discrimination exists. 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,⁵¹ age is one of two most frequently occurring grounds of discrimination (the other being gender).

⁴⁷ 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)].

⁴⁸ See Sec. 39 para 1 of the Law on Pension Insurance.

⁴⁹ European Court of Human Rights, decision on admissibility, ECHR/No. 38621/97.

⁵⁰ 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*] available at: http://www.poradna-prava.cz/dokumenty/diskriminace_up.doc

⁵¹ 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*] available at: http://www.poradna-prava.cz/dokumenty/diskriminace_up.doc



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.

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. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.

Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

There are no rules, nor plans for their adoption, nor case-law dealing with situations of multiple discrimination. In order to facilitate adjudication of these cases, national or European legislation would be necessary.

e) How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?

There were no cases involving multiple discrimination adjudicated by the courts. However, the cases involving sterilisation of Roma women might well involve this element, although multiple discrimination on the grounds of race and gender was never expressly acknowledged by the courts. With respect to sterilisations carried out during the communist era, it is commonly accepted that there was considerable abuse of the system of social benefits, used to 'persuade' Roma women to undergo sterilisation. However, in late 1990 these claims were declared by the Czech courts as statute barred, and therefore no compensation was awarded to the victims. Currently, Czech NGOs are still pursuing efforts to persuade the Czech government to solve systematically the problem of compensation for these victims of forced sterilisation. With respect to cases of unlawful sterilisations taking place after the Velvet Revolutions, serious shortcomings were identified by the Czech courts with respect to the duty to obtain informed consent from these women. Consent was usually only obtained orally, or the women concerned were asked to 'sign the papers' when they were already in the operating theatre under the influence of drugs. Although a considerable number of these women were Roma, ethnic grounds for these sterilisations were never proven in proceedings before the Czech courts.

However, compensation for health damages was awarded in one of these cases: CZK 200,000 (approx. EUR 8,000).



In a second case, compensation of CZK 150,000 (approx. EUR 6,000) was awarded to a woman whose ovaries were surgically removed by doctors without her informed consent; it is also very likely that the intervention was not necessary.

The Czech government provided excuses for sterilisation carried out by doctors on women without their informed consent. At the same time the government acknowledged that forced sterilisations of Roma women were carried out during communist era.

2.1.2 Assumed and associated discrimination

- a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

Sec. 2 paragraph 5 of the Anti-discrimination Law provides for prohibition of discrimination on the ground of assumed characteristics.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

There is no law or case-law dealing with discrimination by association. The Anti-discrimination Law does not expressly provide for prohibition of discrimination on the ground of association. However, the definition of direct discrimination in Section 2 paragraph 3 of the Anti-discrimination Law also allows for broader interpretation, encompassing discrimination based on association with persons with particular characteristics.

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

- a) *How is direct discrimination defined in national law?*

Currently, a number of definitions of discrimination exist in Czech legislation. These are shown in the table below. Some definitions refer to the grounds set out by specific laws, but the lists of grounds are not the same in each of these (except that the grounds contained in the directives are expressly provided for). While 'state of health' always encompasses disability, 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. ⁵²
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 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.

⁵²The 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.



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 01.01.2012.</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.
Law No. 198/2009 Coll., Anti-discrimination Law, Sec. 2, para 3	Direct discrimination shall be deemed to be any conduct, including omission, where one person is, has been or would be treated less favourably than another in comparable situation, (...on specified grounds).	No justification.

- b) *Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn)*

Discriminatory statements or job vacancy announcements by employers are generally speaking capable of constituting direct discrimination, and as such will probably be penalised without any problems by the Czech Trade Inspectorate. Vacancy announcements, such as in the Feryn case, do not constitute a serious problem from the point of view of proof. Instead of complaining to the Czech Trade Inspectorate, individuals can also bring civil actions to court.



- c) *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.

The situation is different with the Anti-discrimination Law. Here, Section 6 also defines exceptions of lawful differential treatment with respect to direct discrimination. In Section 6 paragraph 1 the law implements exceptions on the ground of age, corresponding to Article 6 paragraph 1 of Directive 2000/78/EC. The provisions of Section 6 also allow for differential pensionable ages between women and men; however, this only applies to the state pension system. Genuine occupational requirements are provided for in the Section 6 paragraph 3. In Section 6 paragraph 4, the law provides for differential treatment based on the ethos of religious organisations. Other grounds for lawful differential treatment are the protection of pregnant women and mothers, people with disabilities, and protection of young people under 18 years of age. Section 6 paragraph 6 provides for the provision of services in areas of private and family life. The law also allows for differential treatment on the ground of gender in the area of goods and services offered to the public, provided that differential treatment in this area is legitimate and the measures proportionate and necessary.

Section 7, paragraph 1 of the Anti-discrimination Law deals with differential treatment corresponding to the material scope of the law, going beyond the scope of the directives. Thus, the law provides for lawful differential treatment which can be objectively justified by legitimate aims and where the measures are proportionate and necessary. Section 7, paragraphs 2 and 3 deal with positive measures. The law allows for positive measures to be implemented within the whole material and personal scope of the law. These measures must not introduce rules of automatic preference.

The rules on protection of disability are in the position of *lex specialis*, therefore special conditions also apply to disability in this respect.

- d) *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 clearly permit or prohibit the use of 'situation 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 not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.*

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 Constitution⁵³ guarantees every individual person this right, in contrast to public persons and bodies, which are only allowed to act where the law expressly authorises them to act. Therefore the law does not need to permit situation testing or define it—every private person is allowed to perform situation testing in situations where the law does not expressly disapprove or forbid it. However, the legislation places certain limitations on *recording* situation testing (with exceptions related to journalists and press licenses⁵⁴ 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.⁵⁵
 - b. The protection of personal privacy is to be respected; any evidence obtained through secret tape recordings made in private places such as households may therefore be declared inadmissible before the courts.
 - c. The protection of personality is to be respected; the introduction of video recordings including a person's face or image without his/her consent as admissible evidence before the courts would therefore probably be problematic. This does not apply to recordings under press license, including images of persons active in public and political life, or performing public duties.
- b) *Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc)*

In practice, situation testing is used by NGOs in order to prove discrimination in access to employment, services and housing.

⁵³ Art. 2 para 4 of the Constitution.

⁵⁴ 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)].

⁵⁵ See Sec. 182 of the Criminal Code.

As far as the author of this report is aware, all cases of situation testing in the Czech Republic in recent years were carried out with respect to discrimination on the ground of racial or ethnic origin in various fields: housing, employment, access to goods and services and education.⁵⁶

Testing is almost always carried out in situations where a Romani person attempts to get access to a service, benefit or employment, and because he/she is afraid that it will be denied to him/her on discriminatory grounds, agrees to be accompanied by other person/persons.

Their role is to test whether the other person will receive the same service, benefit or employment while he/she is turned away. This testing method effectively helped to gather evidence of discrimination in number of cases, as the cooperating testers acted in subsequent court procedures as witnesses.⁵⁷ Therefore testing was used almost exclusively for litigation purposes, although research projects were also carried out where testing (for example to investigate discriminatory patterns in job advertising) was used to obtain statistics on possibly discriminatory behaviour of employers.⁵⁸

- c) *Is there any reluctance to use situation 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 is no such reluctance. National law has not been 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 situation testing.

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

The right of a plaintiff to use 'situation 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 situation 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 situation testing.

⁵⁶ Testing is carried out as a comparison of the situation of two testers who apply for 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 the discrimination established (e.g. as in this case those who were refused services or employment on the ground of their racial or ethnic origin) have standing as plaintiffs before the courts.

⁵⁷ For more on testing cases, see for example http://www.poradna-prava.cz/projekt_diskriminace.htm (13.6.2009)

⁵⁸ For more see the publication *Situační testing. Zpráva z průzkumu* [Situation testing. Research report]: http://www.poradna-prava.cz/folder05/situacni_testing_vysledky.pdf accessed 15.2.2011



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...'.⁵⁹

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 situation 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.'⁶⁰

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

a) *How is indirect discrimination defined in national law?*

In current legislation, definitions of indirect discrimination are provided in the Law on Employment, the Law on Members of the Security Services and most recently in the Anti-discrimination Law. These definitions conform to the definitions given in the directives. The Labour Code 2007 does not contain any definitions of discrimination, and refers instead to the definitions in the Anti-discrimination Law.

	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. 62/2006 Coll., Labour Code (Labour code 2007)	No definition of indirect discrimination	Not set out in legislation and none established by case-law.

⁵⁹ Decision of the Municipal Court of Prague, Městský soud v Praze/no. 34C 66/2001–42 (07.03. 2002)

⁶⁰ Decision of the High Court in Prague, Vrchní soud v Praze/č.j. 1 Co 321/2003–196 (17.08.2003)



Law No. 435/2004 Coll., on Employment, Sec. 4, para. 6	Indirect discrimination shall be deemed to be any 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 would also be deemed indirect discrimination on the ground of health.	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, 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. 34/2002 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, Sec. 77, para. 4	Indirect discrimination within the scope of the application of this law shall be deemed to be any apparently non-discriminatory act which disadvantages a member (of the security services) in comparison to another member on grounds provided for in para. 2 (these grounds are: age, race, colour, sex, sexual orientation, religion and belief, political orientation, national origin, ethnic or social origin, property, birth, marital and family status or family duties and membership of trade unions and other assemblies). For more about corresponding grounds, see Table 2.1 above.	Not permitted.
Law No. 21/1999 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. 18/2002 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.
Law No. 198/2009 Coll., Anti-discrimination Law, Sec. 3, para 1	Indirect discrimination shall be deemed to be such conduct or omission, when on the ground of any apparently neutral provision, criterion or practice one person is disadvantaged in comparison with other, on the grounds given in Sec. 2, para 3.	It shall not be deemed indirect discrimination when this provision, criterion or practice is objectively justified by the legitimate aim and means of achieving that aim are appropriate and necessary.
Law No. 198/2009 Coll., Anti-discrimination Law, Sec. 3, para 2	Indirect discrimination on the ground of disability shall be deemed to be also refusal or omission to take proportionate measures enabling a person with disability access to certain occupations, execution of work or to promotion in employment, to utilise counselling or to participate in other sorts of vocational training, or to use public services.	It shall not be deemed indirect discrimination when such measures could represent a disproportionate burden.

- 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?*

The test specified by the legislation is compatible with the directives.



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

The 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 specific cases which kind of age differences indicate 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 potential 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,⁶¹ 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 widespread? 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?*

The use of such evidence is far from widespread. 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 has not been 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.

⁶¹ 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)].



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

This case concerns the indirect discrimination of Roma children in special schools for mentally disabled persons. It originated in 1996 in Ostrava, the 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 of Human Rights (ECHR) in this case alleged that the Czech educational system, due to general conditions within the school system, including ethnically biased intelligence tests, results in discrimination amounting to the racial segregation of Roma in education. The petitions were based on a comparison of statistical data from eight special schools and 69 primary schools in the city of Ostrava (at that time, Ostrava had 70 primary schools and eight special schools) which indicated 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 more 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,⁶² 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.⁶³ The renowned *D.H. and Others v. the Czech Republic* judgment delivered by the Grand Chamber of the European Court of Human Rights⁶⁴ 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 opportunity which was unlikely to be repeated in future.⁶⁵ On the basis of persuasive evidence consisting of statistical data, the European Court of Human Rights 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.⁶⁶

⁶² Resolution No. 279 of 07.04.1999, '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').

⁶³ 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.

⁶⁴ *D.H. and Others v. Czech Republic*, ECHR/[GC] No. 57325/00 (13.11.2007).

⁶⁵ See, for example, the commentary to the 2006 ECHR Senate judgment: B.Čechová (2007), 'ESLP: umístění dětí romského původu do zvláštních škol', in M.Bobek, P.Boučková, Z. Kühn (eds), *Rovnost a diskriminace*, Prague: C.H. Beck [B. Čechová (2007), 'ECHR: Placement of Roma children in special schools', in: M.Bobek, P. Boučková, Z. Kühn (eds), *Equality and Discrimination*, Prague: C.H. Beck].

⁶⁶ ECHR/ No. 57325/00, § 176 (13.11.2007), *D.H. and Others v. the Czech Republic*.

- d) *Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out 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 Law⁶⁷ 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. According to Section 12 paragraph 2 of the Law on Employment,⁶⁸ 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.⁶⁹ 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.⁷⁰

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.⁷¹ There are no laws and regulations providing for positive measures, and therefore there is also no data collection for this purpose.

⁶⁷ 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)].

⁶⁸ Zákon č. 435/2004 Sb., o zaměstnanosti [Law No. 435/2004 Coll., on Employment (Collection of Laws 2004, no. 143 p. 8270)].

⁶⁹ The Law on Employment contains references to substantial occupational requirements and conditions required by legislation for certain occupations.

⁷⁰ 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)].

⁷¹ 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> (20.01.2007). By contrast, other estimates of the Roma population vary between 150,000 and 300,000 persons. See, for example, K. Kalibová (1999), 'Romové z pohledu statistiky demografie' in: *Romové v České republice*, Praha: Socioklub, p. 107 ['Roma from the point of view of demographic statistics' in *Roma in the Czech Republic*, Prague: Socioklub].



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.*

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. The Antidiscrimination Law contains both definitions of harassment and sexual harassment. 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 table below.

Law No. 262/2006 Coll., Labour Code	No definition of harassment
Law No. 435/2004 Coll., on Employment (Sec. 4, para. 7)	Harassment shall be deemed to be any conduct objectively perceived by another person as unwanted, inappropriate or offensive, with the purpose or effect of violating the dignity of a person or of creating a hostile, degrading or intimidating environment.
Law No. 361/2003 on Service by Members of the Security Services (Sec. 77, para. 5)	Harassment shall be deemed to be any conduct objectively perceived by a member (of the security services) 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)	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 the human dignity of a member of the armed forces, 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.
Anti-discrimination Law, Sec. 4 para 1	Harassment should be deemed to be unwanted conduct related to the grounds given in Sec. 2 para 3, where its purpose or result is lowering the dignity of a person and creating an intimidating, hostile, degrading or offensive environment, or which can be objectively perceived as a condition influencing the performance of rights and duties in legal 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.⁷² 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 352, 355 and 356 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 403 and 404 of the Criminal Code. Apartheid and racial and other segregation and discrimination against a group are crimes according to Section 402 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 and health (Sections 140-167 of the Criminal Code). They include crimes of murder, bodily harm, and grievous bodily harm.

In areas not covered by the Anti-discrimination Law and other laws containing a definition of harassment, redress can only be provided on the basis of provisions concerning protection of the personal rights of individuals contained in the Civil Code.⁷³

b) Is harassment prohibited as a form of discrimination?

Yes, harassment is prohibited as a form of discrimination by the Anti-discrimination Law.

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 any 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.

⁷² Law No. 40/2009 Coll., the Criminal Code.

⁷³ See Section 11 of Law No. 64/1961 Coll., Civil Code.



This restriction under the Constitution⁷⁴ and the Charter⁷⁵ is exercised very strictly; additional duties cannot therefore be imposed over and above the basic duties binding natural and legal persons. For this reason, it might be difficult to employ a 'code of practice' approach in the Czech Republic.

2.5 Instructions to discriminate (Article 2(4))

*Does national law (including case law) prohibit instructions to discriminate?
If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?*

According to Section 16 paragraph 2 of the Labour Code 2007, instruction to discriminate is prohibited by 'special legislation'. This reference to 'special legislation' means the Anti-discrimination Law. According to Section 2 paragraph 3 of the Law on Service by Members of the Armed Forces, any instruction to discriminate is unlawful. Section 77 paragraph 2 of the Law on Service by Members of the Security Services also prohibits conduct including instigation, instruction or incitement to discriminate. According to Section 4, paragraphs 4 and 5 of the 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'. For example, 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?
Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

The Anti-discrimination Law provides for a special definition of disability, inspired by the ECJ interpretation of disability in its judgement on the *C-13/05, Chacón Navas* case.⁷⁶ It declares the failure to provide a reasonable accommodation to a person with a disability to be a form of indirect discrimination. The law covers access to services as well as all relevant aspects of employment.

⁷⁴ 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.'

⁷⁵ 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>

⁷⁶ See also 2.1.1 Disability.



The law 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:

- 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 alternative provision or arrangements to accommodate the needs of the disabled person.

There are two definitions of indirect discrimination on the ground of disability in the Czech legislation. These definitions determine eligibility for reasonable accommodation in not identical fashion. The first one can be found in the Law on Employment and applies to right to employment, recruitment, training, retraining and other areas covered by the law on employment. The second one is in the Antidiscrimination Law and applies to all areas covered by the Antidiscrimination law (and that includes also the access to employment). Additionally, the Law on Employment has a special definition of the "person with disability" as a person, whose disability was determined by social security authorities. The differences in the definitions of indirect discrimination and disability (and in the justification test as well) are shown in the table below:

	Definition	Justification test
Law No. 435/2004 Coll., on Employment, Sec. 67 para 2	<p>Natural persons shall be deemed to be persons with disability, when they are</p> <p>a) declared by the social security authority as disabled in the third grade (persons with serious disability"),</p> <p>b) declared by the social security authority as disabled in the first or second grade,</p> <p>c) declared by the decision of the Labour office, issued by the Labour office regional branch, as health-disadvantaged (persons health-disadvantaged).</p>	Not applicable



Law No. 435/2004 Coll., on Employment, Sec. 4, para. 6	The refusal or failure to take measures necessary to allow a natural person with a disability access to employment would also be deemed indirect discrimination on the ground of health.	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, 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. 198/2009 Coll., Anti-discrimination Law, Sec. 5, para 6	Physical, sensory, mental, psychological or other disability, which restrains or can restrain individuals from exercising their right to equal treatment within the scope of the Anti-discrimination Law, where this disability must be long-term, when it is lasting, or it should last according to medical knowledge for a minimum of one year.	Not applicable.
Law No. 198/2009 Coll., Anti-discrimination Law, Sec. 3, para 2	Indirect discrimination on the ground of disability shall be deemed to be also refusal or omission to take proportionate measures enabling a person with disability access to certain occupations, execution of work or to promotion in employment, to utilise counselling or to participate in other sorts of vocational training, or to use public services.	It shall not be deemed indirect discrimination when such measures could represent a disproportionate burden.

It is really difficult to say, which one of them will prevail in concrete situation. There are two possible ways of solving this problem of interpretation. It can be interpreted in the first place according to the rule *lex posterior derogat legi priori*: for that eventuality, the definition of Antidiscrimination law should prevail, because Antidiscrimination law is the "*lex posterior*". On the contrary, it can be also argued that *lex posterior derogat legi generali*: Since Antidiscrimination law is a general law, the definition of Law on Employment should prevail in matters of employment, where the Law on Employment has its own special provision. This short discussion demonstrates the great uncertainty connected with determination who is eligible for reasonable accommodation and who is not.

There are two different sets of conditions, which both can in theory apply to the area of access to employment. The duplicities of provisions in the Czech legal order are confusing enough and do not contribute to effective protection of persons with disability against discrimination. With respect to access to employment, it is also not clear enough, whether and when the person can be refused reasonable accommodation only because he/she was not acknowledged as person with disability by the social security authority.

The situation is more certain with respect to Labour Law. The Labour Law (which covers labour relations) does not have any definition of indirect discrimination on the ground of disability, and therefore it is certain that determination of eligibility for reasonable accommodation in labour relations is governed by the provisions on indirect discrimination on the ground of disability in Antidiscrimination law.

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). 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.⁷⁷ These obligations of employers exist independently alongside the anti-discrimination protection of the Anti-discrimination Law. 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 were to 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).

- b) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

The concept of reasonable accommodation applies in the area of employment, labour relations including counselling, vocational training, and services provided to the public.

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

⁷⁷ Sec. 103 para 5 of the Labour Code 2007.



The failure to meet the duty of reasonable accommodation is deemed to be indirect discrimination on the ground of disability according to Section 3 paragraph 2 of the Anti-discrimination Law.

d) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?*

No.

e) *Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?*

Yes. The shift of the burden of proof when claiming the right to reasonable accommodation is covered by the relevant provision of Section 133a of the Civil Procedure Code.

f) *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 the Law on Spatial Planning and Construction (Law No. 183/2006 Coll.) and the Decree on the General Technical Requirements securing General Accessibility of the Buildings (Decree No. 398/2009 Coll.). The accessibility of buildings without barriers represents one of the general building requirements according to the Sec. 2 para 2 e) of the Law on Spatial Planning and Construction. It includes technical requirements securing the use of buildings by elderly, pregnant women, people accompanying children under three years of age, or persons with physical, sight or hearing disability, and people with mental disability. „Persons with limited movement and orientation ability“⁷⁸ should have access to buildings used by the public, including buildings providing services, schools, block of flats or buildings used for work.

The Decree No. 398/2009 is applicable to the conditions of issuing official planning and building permissions, from the stage of territorial planning to building permit, approval of finished building and its inspections. Besides that, the Decree imposes the duty to secure accessibility of the public areas and communications. The rules imposed by the Decree should apply also to the conditions of administrative permissions for changes of already finished construction work, where this is not excluded by the reasons of technically territorial or construction character.

⁷⁸ Decree no. č. 398/2009Sb., on general non-barrier accessibility requirements.



The Decree also imposes duty to provide accessibility in respect of infrastructural measures and to reserve places for disabled people with respect to traffic constructions (such as special traffic signalization, special constructions for safe orientation of sight- disabled people, adjustments for safe passage of physically disabled persons, reserved parking places etc.) and in other situations.

As a result, the State Construction Administration [stavební úřad] controls in all stages of construction procedure, that accessibility requirements are met. Where this is not the case, the reparation measures are applied. The construction permit cannot be issued and the building cannot be approved for the use, when these standards are not met.⁷⁹ The State Construction Administration has also a duty to forbid use of such buildings.⁸⁰

In practice, people with disabilities encounter considerable difficulties when accessing buildings (see *Zehnalová and Zehnal v. the Czech Republic*).⁸¹ 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 of Human Rights held the complaint inadmissible for reasons which appear rather technical in character.

According to the ECHR, 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 ECHR concluded that the complainants were not able to provide concrete evidence of the asserted impediments or provide persuasive proofs of the violation of their right to private life.

⁷⁹ For example Sec. 115 para 1 and Sec. 122 para 3 of Law No. 183/2006 Coll., the Law on Spatial Planning and Construction.

⁸⁰ See Sec. 120 para. 2 of Law No. 183/2006 Coll., the Law on Spatial Planning and Construction.

⁸¹ European Court of Human Rights, Decision on admissibility. ECHR/No. 38621/97 (14.05.2002)



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 and doors, health protection requirements (e.g. lighting and 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.

- g) Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?*

The national law does not contain a general duty to provide accessibility for people with disabilities by anticipation.

- h) 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 workers with disabilities?*

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 workplace for a disabled person.⁸²

Such agreements may also be concluded between employment office and individual disabled persons undertaking self-employment. Employment offices can provide subsidies for establishing protected workplaces for such persons.

⁸² See Sec. 75 of the Law on Employment.



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), and receive a subsidy from the employment office for this purpose.⁸³ At least 60 per cent of the employees in such workshops must be people with disabilities.

b) *Would such activities be considered to constitute employment under national law-including for the purposes of application of the anti-discrimination 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.

⁸³ 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 01.01.2008,⁸⁴ 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 a foreigner's residence in the Czech Republic.

According to Section 1 paragraph 2 of the Anti-discrimination Law, the law does not apply to legal regulations in respect of the conditions of entry and stay of third-country nationals and stateless persons on the territory of the Czech Republic.

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. However, according to Section 1 paragraph 3 of the Anti-discrimination Law, only natural persons have a right to equal treatment and protection against discrimination.

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?

⁸⁴ Sec. 20 of the Amendment to the School Law No. 343/2007 Coll.



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.⁸⁵ 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.

The rules on the liability of natural and legal persons according to Section 420 paragraph 2 of the Civil Code also apply *per analogiam* to liability for non-material damages.⁸⁶ 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,⁸⁷ 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.

⁸⁵ Zákon č. 40/1964 Sb., občanský zákoník [Law no. 40/1964 Coll., Civil Code, Sec. 420 (Collection of Laws 1964, no. 19 p. 0201)].

⁸⁶ Jehlička O., Švestka J., Škárová M. a kolektiv (2003) *Občanský zákoník. Komentář*. Prague: C. H. Beck, p. 95 [O. Jehlička, J. Švestka, M. Škárová and others (2003) *Civil Code. Commentary*. 8th edition, Prague: C. H. Beck]

⁸⁷ Zákon č. 513/1991 Sb., obchodní zákoník [Law no. 513/1991 Coll., Commercial Law (Collection of Laws 1991, no. 98 p. 2474)]. Sections 15 and 16.



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 not even 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.⁸⁸ The responsibility of the employer is presumed: the employer can only exculpate himself/herself when he/she proves that the employee who has suffered damage is jointly liable for the damage. The employer has a right of recourse (to recover against a party secondarily liable) against the employee who was responsible for the damage for which the employer is held liable. This damage does not include non-pecuniary damage.
- for damages towards third persons, the employer is responsible for the acts of his/her employee under civil law arising *ex contractu* (providing services, renting premises, etc.).

Criminal liability

Liability for administrative offences and crimes is governed by different regulations from civil liability described above. Responsibility for acting upon instruction is expressly defined in the Misdemeanours Law.⁸⁹ 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 liable for punishment for misdemeanours committed in their capacity in relation to legal entities.

⁸⁸ See Sec. 265 paras 1 and 2 of Law no. 262/2006 Coll. (Labour Code 2007).

⁸⁹ Sec. 6 of Law no. 200/1990 Coll., on Misdemeanours.



3.2 Material Scope

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 public and private employment and occupation, including contract work, self-employment, military service and holding statutory office.

General anti-discrimination provisions to implement the Equality Directives are provided in the Anti-discrimination Law, including definitions of discrimination applying to both public and private sectors.

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

National legislation covers access to self-employment or to professions, and selection criteria, recruitment conditions and promotion in respect of these two areas through the Anti-discrimination Law and the Law on Employment.

Self-employed occupations in general are governed by the Law on Self-employment,⁹⁰ where the Anti-discrimination Law provisions also apply.

The same can be said with respect to certain defined types of self-employment and professions performed in a self-employed capacity, for example attorneys, medical doctors, interpreters and many others,⁹¹ which are governed by specific laws.⁹²

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

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

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



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). Where there are no specific anti-discrimination provisions in these laws, the Anti-discrimination Law applies.

The self-governing professional 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))

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

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.) 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). In addition, the Anti-discrimination Law prohibits discrimination in remuneration for work, which also applies to benefits provided in the occupational pensions systems. The secondary EU legislation applying to differential treatment between women and men in occupational pensions is implemented by Sections 8 and 9 of the Anti-discrimination Law. In the Czech Republic, a system for occupational pensions does not exist.



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 courses?

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, paragraph 1 of the Labour Code 2007) covers all types of vocational training and practical work experience provided in the course of employment. Definitions of discrimination are contained in the Anti-discrimination Law.

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). Where special definitions of discrimination are absent, the provisions of the Anti-discrimination Law also apply.

As regards educational activities covered by the School Law and the Law on Higher Education,⁹³ the Anti-discrimination Law applies.

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 Anti-discrimination Law apply.

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



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))

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.

Workers' and employers' organisations

The establishment and existence of workers' and employers' organisations is governed by the Law on Associations.⁹⁴ Membership of and involvement in these organisations are governed by their own statutes. The Anti-discrimination Law applies to this area.

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.⁹⁵

Membership of organisations whose members carry out particular professions

The establishment and existence of such organisations are governed by special laws on professional chambers.⁹⁶

Membership of these chambers is often obligatory, although some have voluntary membership (e.g. the Czech Chamber of Commerce and the Czech Chamber of Agriculture).⁹⁷

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

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

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

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

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



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

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?

Social protection, social security and healthcare are governed by a number of special laws that cover areas such as social benefits,⁹⁸ social services,⁹⁹ pension insurance,¹⁰⁰ health insurance¹⁰¹ and healthcare.¹⁰² In all these areas, the Anti-discrimination Law applies.

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 to people because of their employment or residence status, for example 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. The Anti-discrimination Law provides for the definition of social advantages. They include any reduction or waiver of fees or monetary or non-monetary duty provided, directly or indirectly and independently of state security benefits, to groups of natural persons characterised by lower income or higher living costs than others.

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 and people with disabilities. If these cases and/or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

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

⁹⁹ *Zákon č. 106/2006 Sb., o sociálních službách* [Law No. 106/2006 Coll., on Social Services (Collection of Laws 2006, no. 37 p. 1257)].

¹⁰⁰ *Zákon č. 155/1995 Sb., o důchodovém pojištění* [Law No. 155/1995 Coll., on Pension Insurance (Collection of Laws 1995, no. 41 p. 1986)].

¹⁰¹ 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)].

¹⁰² 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)].



Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated “special” education are favoured and supported.

The School Law contains a general anti-discrimination clause,¹⁰³ forbidding discrimination against EU and Czech citizens. Anti-discrimination provisions of the Anti-discrimination Law therefore apply to its material scope.

In its second report on the Czech Republic,¹⁰⁴ 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 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.¹⁰⁵ 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 2004,¹⁰⁶ 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.¹⁰⁷

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

¹⁰⁴ European Commission against Racism and Intolerance, *Second report on the Czech Republic*, adopted 18.06.1999, Strasbourg, 1.03.2000. http://hudoc.ecri.coe.int/XML/ECRI/ENGLISH/Cycle_02/02_CbC_eng/02-cbc-czechrepublic-eng.pdf

¹⁰⁵ European Commission against Racism and Intolerance, *Second Report on the Czech Republic*, adopted 18.06.1999, Strasbourg, 21.03.2000, Sec. L. 33.

¹⁰⁶ European Commission against Racism and Intolerance, *Third Report on the Czech Republic*, adopted on 05.12.2003, Strasbourg, 08.06.2004.

¹⁰⁷ European Commission against Racism and Intolerance, *Third Report on the Czech Republic*, adopted on 05.12.2003, Strasbourg, 08.06.2004, Sections 106-108.

Because of the problem of segregation of Roma children in so-called 'special schools', the Czech Republic has been criticised repeatedly by international institutions, most recently by the Committee on the Elimination of Racial Discrimination (CERD)¹⁰⁸. CERD expressed its concern that the vulnerable situation of Roma in education seems to result from discriminatory practices and lack of sensitivity on the part of the authorities to the cultural identity and specific difficulties faced by the Roma. The Committee recommended that the Czech republic increase its efforts to assess the situation of the Roma in the field of education. According to the Committee, it should develop effective programmes specifically aimed at putting an end to the segregation of Roma and particularly recommended that the State party review the methodological tools used to determine the cases in which children are to be enrolled in special schools so as to avoid indirect discrimination against Roma children on the basis of their cultural identity.

Although also the ECHR contended that the special schools system in the Czech Republic was indirectly discriminatory, and the measures for the advancement of certain groups are legitimate as long as they do not lead to the segregation of communities¹⁰⁹, the governmental efforts and programmes to remedy the discriminatory impact of the school system on education of Roma children were practically terminated.

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 2000 provided the opportunity for graduates of special schools to apply for admission to secondary schools.¹¹⁰ 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 School Law, which was adopted in 2004 and came into effect from 01.01.2005, 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 legislation, except those already in effect (for example preparatory classes or class teaching assistants). See also above, Sections 2.3.1, 3.2.4.

Separate education of children with disabilities is a rather traditional element of the Czech educational system. It has its roots in pre-war arrangements in the educational system, which were taken over by the socialist concept of state monopoly in institutional and educational care.

¹⁰⁸ Concluding Observations of the Committee on the Elimination of Racial Discrimination, CERD/C/CZE/CO/7, 11.4.2007, www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CZE.CO.7.doc

¹⁰⁹ D.H. and Others v. Czech Republic, ECHR/[GC] No. 57325/00 (13.11.2007).

¹¹⁰ *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)].



The integration of disabled children in mainstream classes is not fully excluded today, although it takes place rather on an individual, case-to case basis, and depends on the willingness of individual schools to accommodate disabled children in mainstream education, and the willingness of parents to secure this form of education for their children. Occasionally, such placements can be opposed by doctors, and in such cases a doctor's opinion can often prevail over the wishes of the parents.

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

- a) *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. In all other respects, the Anti-discrimination Law applies.

- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

The law does not forbid private entities from distinguishing on the basis of age and disability when offering financial products to the public. Obviously, financial institutions offer different conditions for their products on the ground of age, and also on the ground of gender, based on actuarial data. They also exclude disabled people from certain types of financial products, typically life insurance, on an ongoing basis. Usually the financial institutions maintain that the differential treatment is based on statistical data. In fact, as far as the author is aware, there has never been any attempt to verify what kind of data they use and how relevant they are for consideration of risk.

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 against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.



Housing is governed by a number of specific laws regulating rent,¹¹¹ ownership¹¹² and cooperative housing.¹¹³ The Anti-discrimination Law applies to the material scope of 'housing' defined within the wider scope of services provided and offered to the public.

The 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, nor are there any satisfactory guarantees that housing built expressly as social housing will not subsequently be sold or used for other purposes.

There is no law requiring or promoting the availability of houses accessible to people with disabilities and older people. However, the building of such houses can be supported from public funds dedicated for this purpose, based on individual projects, usually maintained by municipalities.

¹¹¹ 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)].

¹¹² 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)].

¹¹³ 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)].



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 6 paragraph 3 of the Anti-discrimination Law, as well as in Section 16, paragraph 3 of the Labour Code (Labour Code 2007) and Section 4, paragraph 3 of the Law on Employment. The formulations in the Anti-discrimination Law and in the Labour Code are not identical, but are very similar. Differential treatment shall not constitute discrimination where, by reason of the nature of the 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 also 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 exclusions mentioned above represent a rank of special lawful exceptions which exist alongside the exception for genuine and determining occupational requirements, and which can be only challenged before the courts on grounds 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?*

The 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? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground.)*

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. 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.¹¹⁴ The Constitutional Court stated that adjudication of national courts as to whether the service relations of clerics should continue or not would represent an unlawful interference with the internal autonomy of the church or religious community, in its independent and genuine capacity.¹¹⁵ This conclusion applies without exception to the establishment and dismissal of clerics from service in accordance with the internal regulations of churches and religious assemblies.

The situation is different with respect to any conduct by a church or religious assembly, which is not in accordance with the national regulations in the area of labour law and social security, for example not paying properly due remuneration etc.

¹¹⁴ 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 no other religious assembly. The same would apply, for example, to the Rabbinate of the Prague Jewish Community.

¹¹⁵ see Constitutional Court decision Ústavní soud/no. I. ÚS 211/96 (26.03.1997) (N 34/7 SbNU 227), III. ÚS 136/2000 (31.08.2000), U 30/19, SbNU 283, No. I. ÚS 611/06, (17.01.2007), No. I. ÚS 1244/07, (18.10.2007).

A church or religious assembly can maintain its internal autonomy, but is not allowed to act contrary to valid legislation. National courts have the duty to provide protection against violation of the rights of every individual. In its decision No. I. ÚS 211/96 the Constitutional Court stated that, with respect to the right to remuneration or other material claims, the national courts have competence even with respect to the service relations of clerics, and that such exercise of competence does not represent interference with religious autonomy. In such matters, according to the view of the Constitutional Court, courts have to apply relevant legislation, for example the Civil or Labour Codes and adjudicate on any claims. The Supreme Court accords with the view of the Constitutional Court (see, for example, decisions No. 20 Cdo 1487/2003, No. 21 Cdo 702/2007, No. 28 Cdo 1271/2006).

- c) *Are there cases where religious institutions are permitted to 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 (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? 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.¹¹⁶ Consequently, there is only a minimal number of state schools, particularly in Bohemian regions, where religion is taught. Churches and religious assemblies can freely empower their ministers to gain access to prisons, hospitals and other institutions run by the state. In the Czech Republic, the ministers of churches and religious assemblies are still paid by the state. This is the result of the still unresolved issue of restitution of property to churches and religious assemblies after the Velvet Revolution. There is also no agreement between the Czech Republic and the Holy See.

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)?*

¹¹⁶ 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.

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 officers¹¹⁷ and soldiers.¹¹⁸)

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

The laws governing service by members of the armed forces and security services 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 of health subsequent to disability or illness are also listed (if the person has completely recovered from illness or disability)¹¹⁹. 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. 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.

¹¹⁷ Sec. 77 para 2 of Law no. 361/2003 Coll., on Service by Members of the Security Services.

¹¹⁸ 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)].

¹¹⁹ 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)].



4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality 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 (i.e. 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 Anti-discrimination Law also applies 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 of discrimination on the ground 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. 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 included in the 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 employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) 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) *Would it constitute unlawful discrimination in national law if an employer provides 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 specific cases, the conditions concerning the provision of benefits may be evaluated by a court if a private actor files a case (an employee who feels wronged/discriminated against because of the 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. 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) *Would it constitute unlawful discrimination in national law if an employer provides 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 Law, as it could constitute direct discrimination on the ground of sexual orientation. 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)

- a) *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.¹²⁰ 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.¹²¹

- b) *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 ?*

The exceptions related to the ground of age, with respect to access to employment and occupation are identified in Section 6, paragraphs 1 and 2 of the Anti-discrimination Law. This section allows for two exceptions linked to age only. The first allows for differential treatment on the ground of age, where a condition is imposed of minimum age, period of vocational training or previous employment, provided that it is necessary for proper performance or the access to specific rights and duties to perform this employment or occupation.

¹²⁰ See Part 5, Sections 101-108 of Law no. 262/2006 Coll., Labour Code.

¹²¹ See Sec. 103 para 1 of Law no. 262/2006 Coll., Labour Code.



The second exception allows for differential treatment where the requirement for the vocational training necessary for proper performance of occupational duties is disproportionate in comparison to the date at which the person applying for the job reaches the pensionable age. An additional exception is related to age and sex, and allows for differential treatment related to the difference of pensionable age for men and women. This exception does not apply to systems of social security for workers.

Besides identifying specific exceptions on the ground of age, national law permits differences of treatment based on age in many other respects. These include in the first place age requirements for certain professions, set up by specific laws. 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...'.¹²² The test of the Czech Constitutional Court corresponds more closely to the position taken by the European Court of Justice (ECJ) 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 Anti-discrimination Law provides for a justification test which is along the lines of Article 6 of Directive 2000/78.

b) *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.
- Minimum and 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, there are two possible ways of challenging these conditions or requirements in the ordinary courts, as follows.

Firstly, there is the possibility of challenging their conformity with the Constitution.

¹²² See the decision of the Constitutional Court Ústavní soud/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.

Secondly, there is the possibility of invoking the direct or indirect effect of EU legislation and having the ordinary law set aside because of the primacy of EU law. This would be the case when the legislation or its interpretation contradicts EU legislation.

In more than one of its later judgements, the Constitutional Court asserted 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.'¹²³ 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'.¹²⁴ In the Czech constitutional system there is relatively restricted, but gradually increasing space for the judiciary to consider whether or not the limits set by national legislation meet the constitutional justification criteria, or standards required by EU legislation.¹²⁵

- c) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, 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.

¹²³ See the decision of the Constitutional Court, Ústavní soud/No. Pl. ÚS 33/96.

¹²⁴ Ústavní soud/No. Pl. ÚS 33/96. 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 30.09.1994. 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.

¹²⁵ Decisions of the Constitutional Court Ústavní soud/No. II.ÚS 1174/09, Ústavní soud/No. Pl. ÚS 53/04, 341/2007 Coll., Ústavní soud/No. Pl. ÚS 42/04, 405/2006 Coll.



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.¹²⁶ 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?

I. 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. 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.

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. The general minimum age for self-employment is 18 years, 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.

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). A judge's function terminates *ex lege* at the end of the year when he/she reaches this age.

¹²⁶ Law No. 54/1956 Coll., on Sickness Insurance for Employees.



Similarly, a state attorney's contract is terminated on 31 December of the year in which he/she reaches the age of 70 years.

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

II. Indirectly fixed conditions of age:

Conditions of pay dependent on years of experience:

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

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

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

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

- 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 longer, or can a person 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. The pensionable age for men is 60 years;¹²⁷ 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 single parent. In October 2007, the Constitutional Court held that this distinction between lone parents is legitimate and not discriminatory.¹²⁸ After 31.12.2012, 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 4.7.3.1).

- b) *Is there a normal age when people 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 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 or life-insurance contributions, which are the subject of contracts between individual employees and private pension funds.

- c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and 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?*

¹²⁷ Law no. 155/1995 Coll., on Pension Insurance.

¹²⁸ Decision of the Constitutional Court (Ústavní soud) no. Pl. ÚS 53/04, 341/2007 Coll..



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 any other age (with the exceptions mentioned above).

4.7.5 Redundancy

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

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.

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

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.¹²⁹ 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 Employment Equality Directive?

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

¹²⁹ See Sec. 67 of Law no. 262/2006 Coll., the Labour Code.



4.9 Any other exceptions

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

All existing exceptions have already been discussed.



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

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

Section 7 paragraphs 2 and 3 of the Czech Anti-discrimination Law provide for positive measures (i.e. positive action). The law allows for positive measures to be implemented within the whole material and personal scope of the law, including all grounds covered by the EU directives. The law forbids positive measures introducing rules of automatic preference.

Further regulations are provided 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 for 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 five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities 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:¹³⁰

- employing a certain percentage of disabled employees (4 per cent of employees);

¹³⁰ See Sec. 81 para 2 of the Law on Employment.



- 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 use these payments 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.¹³¹ The allowances provided constitute 66 per cent of the average wage in the Czech Republic in the preceding year for a person classified as fully disabled. For a person classified as partially disabled or disadvantaged on health grounds, the allowances constitute a 0.33 multiple of the average wage.

The quota system was criticised for its lack of effectiveness by organisations for 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'¹³² 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 10 million (EUR 322,580).¹³³

Other positive action for people with disabilities

People recognised by the state social security service as disabled have the right to employment rehabilitation,¹³⁴ 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.)

¹³¹ See Sec. 78 of the Law on Employment.

¹³² At the time the research described here was conducted, Law no. 1/1991 Coll., on Employment, was still in force. According to Sec. 24 of this law, every employer with more than 25 employees has a duty to employ 4 per cent of persons with altered working ability. If this quota is not met, the employer has to pay 150 per cent of the average wage to the state budget.

¹³³ 'Úřady nestojí o postižené a platí pokuty' ['State administration does not want disabled workers and pays penalties'], *Hospodářské noviny* newspaper, (3–5.09.2004):.

¹³⁴ See Sec. 69 of the Law on Employment.



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.

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.¹³⁵

In respect of Roma, no measures which can be labelled as 'positive action' in the strict sense exist. Nevertheless, the police have established posts for contact officers for minorities and for assistants to the police for work with socially excluded communities.

The tasks of the contact officers for minorities include preventive activities in respect of members of the Roma community. The tasks of the assistants include cooperation with the contact officers, and contact and communication with local communities, especially in localities with a high risk of latent criminality.

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 clearly, 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 to work with children from socio-culturally disadvantaged backgrounds. In state schools, these assistants are to be paid from the publicly funded school budget.

¹³⁵ 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 in the form of social benefits to help a student to maintain himself/herself during studies.



One of the outstanding efforts of the previous Czech government, which resigned after regular elections in 2010¹³⁶, was the initiative to remove potentially discriminatory treatment of Roma children in the Czech schools. There was established an independent group involved with social programmes for educational establishments.

There were carried out several studies, followed by the research accomplished by the Institute for Information in Schooling.¹³⁷ This initiative was linked with the ECHR's judgment in the D.H. case. The aim of the research was to raise the effectiveness of the governmental Action plan of the realization of the concept of the timely care of children with socially disadvantageous background. Under the new minister who took the ministry of education after the elections, the activities of the Action plan were terminated as too ambitious and unnecessary.

The outstanding project, also considerably developed during the short period of activity of caretaker government (2009/2010) was the effective establishment of the Agency for social inclusion. The ground for the establishment of the Agency was formally provided by the Decrees of the Government dated 23. January 2008, No. 85 and at 9. June 2008, No. 731. These Decrees tasked the Office of the government to secure the financial basis for the Agency for Social Inclusion in 2009 and 2010. They provided practical basis for the preparatory work and launching of the pilot activities of the Agency. From 1. January 2010, the Agency implements the project "Support of social inclusion in selected Roma localities through the Agency for Social Inclusion". The project invites the interested municipalities to set up local partnerships, associating the municipality and other local administration, local NGO representatives, Czech police and other subjects. The aim is to contribute to the inclusion of socially excluded communities to the society, to reduction and revitalization of excluded localities, to secure equal opportunities in access to education, housing, social services, health, employment and security for their members. The project selected 32 excluded localities. The Monitoring committee of the Agency associates the representatives of the NGOs active in the area of assistance to the victims of social exclusion and racial discrimination.

¹³⁶ The short period of the caretaker government, construed after the resignation of regular conservative government in 2009, was terminated by the regular elections held in May 2010.

¹³⁷ For more information see: <http://www.msmt.cz/pro-novinare/jake-jsou-vzdelanostni-sance-deti-ze-socialne-znevylhodnuciho>



6 REMEDIES AND ENFORCEMENT

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

In relation to each of the following questions 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.

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

1. Judicial civil procedures (tort claim)

Section 10 of the Anti-discrimination Law introduced general anti-discrimination civil action. Victims of discrimination have the right to demand that discrimination be stopped, and that redress and satisfaction be given. Only when this would be unsatisfactory, in particular where the dignity of the person and their respect in society was considerably affected, do victims also have the right to claim monetary compensation. In addition, victims of discrimination can bring an action in accordance with special provisions of the Law on Employment.¹³⁸ The Civil Procedure Code¹³⁹ and the shift of the burden of proof apply in both cases.

The exceptional character of monetary compensation as it is embodied in the law corresponds to the traditional concept of Section 11 of the Civil Code, which provides for protection of the personal rights of individuals. These personal rights extended mainly to life, health, civil integrity and human dignity, privacy, name and expressions of personal character. The idea that monetary compensation for non-material damage represents an exceptional redress in civil disputes also hampered the approved Anti-discrimination Law. However, the sanctions imposed in anti-discrimination disputes can hardly be effective, if they are not linked to monetary compensation or only include monetary compensation as an exceptional measure. In practice, however, monetary compensation is always provided in anti-discrimination disputes, when the claimant claims it and is the successful party. However, the courts rarely award the amount claimed, and sometimes reduce it considerably. Sometimes, the compensation awarded is unreasonably low and thus cannot be considered effective.

¹³⁸ See Sec. 4 para 10 of the Law on Employment.

¹³⁹ Law No. 99/1963 Coll., Civil Procedure Code.



6.1.1 Criminal judicial procedures

The Criminal Code¹⁴⁰ 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 352, 355 and 356 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 402 and 403 of the Criminal Code.

6.1.2 Administrative judicial procedures

The Code on Administrative Court Procedure regulates the judicial review of administrative decisions.¹⁴¹ The revision of administrative decisions can be a result of discriminatory practice; in practice the court also reviews the decisions of administrative bodies, which have identified as discriminatory certain practices of petitioners.

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).¹⁴²

¹⁴⁰ Law No. 40/2009 Coll., the Criminal Code.

¹⁴¹ *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)].

¹⁴² See Sections 139 and 140 of Law no. 435/2004 Coll., on Employment.



The Law on Employment defines the competencies of employment offices¹⁴³ and the Administrative Code¹⁴⁴ 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 (through their misdemeanour commissions) are vested with the competency to investigate acts of discrimination.

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 01.01.2010.

6.1.3 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.

¹⁴³ See Sec. 7 of Law no. 435/2004 Coll., on Employment.

¹⁴⁴ *Zákon č. 500/2004 Sb., správní řád* [Law No. 500/2004 Coll., the Administrative Code (Collection of Laws 2004, no. 174 p. 9782)].



6.1.4 Misdemeanour Commissions in Municipal Offices

Only natural persons can be subject to misdemeanour procedures. The material scope of misdemeanours is covered by special procedures under the Law on Misdemeanours. Acts of discrimination can be sanctioned in accordance with the provisions on misdemeanours against community relations.¹⁴⁵ 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. The court fees can be waived upon application, but this is not the case with the duty to compensate for the costs of the other party, where the plaintiff loses. The Czech Civil Procedure Code is based on the principle of 'loser pays'. The court derives the costs awarded from the amount requested by the plaintiff (value of the dispute). For example, if the plaintiff requests compensation of CZK 200,000 (approx. EUR 7,690), and loses, the amount to be paid to the winning party will be a minimum of CZK 49,747 / EUR 1,913 (CZK 41,900 for attorney's fees, CZK 7,847 VAT), even for proceedings concluded after the hearing of first instance. Such amounts have a strong deterrent effect on prospective litigants. Processing of cases can last three years, and a period of up to six years is not exceptional.

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.

b) Are these binding or non-binding?

These are binding.

c) What is the time limit within which a procedure must be initiated?

The law does not set explicit uniform limits for procedures. In civil court procedures, some material claims could become statute-barred after a certain time (usually given in years), but certain claims will not. In the area of public law, strict limits exist for prosecution of crimes or misdemeanours, but this is not always so with respect to administrative delicts.

¹⁴⁵ See Sec. 49, Law No. 200/1990 Coll., on Misdemeanours.



d) *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. Procedural time limits for litigation are only rarely set. One exception relevant in this context is action for unlawful dismissal, which has to be submitted within two months after the dismissal.

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) *What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association).*

According to the Section 11 of the Anti-discrimination Law, associations can provide legal assistance to victims of discrimination, and submit motions to administrative bodies responsible for control of lawful conduct of natural and legal persons in different areas.

b) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?*

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,¹⁴⁶ where protection against such discrimination is part of this legal entity's activities. Trade unions can also represent their members as parties to proceedings on any matter, with the exception of business or trade disputes. The entitlement of trade unions to engage in proceedings is not limited to matters of protection against discrimination.

c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

¹⁴⁶ Law No. 83/1990 Coll., on Citizens Assembly.



They need the full power of representation to represent the victim.

- d) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

No association is under legal duty to act in such situation.

- e) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.*

This type of engagement of associations is reserved for civil proceedings only.

- f) *What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify*

The associations themselves are not entitled independently to seek any remedy. They can only seek the remedy as the representatives of the victims.

- g) *Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?*

The rules on the shifting of the burden of proof are general, they are not reserved for one or other type of legal representatives of the claimants.

- h) *Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Actio popularis is not permitted with respect to discrimination claims in the Czech Republic.

- i) *Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Class actions are not permitted with respect to discrimination claims 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.¹⁴⁷ While approving the Anti-discrimination Law, parliamentary deputies also approved amendments to the current provision of Section 133a of the Civil Procedure Code. It was replaced with new wording more in keeping with that used by the Directives. The new 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.

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 people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint)

Section 4, paragraph 4 of the Anti-discrimination Law, on victimisation, applies to the whole scope of the law and to all grounds. The reversal of the burden of proof, as stipulated by the Civil Procedure Code, also applies to victimisation.

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.*

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.

¹⁴⁷ For more, see point 0.3.



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.¹⁴⁸

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.

In the criminal procedures, compensation can be awarded by the court to the victims of the criminal act. In the recent years, the jurisprudence of the criminal courts tends to award rather higher compensations especially where the harm suffered by the victim involves death of the close relative, serious health damage or mutilation.¹⁴⁹

Civil sanctions (claims for 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.¹⁵⁰

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) in cases relating to racial discrimination in employment, services or housing.

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

¹⁴⁸ See Sec. 27 of Law no. 140/1961 Coll., the Criminal Code.

¹⁴⁹ For example, in the case of racially motivated arson attack, the Ostrava Regional court ordered the four convicted perpetrators to pay jointly 9,5 million CZK (approx. 413 043 EUR) to the victim child, who was seriously burned during the attack, as non-material compensation.

¹⁵⁰ 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.



It depends on the type of proceedings; generally sanctions awarded by public administrative bodies, which are paid by sanctioned persons to the state, do as a rule have ceilings specified by the law, while amounts of compensation awarded by the courts to compensate private individuals are not, as a principle, limited by a ceiling.

- 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 required by the Directives?*

There is no official information of this kind to refer to. It is true that some compensation amounts awarded by the courts are extremely low. The lowest compensation paid, as far as the author is aware, was in a case of racial discrimination in housing, which was effectively proved. The case concerned a Romani woman who inquired about housing available for rent.

While her application was refused with an explanation that there were no flats available for rent in the house, a Czech pair making the same inquiry several minutes later were shown a flat in the same house and told that they could move in immediately. The Regional Court in Ostrava awarded the plaintiff CZK 10,000 (EUR 384), the defendant appealed, and the court of second instance lowered the amount to half the original award (CZK 5,000 / EUR 192).¹⁵¹

¹⁵¹ Judgment no. 23 C 110/2003 (Regional Court Ostrava [Krajský soud v Ostravě]), no. 1 Co 99/2004 (Supreme Court in Olomouc [Vrchní soud v Olomouci]).



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) for the promotion of equal treatment, 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?(Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so.)*

The Anti-discrimination Law awards the role of anti-discrimination body to the Public Defender of Rights (Czech ombudsman). The Public Defender of Rights is 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 by the state administration. In 2008, 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.¹⁵² A small amount of additional funding and some new posts were awarded to the Public Defender of Rights in respect of its new tasks. Claims of involuntary sterilisation of Roma women in hospitals represent the most important group of complaints.

- 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.*

The Public Defender of Rights (Czech ombudsman) is elected by the Chamber of Deputies of the Czech Parliament for periods of six years, and is responsible to this Chamber. Candidates are proposed by the Czech president and Senate. The body is funded from the state budget, through its own independent budget line.

- 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.*

According to the law, the competences of the ombudsman cover all grounds of discrimination as specified in the directives. The Czech ombudsman is already vested with competence to supervise fairness in state administration, places of detention and institutional care.

¹⁵² Czech Republic/Sekretariát Rady vlády ČR pro lidská práva (2007), *Šestá a sedmá periodická zpráva o plnění závazků plynoucích z Mezinárodní úmluvy o odstranění všech forem rasové diskriminace*, p. 25 [Government Council for Human Rights (2007), *Sixth and Seventh periodical report on obligations following from the International Convention on the Elimination of All Forms of Racial Discrimination*]. See http://www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy-plneni-mezin-umluv/6.7CERD_CZ_2.pdf



- d) *Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

According to the Anti-discrimination Law, the Public Defender of Rights should provide independent assistance to victims of discrimination, undertake research, publish independent reports and exchange information with anti-discrimination bodies in other EU Member States.

- e) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

The Anti-discrimination Law makes no provision for these competences. However, the body can provide mediation or legal analysis for individual cases or systemic legal problems.

- f) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions) Is the independence of the body / bodies stipulated in the law? If not, can the body/bodies be considered to be independent ? Please explain why.*

The Public Defender of Rights is not a quasi-judicial institution. Given its separate budget, the way of its establishment and responsibility to the legislative body only, its level of independence is of highest possible standard, and it does not need to be declared expressly by the law.

- g) *Are the tasks undertaken by the body / bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports)*

Yes, the tasks are undertaken by the body as stipulated in the law.

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

The Public Defender of Rights is not required to treat any vulnerable group as a priority issue, nor does the Anti-discrimination Law require him/her to do so.



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)*

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 19 of the EC Treaty, and included promotional activities, conferences, festivals, analysis and training programmes and activities. In the author's opinion, no similar action has been taken since.

- 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*

There has not been any outstanding action in this respect in recent years.

- 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)*

Promoting dialogue between social partners with regard to the principle of equal treatment in practices within the workplace is a task within the competence of the Tripartite Agreement (associating key actors in the area of the labour market—employers, trade unions and the government) and the Ministry of Labour. However, there were no further significant developments or opportunities in this respect.

- d) *to specifically address the situation of Roma and Travellers*

There are no Travellers in the Czech Republic. The main actions of the government include educational activities targeting young people, 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. Some of these activities are specifically focused on Roma and some have a more general base.



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 that are 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 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?

Anti-discrimination Law: Public Defender of Rights
www.ochrance.cz

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 Regional Development
www.mmr.cz

Education: Ministry of Education
www.msmt.cz

Is there an anti-racism or anti-discrimination National Action Plan ? If yes, please describe it briefly.

No, there is not any general Action plan. There are rather individual projects, usually implemented by NGO and supported by EU funding.



ANNEX

- 1. Table of key national anti-discrimination legislation**
- 2. Table of international instruments**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Czech Republic

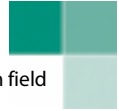
Date 01 January 2011

Title of Legislation (including amending legislation)	Date of adoption	Date of entry 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	16.12.1992	01.01. 1993	Sex, race, colour, language, religion or belief, political or other orientation, national or social origin, adherence to		Fundamental rights declared by the Charter	Prohibition of discrimination

			national or ethnic minority, property, birth or other status.			
No. 198/2009 Coll., Anti-discrimination Law	23.4.2009	01.09. 2009	Race, colour, ethnic origin, nationality, sex, sexual orientation, age, disability, religion or belief	Civil law Administrative Law	Public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	Prohibition of direct and indirect discrimination, reasonable accommodation, harassment, instruction to discriminate, creation of a specialised body
Law no. 361/2003 Coll., on Service by Members of the Security Services Sec. 77	23.9.2003	01.01. 2007	Age, race, colour, sex, sexual orientation, religion and belief, political orientation, national origin, ethnic or social origin, property, birth, marital and family status or family duties,	Labour law	Public employment	Prohibition of direct and indirect discrimination

			membership of trade unions and other assemblies			
Law No. 262/2006 Coll., Labour Code Sec. 16	21.4.2006	01.01. 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	13.5.2004	01.10. 2004	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 duties, political or other views, membership of political parties and	Labour law, administrative law	Recruitment, public and private employment (partially)	Prohibition of direct and indirect discrimination

			movements, trade unions or employers' organisations.			
Law No. 143/1992 Coll., on Pay Sec. 4a, para 1 (as amended by Law no. 217/2000 Coll.)	13.03.1992	01.01. 2001	Race, colour, ethnic origin, nationality, sex, sexual orientation, age, disability, religion or belief	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.)	16.12.1992	01.07. 1995	No ground explicitly provided for	Administrative law	Access to goods and services	Prohibition of discrimination
Law no. 221/1999 Coll., on Service by Members of the Armed Forces Sec. 2, paras 3-5 (Law no. 254/2002 Coll.)	14.9.1999	28.06. 2002	Race, colour, sex, sexual orientation, religion and belief, national origin, ethnic or social origin, property, birth, marital and family status and family duties,	Labour law	Public employment	Prohibition of discrimination



			pregnancy or motherhood or breastfeeding (female soldiers).			
Law No. 218/2002 Coll., on Official Service in State Administration and on Remuneration of these Officials and other Employees, Sec. 80	26.4.2002	01.01. 2012	Race, colour, sex, sexual orientation, language, religion or belief, political or other orientation, membership of political parties or movements, trade unions and other assemblies, national origin, ethnic or social origin, property, birth, state of health, age, marital and family status or family obligations	Labour law	Public employment	Prohibition of discrimination

School Law No. 561/2004 Coll., Sec. 2, para. 1, subsection a)	24.9.2004	01.01. 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
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ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Czech Republic

Date: 01 January 2011

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	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)	21.2.1991	18.3.1992	No	Yes	Yes
Protocol 12, ECHR	4.11.2000	No	No	No	No
Revised European Social Charter	4.11.2000	No	No	Ratified collective complaints protocol? No	No
International Covenant on Civil and Political Rights	7.10.1968	23.12.1975	No	Yes	Yes
Framework Convention for the Protection of National Minorities	28.4.1995	18.12.1997	No	No	Theoretically yes, but it contains obligations of result which, in my opinion, are formulated in such a way as to exclude

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	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?
					direct applicability.
International Convention on Economic, Social and Cultural Rights	7.10.1968	23.12.1975	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	7.3.1966	29.12.1966	No	Yes	Yes
Convention on the Elimination of Discrimination Against Women	17.7.1980	16.2.1982	No	Yes	Yes
ILO Convention No. 111 on Discrimination	25.6.1958	21.1.1964	No	No	Yes

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	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?
Convention on the Rights of the Child	30.9.1990	7.1.1991	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	30.3.2007	28.9.2009	No	No	No