

Executive Summary

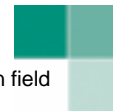
Country Report Czech republic 2011 on measures to combat discrimination

By Pavla Boučková

1. Introduction

Society in the Czech Republic, a country with a population of 10 million, has become increasingly homogenous in its post-war history. In 1945, as part of the post-Second World War settlements, legislation was approved to expatriate most Germans (the largest minority in Czechoslovakia), as well as Hungarians. Most members of the Czechoslovak Roma and Jewish populations perished in German concentration camps, and many members of the Jewish minority who survived the Holocaust were expatriated as German nationals. The traditional doctrine of 'Czechoslovak national identity', cultivated since the country's independence in 1918, was abandoned by post-war communist governments, when separate Czech and Slovak nationalist trends finally prevailed. The country established the Czechoslovak Federation in 1969, and it was finally dissolved in 1993. Unbalanced minority policies quickly became apparent in 1993, when, as one of its initial pieces of legislation, the Parliament of the Czech Republic approved the Czech Citizenship Law. Leaving accusations of intent to one side, the fact nevertheless remains that this legislation of 1993 excluded from Czech citizenship virtually the entire Czech Roma minority population (the majority of Czech Roma are descendants of Roma migration from Slovakia after 1945).

However, the Czech Republic's heritage is negatively affected as a result of the forty-year communist regime, and has attributed formal and imprecise meanings to justice and the rule of law. One of the tasks of newly approved Czech anti-discrimination legislation is therefore to prevail over narrow and formalised perceptions of equal treatment and protection against discrimination held by public and political bodies. It is quite common even for lawyers to express the belief that formal equality before the law is enough to secure what could be justifiably required with respect to equal treatment legislation. These voices express the belief that the constitutional clause declaring the Czech Republic to be 'a democratic state built on the principles of the rule of law and protection of human rights' should be enough to serve as a legal basis for protection against discrimination, and that any definitions of discrimination or rules on positive measures are not necessary prerequisites for effective anti-discrimination protection. The most significant obstacle to effective use of anti-discrimination legislation is the widespread conviction in society that real equality means no more than that everyone be formally treated in an identical manner, without regard to any essential difference causing inequality. In the case of disability, it is still considered acceptable to argue that such differences do result in real inequality. However, state policy measures to balance these inequalities are resented and widely regarded as ineffective, and the legislation to implement them can be circumvented.



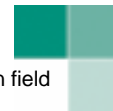
The introduction of special measures in education or employment to balance disadvantages encountered by the Roma minority is mostly perceived by public opinion as giving 'unjustified advantages' on the ground of ethnic origin.

For the ground of age, discrimination against older people in different sectors of public life is not denied, but it is argued that this is a result of the 'market economy', which brings both positive and negative results, and that it would be unreasonable and unjust to require young and successful members of society to pay for the well-being of the older population. The Anti-discrimination Bill was approved in the second voting of the Chamber of Deputies of the Czech Parliament in adjourned voting on 17.06.2009, in what was believed by all to be its last session before the dissolution of the Parliament and elections planned for September 2009. Soon afterwards the Constitutional Court quashed the decision by political parties to shorten the mandate of the Parliament, and in September there were no elections. This unexpected outcome did not have any influence on the approved bill. It was published in the Collection of Laws as Law No. 198/2009.

The law 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. It establishes the 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 bill, now promulgated as a 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 therefore goes beyond the requirements of directives.

2. Main legislation

The Czech Republic has ratified all the instruments for combating discrimination in the two main international human rights systems, the United Nations and the Council of Europe, including the UNESCO Convention against Discrimination in Education, ILO Convention No. 111 and the International Convention on the Elimination of All Forms of Racial Discrimination. The country is also a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The national legal system is framed by the Czech Constitution, which refers to the Charter of Fundamental Rights and Freedoms of the Czech Republic as a part of the constitutional provisions. One of the first pieces of post-communist Czechoslovak federal legislation, in 1993 the Charter was again decreed as a part of the constitutional order by the newly constituted Czech Republic.



The provisions of the Charter cover rights identical to those covered by the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights.

When the Czech Republic ratified the Treaty of Lisbon, a specific declaration was appended to its signature. This declaration relates to the EU Charter of Fundamental Rights and it stresses the limits of its application in the Czech Republic. President of the Czech Republic during the follow up domestic ratification process undermined the domestic ratification of the Lisbon treaty by the possible accession of the Czech Republic to the Protocol on implementation of the EU Charter in Poland and United Kingdom. This Protocol, however, is not an opt-out from the application of the EU Charter, but it has rather interpretative character. It clarifies the effect of rights and principles vested in the EU Charter, where uncertainty might arise. In other words, the unilateral declaration of Czech Republic nor the accession to the Protocol (which can take place only in connection with future amendment of the Treaty) can change anything on the application of the Charter according to Art.51(1) of the EU Charter. The Charter binds not only the EU authorities, institutions and other subjects, but also the Czech Republic as the Member State, when implementing EU law.

Comparative research of the text would show that the provisions of the Czech Charter of Fundamental Rights and Freedoms are more detailed than those of the international instruments (such as the provisions of Chapter Five, covering the right to fair trial), and are more imprecisely formulated (such as Economic, Social and Cultural Rights). A general anti-discrimination clause in Article 3 of the Charter expressly prohibits discrimination with respect to basic rights and freedoms on the following grounds, given in an open-ended list: 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 protect against discrimination on grounds of sexual orientation or disability.

The Criminal Code sets penalties for crimes relating to racial discrimination and discrimination on the grounds of religion or belief, covering only the most serious incidents. Additionally, there are variations in how crimes are dealt with if they are racially motivated or based on religious hatred or discrimination on the grounds of belief—such cases are accompanied by stricter sanctions.

The Czech Republic first implemented the EU anti-discrimination directives in its national law in 2009. Before that date, there were no definitions of forms of discrimination, except in the narrow area of access to employment. The Labour Code contains only general equality provisions, but also lacks definitions of discrimination and other measures of the anti-discrimination *acquis*. Anti-discrimination provisions were non-existent in laws governing access to health, housing, social security and social benefits, or self-employment activities, until the Anti-discrimination Law was passed on 17.06.2009 and came into force on 01.09.2009 (with provisions on the equality body coming into force on 01. 12.2009).



3. Main principles and definitions

Definitions of direct and indirect discrimination, sexual harassment and harassment, as well as indirect discrimination on the ground of disability are included in the Anti-discrimination Law. The legislation protects against discrimination against natural persons, but this protection does not apply to legal persons.

The Law on Service by Members of the Security Services contains definitions of direct and indirect discrimination and harassment. The Law on State Service contains definitions of direct and indirect discrimination, but provides no definition of harassment.

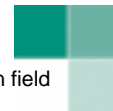
The date for this latter law to come into effect has been postponed every year (at the cut-off date for this report, until 01.01.2015).

The Law on Service by Members of the Armed Forces contains a definition of harassment, but no definitions of direct and indirect discrimination. Similarly to the Law on Service by Members of the Security Services, this law also contains a provision prohibiting instruction to discriminate. Provisions on victimisation, discrimination by association and multiple discrimination are completely absent in Czech national legislation. The Law on Employment introduced new specific anti-discrimination measures.

Exemption on grounds of genuine occupational requirements is provided for in the Anti-discrimination Law, the Labour Law and the laws governing state service, service in the armed forces and in the security services. A reasonable accommodation clause for disability discrimination is provided in the Anti-discrimination Law.

4. Material scope

The Czech anti-discrimination provisions implementing the directives cover labour relations, including employment and working conditions, dismissals and pay, membership and involvement in an organisation of workers or employers, in both the public and private sectors. They also cover access to employment (job recruitment, re-qualification etc.), on all grounds included in the EU anti-discrimination directives—sex, race and ethnicity, religion, disability (state of health), age and sexual orientation. The Anti-discrimination Law also covers labour relations to which Labour Law does not apply, such as those of judges, state attorneys, parliament deputies and others. Other areas covered by the Anti-discrimination Law include membership of organisations whose members carry on a particular profession, self-employment, vocational training, and education at all levels. The Anti-discrimination Law also provides protection with respect to access to health, housing, social security, social advantages and access to goods and services.



The Anti-discrimination Law prohibits discrimination on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation.

The Anti-discrimination Law also covers 'nationality' (in Czech: *národnost*) as a separate ground. In Czech law and 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 an individual. This ground therefore covers both national and ethnic origin, regardless of whether by birth or simply chosen by the individual. Its scope with respect to the grounds covered is enumerative.

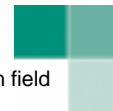
5. Enforcing the law

The system of laws provides for civil, criminal and administrative enforcement, but in practice civil enforcement is believed to be the only effective method. Cases of civil disputes relating to discrimination are given great importance by the media, and this is the only type of enforcement where the victim can obtain financial compensation for non-material damages.

Civil actions may be brought under special anti-discrimination provisions of the Anti-discrimination Law. The Civil Procedure Code and the shift of the burden of proof applies and its practical application does not cause any difficulties in concrete cases.

According to the Criminal Code, crimes relating to racial discrimination and discrimination on the grounds of religion or belief are to be prosecuted as crimes inciting hatred or violence on the grounds of race or religion/belief. Criminal Law also makes provision for strict definitions of crimes affecting life, health or personal freedom when motivated by racist or religious hatred.

Administrative enforcement consists of sanctioning misdemeanours and administrative offences. Relevant administrative procedures provide investigative powers for administrative bodies and inspectorates, as established within the scope of specific laws. These bodies, such as the employment offices or the Czech Trade Inspectorate, are empowered to impose sanctions, mainly financial penalties. Where the powers of other specialised inspectorates or administrative bodies do not apply, competency to investigate acts of discrimination is vested in territorial local government (through the misdemeanour commissions of municipal offices), which can investigate misdemeanours committed by natural persons only. In fact, the number of cases where sanctions have been imposed because of an act of discrimination is extremely limited. The procedures are slow and ineffective. Legal aid is provided in very limited circumstances through court advocates and the Bar Association. The Anti-discrimination Law provides for the right of associations to provide legal assistance to victims. The entitlement of associations with a legitimate interest to engage in judicial proceedings 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 in proceedings can be represented by a legal entity established according to a special law, where protection against such discrimination is part of this legal entity's activities.

Trade unions can also represent their members as parties in proceedings on any matter, with the exception of business or trade disputes. However, these entitlements are not frequently used.

The right of plaintiffs to use 'situation testing' to prove discrimination has in fact never been questioned by Czech courts. The same could also be said about statistical evidence. Whether a court considers statistical data as convincing evidence in an individual case is another matter. In one case including proof by statistical data regarding the age of workers dismissed on the ground of redundancy, the Constitutional Court upheld the petition and ordered the lower courts to evaluate the statistical evidence. In practice, situation testing is used by NGOs in order to prove discrimination in access to employment, services and housing. All cases of this kind were carried out in respect of discrimination on the ground of racial or ethnic origin.

Whether the sanctions imposed for discrimination are effective and dissuasive is very doubtful. The non-material damages awarded by the courts vary widely.

The sums awarded as compensation for discrimination can vary in practice between CZK 5,000 (EUR 202) and CZK 250,000 (EUR 10,120). On the other hand, where a plaintiff fails, he/she will be liable to compensate the respondent for costs, which amount in practice to some EUR 2,500. In theory, although administrative penalties of up to CZK 1 million could be imposed, the amounts actually enforced are much lower—approximately EUR 242. Criminal prosecutions for crimes relating to racial and religious discrimination are quite rare, and are usually for serious criminal offences such as racially motivated murder. Where discrimination occurs, the investigatory bodies usually conclude that the act committed is not so dangerous for society as to be regarded as a crime, and consequently refer these incidents to misdemeanour commissions for administrative investigation. Administrative investigation of misdemeanours is extremely ineffective. The Law on Misdemeanours requires the investigation to be completed within one year, otherwise it must be dropped, and therefore it is quite exceptional for discriminatory acts to be punished within the misdemeanour procedure.

6. Equality bodies

The equality body in the Czech Republic was established with effect from 01.12.2009. The Anti-discrimination Law does not establish a new body but awards the functions required by Article 13 of Directive 2000/43/EC to the Public Defender of Rights (Czech ombudsman).



Within the anti-discrimination legislation, the Public Defender of Rights contributes to combating racism and xenophobia and to the promotion of equal treatment of all persons, irrespective of sex, sexual orientation, age, disability, religion or faith. It can provide independent assistance to victims, conduct research and publish independent reports, and make recommendations.