

European network of legal experts in
gender equality and non-discrimination

Country report

Non-discrimination

Czech Republic
2017

Including summaries in
English, French and
German



EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Non-discrimination and Roma coordination
Unit JUST/D1

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

Czech Republic

David Zahumenský

Reporting period 1 January 2016 – 31 December 2016

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2017

PDF ISBN 978-92-79-68806-5

doi:10.2838/925473

DS-01-17-459-3A-N

© European Union, 2017

CONTENTS

EXECUTIVE SUMMARY	5
RÉSUMÉ	14
ZUSAMMENFASSUNG	24
INTRODUCTION	34
1 GENERAL LEGAL FRAMEWORK	37
2 THE DEFINITION OF DISCRIMINATION	39
2.1 Grounds of unlawful discrimination explicitly covered	39
2.1.1 Definition of the grounds of unlawful discrimination within the directives	39
2.1.2 Multiple discrimination	46
2.1.3 Assumed and associated discrimination	47
2.2 Direct discrimination (Article 2(2)(a))	48
2.2.1 Situation testing	50
2.3 Indirect discrimination (Article 2(2)(b))	54
2.3.1 Statistical evidence	56
2.4 Harassment (Article 2(3))	60
2.5 Instructions to discriminate (Article 2(4))	61
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	62
3 PERSONAL AND MATERIAL SCOPE	70
3.1 Personal scope	70
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)	70
3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)	70
3.1.3 Private and public sector including public bodies (Article 3(1))	71
3.2 Material scope	71
3.2.1 Employment, self-employment and occupation	71
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))	72
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	74
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))	75
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))	76
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	76
3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)	77
3.2.8 Education (Article 3(1)(g) Directive 2000/43)	77
3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)	88
3.2.10 Housing (Article 3(1)(h) Directive 2000/43)	89
4 EXCEPTIONS	92
4.1 Genuine and determining occupational requirements (Article 4)	92
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	92
4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)	93
4.4 Nationality discrimination (Article 3(2))	94
4.5 Work-related family benefits (Recital 22 Directive 2000/78)	94

4.6	Health and safety (Article 7(2) Directive 2000/78)	95
4.7	Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	96
4.7.1	Direct discrimination	96
4.7.2	Special conditions for young people, older workers and persons with caring responsibilities	98
4.7.3	Minimum and maximum age requirements	98
4.7.4	Retirement	100
4.7.5	Redundancy	102
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)	103
4.9	Any other exceptions	103
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)	104
6	REMEDIES AND ENFORCEMENT	108
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	108
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)	114
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)	115
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)	116
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)	117
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)	120
8	IMPLEMENTATION ISSUES	126
8.1	Dissemination of information, dialogue with NGOs and between social partners	126
8.2	Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)	127
9	COORDINATION AT NATIONAL LEVEL	128
10	CURRENT BEST PRACTICES	132
11	SENSITIVE OR CONTROVERSIAL ISSUES	134
11.1	Potential breaches of the directives (if any)	134
11.2	Other issues of concern	135
12	LATEST DEVELOPMENTS IN 2016	137
12.1	Legislative amendments	137
12.2	Case law	137
ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION...		141
ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS		142

EXECUTIVE SUMMARY

1. Introduction

Society in the Czech Republic, a country with a population of 10.5 million, has become increasingly homogenous during its post-war history. In 1945, as part of the settlements following the Second World War, legislation was approved to expatriate most Germans (the largest minority in Czechoslovakia) and Hungarians. The majority of the Czechoslovak Roma and Jewish populations had 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 Czechoslovak Federation was established in 1969 and was finally dissolved in 1993.

Furthermore, the legacy of the 40-year communist regime has had a negative effect on the Czech Republic, attributing formalistic and imprecise meanings to justice and the rule of law. One of the tasks of the newly approved Czech anti-discrimination legislation is therefore to overcome the narrow and formalised perceptions of equal treatment and protection against discrimination held by public and political bodies

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

Securing equal access to mainstream education for Roma children is still problematic. This issue had been previously highlighted by decisions and reports by various Council of Europe and UN bodies, including the European Court of Human Rights in its judgment *D.H. and others v. the Czech Republic*. In 2000 the applicants complained to the ECtHR, arguing that their treatment amounted to discrimination. In a decision in February 2006, the chamber of the ECtHR stated that although the applicants had raised serious arguments, they did not amount to a violation of the European Convention on Human Rights. The applicants filed an appeal and the Grand Chamber finally ruled in favour of the applicants and found that the applicants had suffered discrimination when denied their right to education.¹ In February 2016, the Revised Action Plan for the execution of the judgment in the case *D. H. and others*, describing all adopted and planned measures of a new system of inclusive education, was issued.² In September 2016, the Czech Government submitted a complementary report, containing changes following from the amendment to the Schools Act (for more detail, see section 7 below).³ In 2014, infringement proceedings were initiated by the European Commission and are still on-going. Case law from the Czech courts, as well as legal opinions given by the Czech Ombudsman (the equality body) show that this issue is still very current.⁴

¹ ECtHR, *D.H. and Others v. Czech Republic*, No. 57325/00, 13 November 2007. [http://hudoc.echr.coe.int/eng#{"fulltext":\["d.h."\],"documentcollectionid2":\["GRANDCHAMBER"\],"chamber":\["itemid":\["001-83256"\]}\]](http://hudoc.echr.coe.int/eng#{); accessed 28 January 2017.

² Committee of Ministers (2016), *Revised Action Plan for the execution of the judgment in D. H. and others*, 5 February 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ad0ba>; accessed 28 January 2017.

³ Committee of Ministers (2016), *Complementary Report on the execution of the judgment in D. H. and others*, 6 September 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0>; accessed 28 January 2017.

⁴ See e.g. Constitutional Court of the Czech Republic (*Ústavní soud*), no. III. ÚS 1136/13, 12 August 2015 <http://nalus.usoud.cz/Search/GetText.aspx?sz=3-1136>. In this judgment, the Constitutional Court did not find discrimination although it clearly referred to the test of indirect discrimination established in case law of ECtHR. The Czech Ombudsman criticised a director's attempt to restrict the number of Roma pupils accepted in the first year of a primary school and found direct discrimination in this case. Public Defender of Rights, Legal opinion No. 5202/2014/VOP, 16 April 2015; <http://eso.ochrance.cz/Nalezene/Edit/2812>.

For the ground of age, the existence of 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 absolute equal treatment of persons of different age.

It should be underlined that transposition of the directives into the Czech legal system cannot be regarded as an omnipotent remedy, which will solve or fully remove the problems in Czech society in relation to discrimination. These issues are mainly structural, relating to the integration of the Roma community in the education system, segregation in housing and discrimination in the labour market, problems with the integration of people with disabilities in the workforce and even more importantly, the integration of disadvantaged minorities and groups in the everyday life of society generally.

2. Main legislation

The Czech Republic has ratified all the instruments for combating discrimination within 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 Czech Republic is also a party to the 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 part of the constitutional provisions. The Charter was one of the first pieces of post-communist Czechoslovak federal legislation, and in 1993 it was decreed by the newly constituted Czech Republic that the Charter forms part of its constitutional order. 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 Covenant 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 stresses the limits of its application in the Czech Republic. During the subsequent domestic ratification process, the President of the Czech Republic undermined the domestic ratification of the Lisbon Treaty with the possible accession of the Czech Republic to the Protocol on the implementation of the EU Charter in Poland and United Kingdom. This Protocol is not an opt-out from the application of the EU Charter, but is instead interpretative in character. It clarifies the effect of the rights and principles vested in the EU Charter, where uncertainty might arise. In other words, neither a unilateral declaration by the Czech Republic nor accession to the Protocol (which can only take place in connection with a future amendment of the Treaty) can change anything in relation to the application of the Charter according to Article 51(1) of the EU Charter. The Charter binds not only the EU authorities, institutions and other subjects, but also the Czech Republic as a Member State, when implementing EU law.

Comparative research of the text shows 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 less precisely 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 provide protection against discrimination on the 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.⁵ In addition, 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 transposed the EU equality directives into 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 contained only general equality provisions, and also lacked 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 June 2009 and came into force on 1 September 2009 (with provisions on the equality body coming into force on 1 December 2009).⁶ On the other hand, due to the 'radiation' effect, the Czech courts determined that the protection against discrimination falls into the scope of protection of the personal rights of the individual in accordance with the Civil Code, applicable in situations where no provision of the Civil Code prohibits discrimination on any of the grounds prohibited by the Charter, and before the Anti-discrimination Law was approved.⁷

3. Main principles and definitions

Definitions of direct and indirect discrimination, harassment and instructions to discriminate as well as victimisation are included in the Anti-discrimination Law. The legislation provides protection from discrimination of natural persons. Legal persons are not expressly covered by the personal scope of the Anti-discrimination Law. However, they are protected by the anti-discrimination provision in the Charter, as confirmed by the Constitutional Court e.g. when it considered alleged unequal treatment in taxation (concerning consumption taxes).⁸

The Law on service by members of the security services⁹ contains definitions of direct and indirect discrimination and harassment.

The Law on service by members of the armed forces¹⁰ 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 discrimination by association and multiple discrimination are completely absent from Czech national legislation.

In 2012, the Supreme Court indicated that discriminatory intent is needed in cases of both direct and indirect discrimination.¹¹ However, more recently the Constitutional Court

⁵ Czech Republic, Law No. 40/2009, Criminal Code (*Zákon č. 40/2009 Sb., trestní zákoník*), 8 January 2009.

⁶ Czech Republic, Law No. 198/2009, Anti-discrimination Law (*Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)*), 23 April 2009.

⁷ Constitutional Court. (*Ústavní soud*) /sp. zn. IV. ÚS 412/04, decision of 7 December 2005. <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=48373&pos=1&cnt=1&typ=result>; accessed 28 January 2017.

⁸ Czech Republic, Constitutional Court (*Ústavní soud*), Brno/Pl.ÚS 3/13, 15 October 2013. <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=81289&pos=1&cnt=1&typ=result>; accessed 28 January 2017. See also Czech Republic, Constitutional Court (*Ústavní soud*), Brno/ IV. ÚS 13/98, 3 September 1998. <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=32337&pos=3&cnt=3&typ=result>; accessed 28 January 2017.

⁹ Czech Republic, Law No. 361/2003, on service by members of the security forces, 23 September 2003, section 77.

¹⁰ Czech Republic, Law No. 221/1999, on service by members of the armed forces, 14 September 1999 Section 2(3).

¹¹ Czech Republic, Supreme Court (*Nejvyšší soud ČR*), 21 Cdo 4586/2010, 27 March 2012. http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/4ED3DA547D85D55BC1257A4E00687866?openDocument&Highlight=0; accessed 28 January 2017.

provided a more detailed explanation of indirect discrimination and referred to the test formulated by European Court of Human Rights.¹² Accordingly, no discriminatory intent is needed in cases of indirect discrimination.

Exemption on grounds of genuine occupational requirements is provided for in the Anti-discrimination Law, the Labour Code 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.

There is no legislation expressly prohibiting discrimination based on association with persons with particular characteristics. To strengthen the position of victims, in 2014 the Ombudsman recommended that the Chamber of Deputies should propose a bill amending the Anti-discrimination Law to expressly prohibit discrimination by association – that is, less favourable conduct towards persons because of their affiliation to another person who bears any discriminatory reason (discrimination based on race, ethnic, nationality, sex, age, etc).¹³ The Chamber of Deputies has still not followed this recommendation.

4. Material scope

The Czech anti-discrimination provisions implementing the directives cover labour relations, including employment and working conditions, dismissals and pay, membership of and involvement in an organisation of workers or employers. Implementation applies to both the public and private sectors.

They also cover access to employment (job recruitment, re-qualification etc.), on all grounds included in the EU equality directives – sex, race and ethnicity, religion, disability (state of health), age and sexual orientation.¹⁴ The Anti-discrimination Law also covers certain roles in public administration to which the Labour Code does not apply, such as those of judges, public prosecutors, parliamentary 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 healthcare, 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 thing. According to the Czech Constitution, *národnost* may be freely chosen by the individual. This ground therefore covers both national and ethnic origin, whether this is a status by birth or simply chosen by the individual. Its scope with respect to the grounds covered is enumerative. In compliance with the Regulation (EU) no. 492/2011, there is a bill amending the discrimination grounds in the Anti-discrimination Law to include 'EU citizenship'. The bill should be discussed in the Chamber of Deputies in 2017.¹⁵

¹² Czech Republic, Constitutional Court (*Ústavní soud*), Brno/ III. ÚS 1136/13, 12 August 2015, <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=89444&pos=1&cnt=1&typ=result>; accessed 28 January 2017

¹³ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, *Veřejný ochránce práv*. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna-zprava_VOP_2014.pdf; accessed 28 January 2017.

¹⁴ In an important case of 2016 concerning sexual orientation, the Constitutional Court asserted that registered partners can adopt children. See: Constitutional Court of the Czech Republic, Pl. ÚS 7/15, 14 June 2016; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=93271&pos=1&cnt=1&typ=result>.

¹⁵ Chamber of Deputies (2015), *Sněmovní tisk 688/0* (Press of the Chamber of Deputies No. 668/0); <http://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=688&CT1=0>; accessed 28 January 2017.

5. Enforcing the law

The system of laws provides for civil, criminal and administrative enforcement. In respect to legislation, there are no serious problems regarding transposition of the equality directives. However, there are still some problems in the area of enforcement of the existing laws.

In case of alleged discrimination, civil actions may be brought under special provisions of the Anti-discrimination Law. The Civil Procedure Code applies, as does the shift of the burden of proof.¹⁶ Therefore, if the claimant states before the court facts from which it may be inferred that there has been direct or indirect discrimination, the defendant must prove that there was no breach of the principle of equal treatment. In 2006, the Constitutional Court declared the Czech provisions on burden of proof compatible with the guarantees of fair trial.¹⁷ The application of provisions on burden of proof were later also specified by the Supreme Court.¹⁸ Nevertheless, according to the Civil Procedure Code, the shifted burden of proof does not apply in all situations.¹⁹ The Ombudsman recommended that Section 133a be amended in order to apply shifted burden of proof in all discrimination cases,²⁰ however, the Government did not accept the amendment.

Civil courts reached a decision in 18 discrimination cases in 2016.²¹ Most of these cases (11) were related to employment.²²

In 2015, the Ombudsman produced a report, identifying the main obstacles for victims of discrimination in accessing justice.²³ Among other things, the Ombudsman highlighted that the costs of litigation dissuade victims from filing an anti-discrimination action. On the other hand, bringing a case to court is widely considered by the public as the last resort. People prefer to solve their problems by alternative means (for example, by administrative procedures or reporting the case to NGOs), partly because they do not expect that the courts can provide them with just and useful solutions – and this is often true.

In fact, the number of cases where sanctions have been imposed because of an act of discrimination is limited. The proceedings are slow. Legal assistance is provided in limited circumstances through court-appointed lawyers, the Czech Bar Association and also via collaboration of the Czech Ombudsman and the NGO Pro Bono Alliance.²⁴

¹⁶ See Section 133a of the Law No. 99/1963, Civil Procedure Code (*Zákon č. 99/1963 Sb., občanský soudní řád*), 4 December 1963.

¹⁷ Czech Republic, Constitutional Court (*Ústavní soud*) no. Pl. ÚS 37/04, 26 April 2006. <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=45&pos=1&cnt=1&typ=result>, accessed 28 January 2017.

¹⁸ Czech Republic, Supreme Court (*Nejvyšší soud*) no. 21 Cdo 246/2008, 11 November 2009. http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/0A33D83B7E3D04D2C1257A4E0064BF0E?op=OpenDocument&Highlight=0, accessed 28 January 2017.

¹⁹ For example, it does not apply in cases where a person with disability complains about access to services or education.

²⁰ Public Defender of Rights (Ombudsman), (2015), *Výroční zpráva o ochraně před diskriminací* (Annual report on protection against discrimination), p. 23; http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocní_zpravy/2015-DIS-vyrocní-zprava.pdf; accessed 28 January 2017.

²¹ Czech Republic, Ministry of Justice (2016), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistics on legally effective decisions of courts in civil cases according to categories of disputes), available at: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

²² Czech Republic, Ministry of Justice (2016), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistics on legally effective decisions of courts in civil cases according to categories of disputes), available at: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

²³ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), <http://www.ochrance.cz/en/discrimination/research/>, p. 50-58; accessed 28 January 2017.

²⁴ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její

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,²⁵ which focuses on protection against discrimination within its activities. These special legal entities are able to provide information and advice to victims of discrimination and submit motions to administrative bodies responsible for monitoring lawful conduct of natural and legal persons in different areas. However, these legal entities do not have any special status in disputes concerning discrimination. They can only provide representation based on a power of representation for a victim in a concrete case as a special type of representation under the Civil Procedure Code. They cannot challenge discrimination before Czech courts either through *actio popularis* or class actions. According to the Ombudsman, better cooperation between NGOs and state institutions should be developed in order to improve access to the justice for victims.²⁶

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

Concerning situation testing of discrimination, the Czech courts have already accepted in some cases²⁷ that everyone is authorised to verify whether they can exercise their rights. If an unauthorised infringement of rights occurs, the claims of the testing persons are identical in a situation where discrimination would not be expected. The Supreme Court also confirmed that financial compensation for victims may be provided in these cases.²⁸

In practice, situation testing is used by NGOs in order to prove discrimination in access to employment, services and housing. In 2012, cooperation between some NGOs and the Ombudsman was initiated in the area of situation testing. Most cases of this kind so far have been related to discrimination on the ground of racial or ethnic origin. Although statistical evidence can be used as means of proof, the use of such evidence before the courts in discrimination disputes is not widespread.

Whether the sanctions imposed for discrimination are effective and dissuasive is doubtful. The non-material damages awarded by the courts (damages compensating for the non-material effects of discrimination) vary widely. The sums awarded as compensation for discrimination can vary in practice between EUR 200 (CZK 5 000) and EUR 10 000 (CZK 250 000). On the other hand, when claimants lose cases, they may be liable to compensate the defendant for costs, which amount in practice to around EUR 1 000 to EUR 2 000. In an important case against a restaurant owner who displayed in his restaurant premises a statue holding in her hand a baseball bat with the visible inscription 'Go and get the gypsies', the Prague High Court found that the conduct was discriminatory and awarded the claimant financial compensation of EUR 926 (CZK 25 000).²⁹

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

překážky v přístupu ke spravedlnosti), <http://www.ochrance.cz/en/discrimination/research/>, accessed 28 January 2017.

²⁵ See Czech Republic, Anti-discrimination Law, No. 198/2009, 23 April 2009, Section 11. According to Section 26(3) 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 to proceedings can be represented by a legal entity which according to its articles of incorporation focuses on protection against discrimination within its activities.

²⁶ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p. 84. <http://www.ochrance.cz/en/discrimination/research/>, accessed 28 January 2017.

²⁷ Czech Republic, Supreme Court (*Nejvyšší soud*) /30 Cdo 2314/2012, 28 February 2013. http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/BD306CF3DD626402C1257B410032B5CB?openDocument&Highlight=0; accessed 28 January 2017.

²⁸ Czech Republic, Supreme Court (*Nejvyšší soud*) /30 Cdo 2314/2012, 28 February 2013.

²⁹ Czech Republic, High Court in Prague (*Vrchní soud v Praze*) / 1 Co 99/2006, 17 February 2014.

violence on the grounds of race or religion or belief. The Criminal Code also makes provision for strict definitions of crimes affecting life, health or personal freedom when motivated by racist or religious hatred. In fact, 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 or propagation of neo-Nazism.

Administrative enforcement consists of sanctioning misdemeanours and administrative offences. Relevant administrative procedures provide investigative powers for administrative bodies, such as the Labour Inspectorate or the Czech Trade Inspectorate. In 2016, the Czech Trade Inspectorate imposed a fine of EUR 925 (25 000 CZK) on a real estate agency, because their agents refused to let a flat to Roma people, who had used situation testing. Furthermore, the Ombudsman found direct discrimination in the specific case and declared that the procedure of the Czech Trade Inspectorate was correct and that the applicants might be also entitled to just satisfaction through judicial proceedings.³⁰ In cases involving discriminatory job advertisements, the Czech Employment Inspectorate imposes on average a fine of EUR 883 (CZK 23 850) with the highest sum ever reached being EUR 9 259 (CZK 250 000). The Czech Trade Inspectorate mostly deals with double pricing, where an average fine reaches EUR 1 620 (CZK 43 750). According to the research of the Ombudsman, the administrative bodies particularly penalised discriminatory activities that were sufficiently supported with documentary evidence or by personal testimony.³¹

The administrative investigation of misdemeanours has been extremely ineffective. The Law on Misdemeanours requires an investigation to be completed within one year of the alleged misdemeanour, otherwise it must be dropped: it has been therefore exceptional for discriminatory acts to be punished within this context. However, since October 2015 this period can be extended to two years.

There has been no notable action in recent years to encourage dialogue with NGOs with a view to promoting the principle of equal treatment. Promoting dialogue between social partners with regard to the principle of equal treatment in practices within the workplace is a task that comes under the jurisdiction of the tripartite agreement (bringing together key actors in the labour market: employers, trade unions and the Government) and the Ministry of Labour. However, there have been no further significant developments or opportunities in this respect.

6. Equality bodies

The equality body in the Czech Republic was established with effect from 1 December 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). The Czech Ombudsman also has the remit of the equality body with powers in regard to the full scope of the Anti-discrimination Law.

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, race, ethnic origin, sexual orientation, age, disability, religion or faith and 'nationality' (in Czech: *národnost*). It can provide independent assistance to victims, conduct research and publish independent reports and make recommendations. The Czech equality body is independent and has a very proactive approach.

³⁰ Public Defender of Rights (Ombudsman), (2016), *Zpráva o šetření č. 6780/2014/VOP* (Report on inquiry no. 6780/2014/VOP), 19 January 2016; <http://eso.ochrance.cz/Nalezene/Edit/3922>, accessed 28 January 2017.

³¹ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p. 137. <http://www.ochrance.cz/en/discrimination/research/>.

In 2016, the Office of the Public Defender of Rights registered 451 new complaints of discrimination; discrimination was found in only nine of these cases (less than 2 % of cases). These complaints referred most frequently to alleged discrimination in the areas of labour law (23 % of cases), provision of goods and services (19 % of cases), housing (11 % of cases), education (11 % of cases) and public administration (11 % of cases). The most referred discriminatory grounds in 2016 were 'other reason' (39 % of cases), disability (23 % of cases), race and ethnic origin (15 % of cases), sex (10 % of cases), age (10 % of cases) and nationality (5 % of cases). Sexual orientation and religion were referred to in 2 % of complaints.³²

Current personnel and financial capacities only allow the Ombudsman to provide limited assistance to victims. The Czech Ombudsman is not empowered to provide victims with representation before the courts. The Ombudsman can only evaluate whether a case involves discrimination or not, and provide victim with an opinion as to whether the case is likely to be successful before the Czech courts.

However, since 2012, the Czech Ombudsman has been cooperating with the NGO Pro Bono Alliance (a pro bono alliance), which arranges free legal assistance to certain victims of discrimination, who have been very probably been discriminated against according to the Ombudsman. Specific legal assistance is provided on the basis of a contract between a complainant (client) and a cooperating law firm involved in a pro bono clearing-house served by the Pro Bono Alliance. Since 2012, more than 15 victims of discrimination have accepted this legal assistance.³³ In 2016, one of the law firms took on five cases from the Ombudsman in order to provide legal assistance.³⁴

The Czech Ombudsman is not allowed to use situation testing. However, in 2012 the Ombudsman initiated collaboration with NGOs who might conduct situation testing in cases identified by the Ombudsman.

7. Key issues

The main issue regarding the transposition of Racial Equality Directive 2000/43/EC is securing equal access to education for Roma children in practice. In 2015, the Ombudsman stated that number of Roma pupils educated according to the educational programme for pupils with mild mental disabilities has risen by 4 % year-on-year.³⁵

In 2012 the Czech Ombudsman carried out research to gather ethnic data regarding pupils in former special schools (now mostly 'practical primary schools'). The data were gathered by means of studies by 'third parties', i.e. equality body employees and teachers. This survey, carried out in 67 randomly chosen former special schools across the Czech Republic, showed that Roma children represented 32 % to 35 % of all pupils. When these figures are compared to the percentage of Roma people in the total population of the Czech Republic (the figure varies between 1.4 % and 2.8 %), it is obvious that the percentage of Roma children found in these schools is disproportionate. This exceptional research

³² Public Defender of Rights (2016), *Souhrnná zpráva o činnosti veřejného ochránce práv 2016* (Summarising report on Ombudsman's activities in 2016), Brno, *Veřejný ochránce práv*; https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snmovnu/Vyrocní-zpráva-2016_web.pdf.

³³ Public Defender of Rights (Ombudsman), (2015), *'Pro bono síť advokátů proti diskriminaci se rozrůstá o další tři kanceláře'* ('Pro Bono Alliance of lawyers against discrimination is expanding by three law firms'). <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2015/pro-bono-sit-advokatu-proti-diskriminaci-se-rozrusta-o-dalsi-tri-kancelare/>, accessed 28 January 2017.

³⁴ Public Defender of Rights (Ombudsman), (2016), *Advokátní kancelář zapojená do sítě pro bono převzala již pátý případ* (Law firm assumed the fifth case within pro bono assistance); <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2016/advokatni-kancelar-zapojena-do-site-pro-bono-prevzala-jiz-paty-pripad-v-tomto-roce/>, accessed 28 January 2017.

³⁵ Public Defender of Rights (2015), *Stanovisko sp. zn. 16/2015/DIS* (Statement No. 16/2015/DIS), Brno, *Veřejný ochránce práv*. <http://eso.ochrance.cz/Odlozene/Edit/2412>, accessed 28 January 2017.

performed by the Ombudsman helped to prove that indirect discrimination in access to education for Roma children continues in Czech schools.³⁶

An amendment to the Schools Act, providing better integration of pupils with disabilities and those with special educational needs generally, was accepted in February 2015. Among other things, the amendment establishes a preference of individual rather than group integration.³⁷ This means that, wherever possible, a pupil should be integrated individually into the mainstream environment with adequate support. The main parts of the amended provisions came into force on 1 September 2016 and since then, the so-called inclusive education was introduced. Several positive improvements were adopted, such as various supporting measures³⁸ for pupils with special educational needs, a system of financing of those measures and the establishment of a review body in the field of diagnostics. Although some improvements can be seen in practice, several months after the adopted changes, it cannot yet be assessed whether it has brought adequate safeguards against discrimination of Roma children in access to education.

The resolution of structural issues does not reside primarily in the area of enforcement and sanctions; rather it is primarily for the political agenda – a matter for political parties in government to treat as a priority. The root of the problem is not in the area of the implementation of legislation, but rather in the lack of systematic government policy. Recent governments have not paid any real attention to issues of human rights in general, including the discrimination agenda. Effective government policies to combat the structural roots of discrimination have not been developed.

³⁶ Public Defender of Rights (2012), Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools Final Report (*Výzkum etnického složení žáků bývalých zvláštních škol*), Brno, Public Defender of Rights. <http://www.ochrance.cz/en/discrimination/research/>, http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf; accessed 28 January 2017.

³⁷ A term used in the Czech school system, where 'group integration' means the creation of special study groups or classes in the mainstream school.

³⁸ Specified by Decree No. 27/2016, on the education of pupils with special educational needs and talented pupils, 28 January 2016; <https://www.zakonyprolidi.cz/cs/2016-27>.

RÉSUMÉ

1. Introduction

La société de la République tchèque, qui compte aujourd'hui 10,5 millions d'habitants, se caractérise par une homogénéité croissante depuis la fin de la Seconde Guerre mondiale. C'est en 1945 en effet qu'a été approuvée, dans le cadre des accords d'après-guerre, la législation prévoyant l'expatriation de la plupart des Allemands (lesquels formaient la minorité la plus importante de Tchécoslovaquie) et des Hongrois. La majorité des populations rom et juive de Tchécoslovaquie ont péri dans les camps de concentration allemands, et beaucoup de membres de la minorité juive ayant survécu à l'holocauste ont été expatriés en tant que ressortissants allemands. La doctrine traditionnelle de l'«identité nationale tchécoslovaque», cultivée depuis l'indépendance du pays en 1918, a été abandonnée par les gouvernements communistes de l'après-guerre, époque à laquelle des tendances nationalistes distinctes tchèques et slovaques l'ont, en définitive, emporté. La Fédération tchécoslovaque fondée en 1969 a finalement été dissoute en 1993.

Quarante années de régime communiste ont laissé en outre à la République tchèque un héritage dont l'effet négatif transparaît notamment au travers du sens formaliste et imprécis conféré aux notions de justice et d'État de droit. La législation tchèque antidiscrimination récemment approuvée doit donc s'attacher entre autres à dépasser la vision étroite et formalisée des organes publics et politiques à l'égard de l'égalité de traitement et de la protection contre la discrimination.

Les mesures spéciales introduites dans l'enseignement ou l'emploi pour compenser les désavantages subis par la minorité rom sont le plus souvent perçues par l'opinion publique comme octroyant des «avantages injustifiés» fondés sur l'origine ethnique.

Garantir l'égalité d'accès des enfants roms au système d'enseignement général reste problématique. Cette question a déjà été soulignée dans des décisions et rapports émanant de divers organes du Conseil de l'Europe et des Nations unies, y compris la Cour européenne des droits de l'homme dans son arrêt *D.H. et autres c. République tchèque*. En 2000, les requérants ont saisi la CouEDH en alléguant que leur traitement était discriminatoire. Dans un arrêt de février 2006, la chambre de la CouEDH a déclaré que les requérants avaient avancé des arguments sérieux mais que ceux-ci n'attestaient cependant pas d'une violation de la Convention européenne des droits de l'homme. Les requérants ont interjeté appel et la Grande Chambre a finalement statué en leur faveur en établissant qu'ils avaient subi une discrimination en étant privés de leur droit à l'instruction.³⁹ Le plan d'action mis à jour pour l'exécution de l'arrêt dans l'affaire *D. H. et autres*, qui décrit toutes les mesures adoptées et planifiées en vue d'un nouveau système d'éducation inclusive, a été publié en février 2016.⁴⁰ Le gouvernement tchèque a soumis en septembre 2016 un rapport complémentaire contenant les modifications effectuées suite à l'amendement de la loi sur les écoles (voir le point 7 ci-après pour plus de précisions).⁴¹ Une procédure d'infraction a été engagée par la Commission européenne en 2014; elle est toujours en cours. La jurisprudence des juridictions tchèques, de même que

³⁹ CouEDH, *D.H. et autres c. République tchèque*, requête n° 57325/00, 13 novembre 2007. [http://hudoc.echr.coe.int/eng#{"display":\["0"\],"languageisocode":\["FRE"\],"appno":\["57325/00"\],"itemid":\["001-83258"\]}](http://hudoc.echr.coe.int/eng#{), consulté le 28 janvier 2017.

⁴⁰ Comité des Ministres (2016), *Revised Action Plan for the execution of the judgment in D. H. and others*, 5 février 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ad0ba>, consulté le 28 janvier 2017.

⁴¹ Comité des Ministres (2016), *Complementary Report on the execution of the judgment in D. H. and others*, 6 septembre 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0>, consulté le 28 janvier 2017.

les avis juridiques rendus par le Médiateur tchèque (organisme de promotion de l'égalité de traitement), montrent que cette problématique reste très courante.⁴²

En ce qui concerne le motif de l'âge, l'existence d'une discrimination exercée à l'égard des aînés dans différents secteurs de la vie publique n'est pas niée, mais cette forme de discrimination est présentée comme une conséquence de «l'économie de marché» avec ses bons et ses mauvais côtés, invoquant qu'il serait déraisonnable et injuste d'exiger une égalité de traitement absolue entre personnes d'âges différents.

Il convient de souligner que la transposition des directives dans l'ordre juridique interne ne peut être considérée comme la panacée universelle capable de résoudre ou d'éliminer totalement les problèmes de la société tchèque en rapport avec la discrimination. Les difficultés sont essentiellement structurelles et concernent l'intégration de la communauté rom dans le système d'enseignement, la ségrégation au niveau du logement et la discrimination sur le marché du travail, l'insertion professionnelle des personnes handicapées et, surtout, l'intégration des minorités et groupes défavorisés dans la vie quotidienne de la société de façon générale.

2. Législation principale

La République tchèque a ratifié tous les instruments de lutte contre la discrimination relevant des deux principaux systèmes internationaux de défense des droits de l'homme, à savoir les Nations unies et le Conseil de l'Europe, et notamment la Convention de l'UNESCO contre la discrimination dans l'éducation, la Convention n° 111 de l'OIT et la Convention internationale sur l'élimination de toutes les formes de discrimination raciale. La République tchèque adhère également à la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, au Pacte international relatif aux droits civils et politiques et au Pacte international relatif aux droits économiques, sociaux et culturels. L'ordre juridique national est structuré par la Constitution tchèque, qui intègre la Charte des droits fondamentaux et des libertés fondamentales de la République tchèque dans ses dispositions. La République tchèque nouvellement constituée a déclaré en 1993 que la Charte, qui fut l'un des premiers éléments de la législation fédérale tchécoslovaque post-communiste, faisait partie de son ordre constitutionnel. Les dispositions de la Charte tchèque couvrent des droits identiques à ceux visés par la Convention européenne des droits de l'homme, le Pacte international relatif aux droits civils et politiques et le Pacte international relatif aux droits économiques, sociaux et culturels.

Lors de la ratification du traité de Lisbonne par la République tchèque, une déclaration spécifique a été annexée à la signature. Elle concerne la Charte des droits fondamentaux de l'UE et souligne les limites de son application en République tchèque. Durant le processus national subséquent de ratification du Traité, le Président de la République tchèque a différé ladite ratification en réclamant pour la République tchèque la possibilité d'adhérer au Protocole sur l'application de la Charte des droits fondamentaux en Pologne et au Royaume-Uni. Ce protocole ne dispense pas de l'application de la Charte de l'UE: il a plutôt un caractère interprétatif puisqu'il précise l'effet des droits et principes consacrés par la Charte là où une incertitude pourrait survenir. Autrement dit, ni une déclaration unilatérale de la République tchèque ni l'adhésion au Protocole (qui ne peut se faire qu'en liaison avec un futur amendement du Traité) ne changent rien à l'application de la Charte conformément à son article 51, paragraphe premier. Celle-ci engage non seulement les

⁴² Voir notamment l'arrêt n° III. ÚS 1136/13 du 12 août 2015 de la Cour constitutionnelle de la République tchèque (*Ústavní soud*) (<http://nalus.usoud.cz/Search/GetText.aspx?sz=3-1136>) dans lequel la Cour conclut à une absence de discrimination tout en faisant clairement référence au test de la discrimination indirecte établi par la jurisprudence de la CourEDH. Le Médiateur tchèque a critiqué la tentative d'un directeur de limiter le nombre d'élèves roms admis en première année d'une école primaire et conclu en l'espèce à une discrimination directe. Défenseur public des droits, avis juridique n° 5202/2014/VOP du 16 avril 2015 (<http://eso.ochrance.cz/Nalezene/Edit/2812>).

autorités, institutions et autres sujets de l'UE, mais également la République tchèque en tant qu'État membre, lors de l'application du droit européen.

Une étude comparative des textes montre que les dispositions de la Charte tchèque des droits fondamentaux et libertés fondamentales sont plus détaillées que celles des instruments internationaux (dispositions du Chapitre Cinq régissant le droit à un jugement équitable, par exemple) et sont formulées de manière moins précise (droits économiques, sociaux et culturels notamment). L'article 3 de la Charte tchèque comporte une clause antidiscrimination générale qui interdit explicitement la discrimination en matière de droits fondamentaux et libertés fondamentales fondée sur une liste ouverte de motifs: le sexe, la race, la couleur, la langue, la religion ou les convictions, les opinions politiques ou autres, l'origine nationale ou sociale, l'appartenance à une minorité ethnique ou nationale, la fortune et la naissance ou tout autre statut. La Charte n'assure pas une protection spécifique contre la discrimination fondée sur l'orientation sexuelle ou le handicap.

Le code pénal fixe des sanctions pour les délits liés à une discrimination raciale ou une discrimination fondée sur la religion ou les convictions, mais elles concernent uniquement les incidents les plus graves.⁴³ On observe en outre des divergences dans la manière dont sont traités les délits selon qu'ils ont une motivation raciale ou qu'ils relèvent d'une haine religieuse ou d'une discrimination fondée sur les convictions – les sanctions étant alors plus strictes.

C'est en 2009 que la République tchèque a transposé pour la toute première fois les directives «égalité» de l'UE en droit interne: celui-ci ne contenait jusque-là aucune définition des types de discrimination, hormis dans le domaine étroit de l'accès à l'emploi. Le code du travail contenait uniquement des dispositions générales en matière d'égalité, et des définitions de la discrimination et d'autres mesures de l'acquis européen en matière de non-discrimination lui faisaient défaut. Il n'existait aucune disposition concernant la lutte contre la discrimination dans les lois régissant l'accès à la santé, au logement, à la sécurité sociale et aux prestations sociales, ou l'exercice d'une activité indépendante, jusqu'à l'adoption de la loi relative à la lutte contre la discrimination le 17 juin 2009 et son entrée en vigueur le 1^{er} septembre 2009 (les dispositions relatives à l'organisme de promotion de l'égalité étant entrées en vigueur le 1^{er} décembre 2009).⁴⁴ De plus, par effet de «rayonnement», les juridictions tchèques ont établi que la protection contre la discrimination relève du champ de protection des droits personnels de l'individu conformément au code civil et qu'elle s'applique aux situations dans lesquelles aucune disposition du code civil n'interdit la discrimination fondée sur l'un quelconque des motifs prohibés par la Charte – et ce avant l'adoption de la loi antidiscrimination.⁴⁵

3. Principes généraux et définitions

Des définitions de la discrimination directe et indirecte, du harcèlement et de l'injonction de discriminer, ainsi que des rétorsions, figurent dans la loi antidiscrimination. La législation assure une protection des personnes physiques contre la discrimination. Les personnes morales ne sont pas expressément couvertes par le champ d'application personnel de la loi antidiscrimination, mais elles sont protégées par la disposition antidiscrimination de la Charte, comme l'a confirmé la Cour constitutionnelle – notamment lorsqu'elle a été saisie d'allégations d'inégalité de traitement en matière fiscale (concernant des taxes à la consommation).⁴⁶

⁴³ République tchèque, loi n° 40/2009, Code pénal (*Zákon č. 40/2009 Sb., trestní zákoník*), 8 janvier 2009.

⁴⁴ République tchèque, loi n° 198/2009, loi antidiscrimination (*Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)*), 23 avril 2009.

⁴⁵ Cour constitutionnelle (*Ústavní soud*) /sp. zn. IV. ÚS 412/04, arrêt du 7 décembre 2005. <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=48373&pos=1&cnt=1&typ=result>, consulté le 28 janvier 2017.

⁴⁶ République tchèque, Cour constitutionnelle (*Ústavní soud*), Brno/Pl.ÚS 3/13, 15 octobre 2013. <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=81289&pos=1&cnt=1&typ=result>, consulté le 28 janvier

La loi relative à l'emploi au sein des services de sécurité⁴⁷ contient des définitions de la discrimination directe, de la discrimination indirecte et du harcèlement.

La loi sur l'emploi dans les forces armées⁴⁸ contient une définition du harcèlement, mais ne contient pas de définition de la discrimination directe et indirecte. Tout comme la loi sur l'emploi au sein des services de sécurité, elle inclut une disposition interdisant l'injonction de discriminer. La législation nationale tchèque ne contient absolument aucune disposition concernant la discrimination par association et la discrimination multiple.

La Cour suprême a indiqué en 2012 que tant la discrimination directe que la discrimination indirecte requérait une intention discriminatoire.⁴⁹ Plus récemment toutefois, la Cour constitutionnelle a fourni une explication plus précise de la discrimination indirecte et fait référence au test formulé par la Cour européenne des droits de l'homme.⁵⁰ Aucune intention discriminatoire n'est dès lors requise en cas de discrimination indirecte.

La dérogation fondée sur les exigences professionnelles essentielles est prévue par la loi antidiscrimination, le code du travail et les lois régissant la fonction publique, l'emploi dans les forces armées et l'emploi dans les services de sécurité. Une clause d'aménagement raisonnable liée à la discrimination fondée sur le handicap est prévue par la loi antidiscrimination.

Aucune législation n'interdit expressément la discrimination fondée sur l'association avec des personnes présentant des caractéristiques particulières. Dans le but de renforcer la position des victimes, le Médiateur a recommandé en 2014 que la Chambre des députés propose un projet de loi modifiant la loi antidiscrimination en vue d'interdire expressément la discrimination par association – à savoir un comportement moins favorable à l'égard d'une personne en raison de son affiliation à une autre personne à laquelle s'applique un motif de discrimination (race, origine ethnique, nationalité, sexe, âge, etc.).⁵¹ À ce jour cependant, la Chambre des députés n'a toujours pas donné suite à cette recommandation.

4. Champ d'application matériel

Les dispositions tchèques antidiscrimination qui assurent la mise en œuvre des directives couvrent, tant dans le secteur public que dans le secteur privé, les relations de travail, y compris les conditions d'emploi et de travail, les licenciements et la rémunération, et l'adhésion et la participation à des organisations de travailleurs ou d'employeurs.

Ces dispositions couvrent également l'accès à l'emploi (recrutement, requalification, etc.) en rapport avec tous les motifs énoncés dans les directives antidiscrimination de l'UE: le sexe, la race et l'origine ethnique, un handicap (l'état de santé), l'âge et l'orientation sexuelle.⁵² La loi antidiscrimination couvre également certaines fonctions de

2017. Voir aussi: République tchèque, Cour constitutionnelle (*Ústavní soud*), Brno/ IV. ÚS 13/98, 3 septembre 1998. <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=32337&pos=3&cnt=3&typ=result>, consulté le 28 janvier 2017.

⁴⁷ République tchèque, loi n° 361/2003 relative à l'emploi au sein des services de sécurité, 23 septembre 2003 (article 77).

⁴⁸ République tchèque, loi n° 221/1999 relative aux forces armées, 14 septembre 1999 (article 2, paragraphe 3).

⁴⁹ République tchèque, Cour suprême (*Nejvyšší soud ČR*), 21 Cdo 4586/2010, 27 mars 2012. http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/4ED3DA547D85D55BC1257A4E00687866?openDocument&Highlight=0, consulté le 28 janvier 2017.

⁵⁰ République tchèque, Cour constitutionnelle (*Ústavní soud*), Brno/ III. ÚS 1136/13, 12 August 2015, <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=89444&pos=1&cnt=1&typ=result>, consulté le 28 janvier 2017.

⁵¹ Défenseur public des droits (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Rapport de synthèse des activités du Médiateur en 2014), Brno, Veřejný ochránce práv. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna-zprava_VOP_2014.pdf, consulté le 28 janvier 2017.

⁵² Dans une importante affaire de 2016 concernant l'orientation sexuelle, la Cour constitutionnelle a affirmé que les partenaires enregistrés pouvaient adopter des enfants. Voir: Cour constitutionnelle de la République

l'administration publique auxquelles le droit du travail ne s'applique pas, et notamment celles des juges, procureurs, députés parlementaires et autres. Cette loi couvre en outre des domaines tels que l'affiliation à des organisations dont les membres exercent une profession particulière, le travail indépendant, la formation professionnelle et l'éducation à tous les niveaux. La loi antidiscrimination assure également une protection pour ce qui concerne l'accès aux soins de santé, au logement, à la sécurité sociale ou aux avantages sociaux et l'accès aux biens et services.

La loi antidiscrimination interdit la discrimination fondée sur l'origine raciale ou ethnique, la religion ou les convictions, l'âge, un handicap et l'orientation sexuelle. La loi antidiscrimination couvre par ailleurs la «nationalité» (en tchèque: *národnost*) en tant que motif distinct. Dans la législation tchèque et en langue tchèque, ce terme est différent de la «citoyenneté» (en tchèque: *občanství*). Son sens se rapproche davantage de «l'origine nationale», mais ne signifie pas exactement la même chose. Selon la Constitution tchèque, une personne pourrait librement choisir sa «*národnost*». Ce motif couvre dès lors à la fois l'origine nationale et l'origine ethnique, que ce statut ait été acquis par la naissance ou qu'il ait été simplement choisi par l'intéressé. Une liste énumérative des motifs couverts fixe le champ d'application de la loi. Conformément au règlement (UE) n° 492/2011, il existe un projet de loi qui amende les motifs de discrimination dans la loi antidiscrimination en vue d'inclure la «citoyenneté de l'UE». Ce projet de loi devrait être débattu à la Chambre des députés en 2017.⁵³

5. Mise en application de la loi

Le système législatif prévoit une mise en application civile, pénale et administrative. Si la transposition des directives «égalité» ne pose pas de problème grave en termes de législation, certaines difficultés subsistent néanmoins en ce qui concerne la mise en application des lois existantes.

En cas de présomption de discrimination, des poursuites au civil peuvent être intentées en vertu de dispositions spéciales de la loi antidiscrimination. Le code de procédure civile s'applique, de même que le renversement de la charge de la preuve.⁵⁴ En conséquence, lorsque la partie requérante établit devant une juridiction des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte, il incombe à la partie défenderesse de prouver qu'il n'y a pas eu violation du principe de l'égalité de traitement. En 2006, la Cour constitutionnelle a déclaré que les dispositions tchèques en matière de charge de la preuve étaient compatibles avec les garanties d'un procès équitable.⁵⁵ L'application des dispositions relatives à la charge de la preuve a été ultérieurement précisée aussi par la Cour suprême.⁵⁶ Cependant, en vertu du code de procédure civile, le renversement de la charge de la preuve n'est pas d'application dans toutes les situations.⁵⁷ Le Médiateur a recommandé que l'article 133a soit modifié afin que le renversement de la charge de la preuve s'applique dans tous les cas de discrimination,⁵⁸ mais le gouvernement n'a pas accepté l'amendement.

tchèque, Pl. ÚS 7/15, 14 juin 2016;

<http://nalus.usoud.cz/Search/ResultDetail.aspx?id=93271&pos=1&cnt=1&typ=result>.

⁵³ Chambre des députés (2015), *Sněmovní tisk 688/0* (Communiqué de la Chambre des députés n° 668/0); <http://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=688&CT1=0>, consulté le 28 janvier 2017.

⁵⁴ Voir l'article 133a de la loi n° 99/1963, Code de procédure civile (*Zákon č. 99/1963 Sb., občanský soudní řád*), 4 décembre 1963.

⁵⁵ République tchèque, Cour constitutionnelle (*Ústavní soud*) n° Pl. ÚS 37/04, 26 avril 2006, <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=45&pos=1&cnt=1&typ=result>, consulté le 28 janvier 2017.

⁵⁶ République tchèque, Cour suprême (*Nejvyšší soud*) n° 21 Cdo 246/2008, 11 novembre 2009. http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/0A33D83B7E3D04D2C1257A4E0064BF0E?openDocument&Highlight=0, consulté le 28 janvier 2017.

⁵⁷ Il ne s'applique notamment pas lorsqu'une personne handicapée introduit une plainte concernant l'accès aux services ou à l'éducation.

⁵⁸ Défenseur public des droits (Médiateur), (2015), *Výroční zpráva o ochraně před diskriminací* (Rapport annuel sur la protection contre la discrimination), p. 23;

Les juridictions civiles se sont prononcées dans 18 affaires de discrimination en 2016;⁵⁹ la plupart (11) concernaient l'emploi.⁶⁰

Le Médiateur a produit en 2015 un rapport qui recense les principaux obstacles rencontrés par les victimes de discrimination pour intenter une action en justice⁶¹ et cite notamment à cet égard le niveau dissuasif des coûts de procédure. Par ailleurs, le fait de porter une affaire en justice est généralement considéré par l'opinion publique comme un dernier recours: les gens préfèrent résoudre leurs problèmes par d'autres moyens (procédures administratives ou signalement du cas à des ONG, par exemple), en partie parce qu'ils ne s'attendent pas à ce que les tribunaux leur apportent une solution juste et utile – ce qui se vérifie souvent.

De fait, le nombre de cas dans lesquels des sanctions ont été imposées en raison d'un acte discriminatoire est faible. Les procédures sont lentes. L'aide juridique n'est accordée que dans des cas bien déterminés via des avocats désignés par les tribunaux et l'Ordre des avocats, et via la collaboration du Médiateur et de l'ONG «Pro Bono Alliance».⁶²

Lorsqu'il s'agit d'affaires portant sur une discrimination fondée sur le genre, l'origine raciale ou ethnique, la religion, les convictions, un handicap, l'âge ou l'orientation sexuelle, une partie aux poursuites peut être représentée par une entité juridique⁶³ dont l'activité est axée sur la protection contre la discrimination. Les entités juridiques de ce type particulier sont en mesure de fournir des informations et des conseils aux victimes de discrimination et de présenter des motions à des instances administratives chargées de contrôler le comportement légitime des personnes physiques et morales dans divers domaines. Ces entités juridiques n'ont cependant aucun statut particulier dans les litiges portant sur des faits de discrimination. Elles peuvent uniquement assurer, en vertu d'un pouvoir qui leur est conféré à cette fin, la représentation d'une victime dans un cas concret au titre du type spécial de représentation prévu par le code civil. Elles ne peuvent contester une discrimination en intentant une action publique (*actio popularis*) ou une action collective devant des juridictions tchèques. Il conviendrait, selon le Médiateur, de renforcer la coopération entre les ONG et les institutions publiques en vue d'améliorer l'accès des victimes à la justice.⁶⁴

http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocní_zpravy/2015-DIS-vyrocní-zprava.pdf, consulté le 28 janvier 2017.

⁵⁹ République tchèque, ministère de la Justice (2016), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistiques sur les décisions exécutoires des tribunaux dans des affaires civiles selon les catégories de litiges), disponible sur: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

⁶⁰ République tchèque, ministère de la Justice (2016), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistiques sur les décisions exécutoires des juridictions dans des affaires civiles selon les catégories de litiges), disponible sur: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

⁶¹ Défenseur public des droits (Médiateur), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), disponible en anglais sur <http://www.ochrance.cz/en/discrimination/research/>, p. 50-58, consulté le 28 janvier 2017.

⁶² Défenseur public des droits (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), <http://www.ochrance.cz/en/discrimination/research/>, consulté le 28 janvier 2017.

⁶³ Voir République tchèque, loi antidiscrimination n° 198/2009, 23 avril 2009, article 11. En vertu de l'article 26, paragraphe 3, du code de procédure civile, une partie en cause dans litige portant sur une discrimination fondée sur le genre, la race ou l'origine ethnique, la religion, les convictions, un handicap, l'âge ou l'orientation sexuelle, peut être représentée par une entité juridique dont les statuts précisent qu'elle axe ses activités sur la protection contre la discrimination.

⁶⁴ Défenseur public des droits (Médiateur), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p. 84. <http://www.ochrance.cz/en/discrimination/research/>, consulté le 28 janvier 2017.

Les syndicats peuvent également représenter leurs membres en tant que parties à une action judiciaire, quelle que soit la matière visée hormis les litiges commerciaux et d'affaires. Ce droit d'ester en justice est néanmoins peu exercé.

En ce qui concerne le test de situation en matière de discrimination, les juridictions tchèques ont déjà admis dans plusieurs affaires⁶⁵ que toute personne est autorisée à vérifier si elle peut exercer ses droits. En cas de violation des droits, les prétentions des personnes ayant procédé au test sont identiques à ce qu'elles seraient dans une situation où une discrimination n'aurait pas été attendue. La Cour suprême a également confirmé qu'une indemnisation financière pouvait être allouée aux victimes dans de tels cas.⁶⁶

Dans la pratique, le test de situation est utilisé par des ONG pour démontrer une discrimination dans l'accès à l'emploi, aux services et au logement. Une coopération entre quelques ONG et le Médiateur a été initiée en 2012 en matière de test de situation. À ce jour, la plupart des affaires de ce type ont porté sur une discrimination fondée sur l'origine raciale ou ethnique. Bien que les preuves statistiques puissent servir de moyens de preuve, leur utilisation devant les tribunaux n'est guère fréquente dans les affaires de discrimination.

Le doute est permis quant au caractère efficace et dissuasif des sanctions infligées pour discrimination. Le montant de la réparation pour préjudice moral allouée par les tribunaux (à savoir une indemnisation destinée à compenser les conséquences non matérielles de la discrimination) varie fortement puisqu'il peut aller dans la pratique de 200 euros (5 000 CZK) à 10 000 euros (250 000 CZK). Par ailleurs, lorsqu'un requérant n'obtient pas gain de cause, il peut être tenu d'indemniser la partie défenderesse pour les dépens, lesquels représentent en pratique de 1 000 à 2 000 euros environ. Dans une affaire importante à l'encontre d'un propriétaire qui avait placé dans son restaurant une statue tenant dans sa main une batte de baseball avec l'inscription très visible «Haro sur les gitans», la Cour supérieure de Prague a conclu à un comportement discriminatoire et alloué au requérant une indemnisation financière de 926 euros (25 000 CZK).⁶⁷

Selon le code pénal, les délits liés à une discrimination raciale ou une discrimination fondée sur la religion ou les convictions doivent être poursuivis comme des délits incitant à une haine ou une violence fondée sur la race ou la religion/les convictions. Le droit pénal comporte une définition stricte des délits portant atteinte à la vie, la santé ou la liberté personnelle lorsqu'ils sont motivés par la haine raciale ou religieuse. En réalité, les poursuites au pénal dans le cadre de délits liés à une discrimination religieuse ou raciale sont assez rares, et portent en général sur des délits graves tels que des meurtres à caractère raciste ou des actes visant à propager le néonazisme.

La mise en application administrative consiste à sanctionner les délits correctionnels et administratifs. Les procédures administratives pertinentes confèrent des pouvoirs d'investigation à des instances administratives telles que l'Inspection du travail ou l'Inspection du commerce tchèque. En 2016, l'Inspection du travail tchèque a infligé une amende de 925 euros (25 000 CZK) à une agence immobilière dont les employés avaient refusé de louer un appartement à des Roms, lesquels avaient recouru au test de situation. Le Médiateur a constaté en outre une discrimination directe en l'espèce et déclaré que la procédure de l'Inspection du travail était correcte et que les parties requérantes pourraient également se voir accorder une satisfaction équitable via une procédure judiciaire.⁶⁸

⁶⁵ République tchèque, Cour suprême (*Nejvyšší soud*) /30 Cdo 2314/2012, 28 février 2013. http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/BD306CF3DD626402C1257B410032B5CB?openDocument&Highlight=0, consulté le 28 janvier 2017.

⁶⁶ République tchèque, Cour suprême (*Nejvyšší soud*) /30 Cdo 2314/2012, 28 février 2013.

⁶⁷ République tchèque, Cour supérieure de Prague (*Vrchní soud v Praze*) / 1 Co 99/2006, 17 février 2014.

⁶⁸ Défenseur public des droits (Médiateur), (2016), *Zpráva o šetření č. 6780/2014/VOP* (Rapport d'enquête n° 6780/2014/VOP), 19 janvier 2016; <http://eso.ochrance.cz/Nalezene/Edit/3922>, consulté le 28 janvier 2017.

Lorsqu'il s'agit d'offres d'emploi discriminatoires, l'Inspection de l'emploi tchèque inflige en moyenne une amende de 883 euros (23 850 CZK) – le montant le plus élevé jamais atteint à ce jour étant de 9 259 euros (250 000 CZK). L'Inspection du commerce tchèque traite principalement de double tarification et l'amende moyenne dans ce contexte s'établit à 1 620 euros (43 750 CZK). Il ressort des recherches effectuées par le Médiateur que les instances administratives ont plus particulièrement pénalisé des activités discriminatoires suffisamment étayées par des preuves documentaires ou des témoignages personnels.⁶⁹

Les enquêtes administratives concernant les délits correctionnels ont été particulièrement inefficaces. La loi régissant ce type de délits exige que l'enquête soit achevée dans un délai d'un an à compter du délit présumé, faute de quoi les poursuites doivent être abandonnées: il s'est donc avéré exceptionnel, dans ce contexte, que des actes discriminatoires soient punis. Depuis octobre 2015 cependant, ce délai peut être porté à deux ans.

Aucune démarche n'a été réellement entreprise ces dernières années pour encourager le dialogue avec les ONG dans une perspective de promotion du principe de l'égalité de traitement. La promotion du dialogue entre partenaires sociaux concernant le principe de l'égalité de traitement dans les pratiques en vigueur sur le lieu de travail est une tâche qui relève de la compétence de l'accord tripartite (réunissant les acteurs clés du marché du travail, à savoir les employeurs, les syndicats et le gouvernement) et du ministère du Travail. On ne constate toutefois aucune évolution ni possibilité nouvelle à cet égard.

6. Organismes de promotion de l'égalité de traitement

L'organisme de promotion de l'égalité institué en République tchèque est opérationnel depuis le 1^{er} décembre 2009. La législation antidiscrimination ne crée pas de nouvel organisme, mais attribue au Défenseur public des droits (Médiateur tchèque) les fonctions requises par l'article 13 de la directive 2000/43/CE. Le Médiateur a également le mandat de l'organisme pour l'égalité avec des compétences pour l'intégralité du champ d'application de la loi antidiscrimination.

Le Défenseur public des droits contribue, dans le cadre de la législation antidiscrimination, à combattre le racisme et la xénophobie et à promouvoir l'égalité de traitement de toutes les personnes indépendamment de leur sexe, leur race, leur origine ethnique, leur orientation sexuelle, leur âge, leur handicap, leur religion ou leur foi et leur «nationalité» (en tchèque: *národnost*). Il peut apporter une aide indépendante aux victimes, procéder à des études indépendantes et publier des rapports indépendants, et formuler des recommandations. L'organisme tchèque de promotion de l'égalité de traitement est indépendant et se montre très proactif.

Le Bureau du Défenseur public des droits a enregistré 451 nouvelles plaintes pour discrimination en 2016; il n'a cependant constaté de discrimination que dans neuf d'entre elles (soit moins de 2 %). Ces recours portaient le plus souvent sur des présomptions de discrimination dans les domaines du droit du travail (23 % des cas), de la fourniture de biens et de services (19 % des cas), du logement (11 % des cas), de l'enseignement (11 % des cas) et de l'administration publique (11 % des cas). Les motifs de discrimination les plus souvent invoqués en 2016 ont été les «autres raisons» (39 % des cas), le handicap (23 % des cas), la race et l'origine ethnique (15 % des cas), le sexe (10 % des cas), l'âge (10 % des cas) et la nationalité (5 % des cas). L'orientation sexuelle et la religion ont été citées dans 2 % des plaintes.⁷⁰

⁶⁹ Défenseur public des droits (Médiateur), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p. 137. <http://www.ochrance.cz/en/discrimination/research/>.

⁷⁰ Défenseur public des droits (2016), *Souhrnná zpráva o činnosti veřejného ochránce práv 2016* (Rapport de synthèse des activités du Médiateur en 2016), Brno, *Veřejný ochránce práv*;

Ses capacités actuelles en termes de ressources humaines et financières font que le Médiateur ne peut apporter qu'une assistance limitée aux victimes. Le Médiateur tchèque n'est pas habilité à représenter les victimes devant les tribunaux. Il doit se contenter d'apprécier si une affaire implique ou non une discrimination, et de fournir à la victime un avis quant à ses chances d'obtenir gain de cause en justice.

Depuis 2012 toutefois, le Médiateur tchèque coopère avec l'ONG «Pro Bono Alliance», qui organise une aide juridique gratuite pour des victimes dont le Médiateur estime qu'elles ont très probablement fait l'objet d'une discrimination. Une aide juridique spécifique est fournie sur la base d'un contrat entre un requérant (client) et un cabinet juridique partenaire affilié à une «chambre de compensation» pro bono desservie par l'ONG «Pro Bono Alliance». Depuis 2012, plus de quinze victimes de discrimination ont accepté cette aide juridique.⁷¹ En 2016, l'un des cabinets juridiques a accepté de fournir cette assistance dans cinq dossiers du Médiateur.⁷²

Le Médiateur tchèque n'est pas autorisé à recourir au test de situation. En 2012 cependant, il a entamé une collaboration avec des ONG susceptibles de procéder à des tests de situation dans des cas recensés par ses soins.

7. Points essentiels

Le point majeur en rapport avec la transposition de la directive 2000/43/CE (égalité raciale) concerne la garantie d'une égalité d'accès à l'enseignement pour les enfants roms dans la pratique. En 2015, le Médiateur a déclaré que le nombre d'élèves roms instruits dans un programme d'enseignement s'adressant à des enfants atteints de légères déficiences mentales avait augmenté de 4 % par rapport à l'année précédente.⁷³

Le Médiateur tchèque a procédé en 2012 à des recherches visant à collecter des informations ethniques concernant les enfants des anciennes écoles spéciales (devenues pour la plupart des «écoles primaires pratiques»). Ces données ont été collectées au travers d'études de «tiers», à savoir des membres du personnel de l'organisme pour l'égalité et des enseignants. Cette étude menée dans 67 anciennes écoles spéciales choisies au hasard sur l'ensemble du territoire national révèle que les enfants roms y représentent de 32 à 35 % de l'ensemble des élèves. Une comparaison entre ces chiffres et la proportion de Roms dans l'ensemble de la population de la République tchèque (chiffre variant entre 1,4 et 2,8 %) montre très clairement que le pourcentage d'enfants roms scolarisés dans ces établissements est disproportionné. Ce travail exceptionnel réalisé par le Médiateur a contribué à prouver qu'une discrimination indirecte persiste dans les écoles tchèques en termes d'accès des enfants roms à l'instruction.⁷⁴

https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snmovnu/Vyrocní-zpráva-2016_web.pdf.

⁷¹ Défenseur public des droits (Médiateur), (2015), «Pro bono síť advokátů proti diskriminaci se rozrůstá o další tři kanceláře» (L'Association de juristes «Pro Bono Alliance» contre la discrimination compte trois cabinets juridiques affiliés supplémentaires), <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2015/pro-bono-sit-advokatu-proti-diskriminaci-se-rozrusta-o-dalsi-tri-kancelare/>, consulté le 28 janvier 2017.

⁷² Défenseur public des droits (Médiateur), (2016), *Advokátní kancelář zapojená do sítě pro bono převzala již pátý případ* (Un cabinet juridique prend en charge la cinquième affaire dans le cadre de l'assistance «pro bono»); <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2016/advokatni-kancelar-zapojena-do-site-pro-bono-prevzala-jiz-paty-pripad-v-tomto-roce/>, consulté le 28 janvier 2017.

⁷³ Défenseur public des droits (2015), *Stanovisko sp. zn. 16/2015/DIS* (Déclaration n° 16/2015/DIS), Brno, *Veřejný ochránce práv*. <http://eso.ochrance.cz/Odlozene/Edit/2412>, consulté le 28 janvier 2017.

⁷⁴ Défenseur public des droits (2012), *Enquête du Défenseur public des droits concernant la composition ethnique des élèves des anciennes écoles spéciales – Rapport final (Výzkum etnického složení žáků bývalých zvláštních škol)*, Brno, Défenseur public des droits. <http://www.ochrance.cz/en/discrimination/research/>, http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf, consulté le 28 janvier 2017.

Un amendement à la loi sur les écoles visant à améliorer l'intégration des élèves handicapés et de ceux ayant des besoins éducatifs spéciaux de façon plus générale a été adopté en février 2015. Il instaure notamment une préférence pour l'intégration individuelle plutôt que collective.⁷⁵ Autrement dit, il convient de veiller à ce qu'un élève soit intégré individuellement dans le milieu scolaire ordinaire en bénéficiant d'une aide adéquate. Les principaux volets des dispositions modifiées sont entrés en vigueur le 1^{er} septembre 2016 et l'enseignement dit «inclusif» est instauré depuis lors. Plusieurs améliorations positives ont été adoptées, parmi lesquelles diverses mesures de soutien⁷⁶ à l'intention des élèves ayant des besoins éducatifs spéciaux, un mécanisme de financement de ces mesures et la mise en place d'une instance de recours en matière de diagnostic. Si certaines améliorations sont visibles sur le terrain quelques mois après la mise en œuvre des changements adoptés, il serait prématuré de vouloir déterminer si ceux-ci assurent désormais une protection adéquate des enfants roms contre une discrimination dans l'accès à l'enseignement.

Les problèmes structurels à résoudre ne se situent pas principalement dans le domaine de la mise en application et des sanctions, mais plutôt au niveau de l'agenda politique – autrement dit, il faudrait que la question soit traitée en tant que priorité par les partis politiques au pouvoir. Le fond du problème n'est pas la mise en œuvre de la législation: il résiderait plutôt dans une absence de politique gouvernementale systématique. Les récents gouvernements n'ont pas réellement accordé d'attention à la problématique des droits de l'homme en général, en ce compris le programme de lutte contre la discrimination. Aucune mesure gouvernementale efficace n'a été développée pour éradiquer les racines structurelles de la discrimination.

⁷⁵ Un terme utilisé dans le système scolaire tchèque pour désigner la création de classes spéciales ou de groupes spéciaux d'études dans l'enseignement ordinaire.

⁷⁶ Fixées par le décret n° 27/2016 relatif à l'instruction des élèves ayant des besoins éducatifs spéciaux et des élèves doués, 28 janvier 2016; <https://www.zakonyprolidi.cz/cs/2016-27>.

ZUSAMMENFASSUNG

1. Einleitung

Die Gesellschaft der Tschechischen Republik, eines Landes mit einer Bevölkerung von 10,5 Millionen, wurde im Verlauf der Nachkriegsgeschichte immer homogener. 1945 wurden im Rahmen der Ausgleichsregelungen nach dem zweiten Weltkrieg Gesetze zur Ausbürgerung der meisten Deutschen (der größten Minderheit in der Tschechoslowakei) und der Ungarn verabschiedet. Die Mehrheit der tschechoslowakischen Roma und Juden war in den deutschen Konzentrationslagern umgekommen und viele Mitglieder der jüdischen Minderheit, die den Holocaust überlebt hatten, wurden als Deutsche ausgebürgert. Die traditionelle Doktrin einer tschechoslowakischen nationalen Identität, die seit der Unabhängigkeit des Landes im Jahr 1918 kultiviert worden war, wurde von den kommunistischen Regierungen der Nachkriegszeit aufgegeben, wodurch schließlich getrennte nationalistische Bewegungen der Tschechen und der Slowaken übrig blieben. Die tschechoslowakische Föderation wurde 1969 gegründet und im Jahr 1993 endgültig aufgelöst.

Das Erbe der 40-jährigen kommunistischen Herrschaft wirkte sich auch auf die Tschechische Republik negativ aus, weil diese die Begriffe Recht und Rechtsstaat formalistisch und fehlerhaft definierte. Eine wichtige Aufgabe des neu verabschiedeten tschechischen Antidiskriminierungsrechts besteht deshalb darin, das eng gefasste und formalisierte Verständnis von Gleichbehandlung und Diskriminierungsschutz zu überwinden, das in staatlichen und politischen Organen vorherrscht.

Die Einführung von Fördermaßnahmen in den Bereichen Bildung und Beschäftigung, mit denen die Benachteiligung der Roma-Minderheit ausgeglichen werden soll, wird von der Mehrheit der Öffentlichkeit als „ungerechtfertigte Bevorzugung“ aufgrund der ethnischen Herkunft wahrgenommen.

Es ist noch nicht gelungen, allen Roma-Kindern den Zugang zu Regelschulen zu ermöglichen. Das Thema gelangte vor allem durch Entscheidungen und Berichte von Organen des Europarats und der Vereinten Nationen ins Bewusstsein der Öffentlichkeit, z. B. durch das Urteil des Europäischen Gerichtshofs für Menschenrechte in der Rechtssache *D.H. und andere gegen die Tschechische Republik*. Die Kläger reichten im Jahr 2000 beim EGMR eine Klage wegen Diskriminierung ein. Die zuständige Kammer des EGMR kam im Februar 2006 zu dem Urteil, dass die Kläger zwar schwerwiegende Argumente vorgebracht hatten, die betreffenden Handlungen jedoch keine Verstöße gegen die Europäische Menschenrechtskonvention darstellten. Die Kläger gingen in Berufung und die große Kammer entschied schließlich zugunsten der Kläger und kam zu dem Ergebnis, dass diese in ihrem Recht auf Bildung diskriminiert worden waren.⁷⁷ Im Februar 2016 wurde der überarbeitete Aktionsplan zur Vollstreckung des Urteils in der Rechtssache *D. H. u.a.* veröffentlicht, in dem alle geplanten und beschlossenen Maßnahmen für ein neues, inklusives Bildungssystem beschrieben wurden.⁷⁸ Im September 2016 legte die tschechische Regierung einen ergänzenden Bericht mit Änderungen vor, die sich aus der Novellierung des Schulgesetzes ergaben (für nähere Einzelheiten siehe Abschnitt 7 weiter unten).⁷⁹ 2014 leitete die Europäische Kommission ein entsprechendes Vertragsverletzungsverfahren ein, das noch anhängig ist. Entscheidungen der

⁷⁷ EGMR, *D.H. u.a. gegen Tschechische Republik*, Bsw. 57325/00, 13. November 2007. <http://hudoc.echr.coe.int/eng#> (letzter Zugriff am 9. November 2015).

⁷⁸ Ministerkomitee (2016), *Revised Action Plan for the execution of the judgment in D. H. and others*, 5. Februar 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ad0ba> (letzter Zugriff am 28. Januar 2017).

⁷⁹ Ministerkomitee (2016), *Complementary Report on the execution of the judgment in D. H. and others*, 6. September 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0> (letzter Zugriff am 28. Januar 2017).

tschechischen Gerichte und Rechtsgutachten des Tschechischen Ombudsmanns (der Gleichbehandlungsstelle) zeigen, dass dieses Thema nach wie vor sehr aktuell ist.⁸⁰

In Bezug auf den Diskriminierungsgrund Alter wird nicht bestritten, dass ältere Menschen in einigen Bereichen des öffentlichen Lebens diskriminiert werden. Allerdings wird argumentiert, dass dies eine Folge der „Marktwirtschaft“ sei, die positive und negative Seiten habe, und dass es unvernünftig und ungerecht wäre, eine absolute Gleichbehandlung von Menschen verschiedenen Alters zu fordern.

Es ist zu betonen, dass die Umsetzung der Richtlinien in das tschechische Rechtssystem kein omnipotentes Heilmittel darstellt, das die Diskriminierungsprobleme der tschechischen Gesellschaft lösen oder vollständig beseitigen kann. Diese Probleme sind vor allem struktureller Art und hängen mit der Eingliederung der Roma-Gemeinschaft ins Bildungssystem, deren Wohnsegregation und Diskriminierung auf dem Arbeitsmarkt zusammen, mit Problemen bei der Integration von Menschen mit Behinderungen in den Arbeitsmarkt und, noch wichtiger, mit der Integration benachteiligter Minderheiten und Gruppen in das alltägliche gesellschaftliche Leben.

2. Wichtigste Gesetze

Die Tschechische Republik hat alle Instrumente der beiden wichtigsten internationalen Menschenrechtssysteme – Vereinte Nationen und Europarat – zur Bekämpfung von Diskriminierung ratifiziert, einschließlich des Übereinkommens der UNESCO gegen Diskriminierung im Unterrichtswesen, des 111. Übereinkommens der ILO und des Internationalen Übereinkommens zur Beseitigung jeder Form von Rassendiskriminierung. Die Tschechische Republik ist auch der Konvention zum Schutz der Menschenrechte und Grundfreiheiten, dem Internationalen Pakt über bürgerliche und politische Rechte und dem Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte beigetreten. Grundgerüst des nationalen Rechtssystems ist die tschechische Verfassung, die die Charta der Grundrechte und Grundfreiheiten der Tschechischen Republik als Teil der Verfassungsordnung verankert. Die Charta war eine der ersten Rechtsvorschriften der postkommunistischen tschechoslowakischen Föderation und wurde im Jahr 1993 durch eine Verordnung der neu gegründeten Tschechischen Republik zu einem Teil der Verfassungsordnung erklärt. Die Charta garantiert die gleichen Rechte, die von der Europäischen Menschenrechtskonvention, dem Internationalen Pakt über bürgerliche und politische Rechte und dem Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte geschützt werden.

Als die Tschechische Republik den Vertrag von Lissabon ratifizierte, gab sie mit der Ratifizierungsurkunde eine Sondererklärung ab. Diese Erklärung bezieht sich auf die EU-Charta der Grundrechte und verweist auf die Grenzen deren Anwendung in der Tschechischen Republik. Während des anschließenden innenpolitischen Ratifizierungsverfahrens unterlief der Präsident der Tschechischen Republik die Ratifizierung des Lissabon-Vertrags, indem er einen Anschluss der Tschechischen Republik an das Protokoll zur Umsetzung der EU-Charta in Polen und im Vereinigten Königreich ins Spiel brachte. Das Protokoll ist keine Nichtbeteiligungsklausel in Bezug auf die EU-Charta, sondern enthält Bestimmungen zu deren Auslegung. Es klärt die Wirkung der in der EU-Charta begründeten Rechte und Grundsätze, wo Unsicherheiten bestehen. Anders ausgedrückt kann weder eine einseitige Erklärung der Tschechischen Republik noch ein Anschluss an das Protokoll (der nur in Verbindung mit künftigen Änderungen des Lissabon-

⁸⁰ Vgl. z. B. Verfassungsgericht der Tschechischen Republik (*Ústavní soud*), Nr. III. ÚS 1136/13, 12. August 2015; <http://nalus.usoud.cz/Search/GetText.aspx?sz=3-1136>. In diesem Urteil stellte das Verfassungsgericht keine Diskriminierung fest, obwohl es klar auf die in der Rechtsprechung des EGMR genannten Kriterien für mittelbare Diskriminierung Bezug nahm. Der Tschechische Ombudsmann kritisierte den Versuch einer Schulleitung, die Zahl der für das erste Grundschuljahr zugelassenen Roma-Schülerinnen und -Schüler zu begrenzen und stellte in diesem Fall eine unmittelbare Diskriminierung fest. Bürgerbeauftragter, Rechtsgutachten Nr. 5202/2014/VOP, 16. April 2015; <http://eso.ochrance.cz/Nalezene/Edit/2812>.

Vertrags möglich ist) etwas an der Anwendung der EU-Charta nach deren Artikel 51(1) ändern. Die Charta gilt nicht nur für die Organe, Einrichtungen und sonstigen Stellen der Europäischen Union, sondern auch für die Tschechische Republik als Mitgliedstaat bei der Umsetzung des EU-Rechts.

Eine vergleichende Analyse des Texts zeigt, dass die Bestimmungen der tschechischen Charta der Grundrechte und Grundfreiheiten detaillierter sind als die der internationalen Instrumente (z. B. die Bestimmung in Kapitel fünf über das Recht auf ein faires Gerichtsverfahren) und weniger präzise formuliert (z. B. in Bezug auf die wirtschaftlichen, sozialen und kulturellen Rechte). Ein allgemeine Antidiskriminierungsklausel in Artikel 3 der Charta verbietet ausdrücklich Diskriminierung bei der Ausübung der Grundrechte und -freiheiten aus den folgenden Gründen, wobei die Aufzählung nicht abgeschlossen ist: Geschlecht, Rasse, Hautfarbe, Sprache, Religion oder Weltanschauung, politische oder sonstige Überzeugung, nationale oder soziale Herkunft, Mitgliedschaft in einer nationalen oder ethnischen Minderheit, Eigentum und Geburt oder sonstiger Status. Die Charta schützt nicht ausdrücklich vor Diskriminierung aufgrund der sexuellen Orientierung oder einer Behinderung.

Das Strafgesetzbuch sieht Strafen für Tatbestände vor, die mit Rassendiskriminierung und Diskriminierung aufgrund von Religion oder Weltanschauung in Verbindung stehen, diese gelten jedoch nur für besonders schwere Straftaten.⁸¹ Außerdem werden Strafen, die rassistisch oder durch religiösen Hass oder Diskriminierung aufgrund der Weltanschauung motiviert sind, besonders behandelt und härter bestraft.

Die Tschechische Republik hat die Gleichbehandlungsrichtlinien der EU erst 2009 in nationales Recht umgesetzt. Bis dahin gab es keine Definitionen der einzelnen Diskriminierungsformen, mit Ausnahme eines engen Anwendungsbereiches beim Zugang zu Beschäftigung. Das Arbeitsgesetzbuch enthielt nur einen allgemeinen Gleichbehandlungsgrundsatz und ebenfalls keine Definition von Diskriminierung und andere Elemente des Besitzstands der EU im Antidiskriminierungsrecht. Bevor das Antidiskriminierungsgesetz am 17. Juni 2009 verabschiedet wurde und am 1. September 2009 in Kraft trat (die Bestimmungen zur Gleichbehandlungsstelle traten erst am 1. Dezember 2009 in Kraft), enthielten die bestehenden Gesetze, die den Zugang zu Gesundheitswesen, Wohnraum, sozialer Sicherheit und sozialen Vergünstigungen regeln, keine Antidiskriminierungsbestimmungen.⁸² Andererseits gingen die tschechischen Gerichte bereits vor der Verabschiedung des Antidiskriminierungsrechts davon aus, dass der Schutz vor Diskriminierung durch den „Strahlungseffekt“ unter den Schutz der Persönlichkeitsrechte gemäß dem Bürgerlichen Gesetzbuch fällt, der immer dann gilt, wenn keine sonstige Bestimmung des Bürgerlichen Gesetzbuches Diskriminierung wegen den in der Charta genannten Diskriminierungsgründen verbietet.⁸³

3. Wichtigste Grundsätze und Begriffe

Das Antidiskriminierungsgesetz enthält Definitionen von unmittelbarer und mittelbarer Diskriminierung, Belästigung, Anweisung zur Diskriminierung sowie Viktimisierung. Das Recht schützt nur natürliche Personen vor Diskriminierung. Juristische Personen fallen nicht ausdrücklich unter den Anwendungsbereich des Antidiskriminierungsgesetzes. Sie sind jedoch durch das Diskriminierungsverbot der Charta geschützt, wie das

⁸¹ Tschechische Republik, Gesetz Nr. 40/2009, Strafgesetzbuch (*Zákon č. 40/2009 Sb., trestní zákoník*), 8. Januar 2009.

⁸² Tschechische Republik, Gesetz Nr. 198/2009, Antidiskriminierungsgesetz (*Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)*), 23. April 2009.

⁸³ Verfassungsgericht (*Ústavní soud*) /sp. zn. IV. ÚS 412/04, Urteil vom 7. Dezember 2005; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=48373&pos=1&cnt=1&typ=result> (letzter Zugriff am 28. Januar 2017).

Verfassungsgericht bestätigt hat, z. B. in Fällen von ungleicher Behandlung durch die Steuerbehörden (in Bezug auf Verbrauchssteuern).⁸⁴

Das Gesetz über den Dienst von Mitgliedern der Sicherheitsdienste⁸⁵ enthält Definitionen von unmittelbarer und mittelbarer Diskriminierung und Belästigung.

Das Gesetz über den Dienst von Mitgliedern der Streitkräfte⁸⁶ enthält eine Definition von Belästigung, jedoch keine Definition von unmittelbarer und mittelbarer Diskriminierung. Ähnlich wie das Gesetz über den Dienst von Mitgliedern der Sicherheitsdienste enthält auch dieses Gesetz eine Bestimmung, die Anweisung zur Diskriminierung verbietet. Das tschechische Recht enthält nirgends Bestimmungen zu Diskriminierung aufgrund von Assoziierung und Mehrfachdiskriminierung.

2012 urteilte der Oberste Gerichtshof, dass unmittelbare und mittelbare Diskriminierung nur dann vorliegt, wenn eine diskriminierende Absicht bewiesen wurde.⁸⁷ In jüngerer Zeit hat das Verfassungsgericht jedoch ausführlichere Erläuterungen zu mittelbarer Diskriminierung abgegeben und auf die vom Europäischen Gerichtshof für Menschenrechte formulierten Kriterien Bezug genommen.⁸⁸ Entsprechend ist in Fällen von mittelbarer Diskriminierung keine diskriminierende Absicht erforderlich.

Das Antidiskriminierungsgesetz, das Arbeitsgesetzbuch und die Gesetze, die den öffentlichen Dienst und die Arbeit der Streifkräfte und Sicherheitsdienste regulieren, sehen Ausnahmen für wesentliche berufliche Anforderungen vor. Das Antidiskriminierungsgesetz fordert angemessene Vorkehrungen, die Diskriminierung aufgrund von Behinderungen verhindern.

Es gibt keine Rechtsvorschrift, die Diskriminierung aufgrund der Assoziierung mit Personen mit bestimmten Eigenschaften ausdrücklich verbietet. Um die Position der Opfer zu stärken, empfahl der Ombudsmann 2014, das Abgeordnetenhaus solle einen Gesetzesvorschlag zur Änderung des Antidiskriminierungsgesetzes machen, der Diskriminierung durch Assoziierung – also die weniger günstige Behandlung einer Person aufgrund ihrer Verbindung zu einer anderen Person, die aus irgendeinem Grund (Rasse, ethnische Zugehörigkeit, Nationalität, Geschlecht, Alter usw.) diskriminiert wird – ausdrücklich verbieten sollte.⁸⁹ Das Abgeordnetenhaus ist dieser Empfehlung noch nicht gefolgt.

4. Sachlicher Geltungsbereich

Die tschechischen Antidiskriminierungsvorschriften, mit denen die Richtlinien umgesetzt wurden, gelten für Beschäftigungsverhältnisse einschließlich Beschäftigungs- und

⁸⁴ Tschechische Republik, Verfassungsgericht (*Ústavní soud*), Brno/Pl. ÚS 3/13, 15. Oktober 2013; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=81289&pos=1&cnt=1&typ=result> (letzter Zugriff am 28. Januar 2017). Siehe ebenso: Tschechische Republik, Verfassungsgericht (*Ústavní soud*), Brno/ IV. ÚS 13/98, 3. September 1998; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=32337&pos=3&cnt=3&typ=result> (letzter Zugriff am 28. Januar 2017).

⁸⁵ Tschechische Republik, Gesetz Nr. 361/2003 über den Dienst von Angehörigen der Sicherheitskräfte, 23. September 2003, Art. 77.

⁸⁶ Tschechische Republik, Gesetz Nr. 221/1999 über den Dienst von Angehörigen der Streitkräfte, 14. September 1999, Art. 2 Abs. 3.

⁸⁷ Tschechische Republik, Oberster Gerichtshof (*Nejvyšší soud ČR*), 21 Cdo 4586/2010, 27. März 2012. http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/4ED3DA547D85D55BC1257A4E00687866?openDocument&Highlight=0 (letzter Zugriff am 28. Januar 2017).

⁸⁸ Tschechische Republik, Verfassungsgericht (*Ústavní soud*), Brno/ III. ÚS 1136/13, 12. August 2015, <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=89444&pos=1&cnt=1&typ=result> (letzter Zugriff am 28. Januar 2017).

⁸⁹ Bürgerbeauftragter (Ombudsmann) (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Zusammenfassender Bericht über die Tätigkeit des Ombudsmanns im Jahr 2014), Brno, *Veřejný ochránce práv*; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnnazprava_VOP_2014.pdf (letzter Zugriff am 9. April 2016).

Arbeitsbedingungen, Entlassungen und Arbeitsentgelt sowie Mitgliedschaft und Mitwirkung in Arbeitnehmer- und Arbeitsgeberorganisationen. Die Umsetzung gilt sowohl für den öffentlichen als auch für den privaten Sektor.

Außerdem gelten sie für den Zugang zu Beschäftigung (Einstellung, Umschulung usw.) und decken alle in den Gleichbehandlungsrichtlinien der EU genannten Diskriminierungsgründe ab, d. h. Geschlecht, Rasse und ethnische Zugehörigkeit, Religion, Behinderung (Gesundheitszustand), Alter und sexuelle Orientierung.⁹⁰ Das Antidiskriminierungsgesetz deckt außerdem bestimmte Funktionen der öffentlichen Verwaltung ab, für die das Arbeitsgesetzbuch nicht gilt, z. B. Richter, Staatsanwälte und Parlamentsabgeordnete u.a. Ferner gilt das Antidiskriminierungsgesetz für die Mitgliedschaft in Organisationen, deren Mitglieder einer bestimmten Berufsgruppe angehören, für selbständige Erwerbstätigkeit und alle Ebenen der Berufsausbildung und beruflichen Weiterbildung. Das Antidiskriminierungsgesetz bietet Schutz beim Zugang zum Gesundheitswesen, zu Wohnraum, sozialer Sicherheit, sozialen Vergünstigungen und zu Gütern und Dienstleistungen.

Das Antidiskriminierungsgesetz verbietet Diskriminierung aufgrund von Rasse oder ethnischer Herkunft, Religion oder Weltanschauung, Alter, Behinderung, und sexueller Orientierung. Es schützt außerdem „Nationalität“ (tschechisch: *národnost*) als eigenständigen Diskriminierungsgrund. Im tschechischen Recht und in der tschechischen Sprache ist dieser Begriff nicht identisch mit „Staatsbürgerschaft“ (tschechisch: *občanství*). Der Begriff liegt näher an „nationaler Herkunft“, hat jedoch nicht ganz dieselbe Bedeutung. Nach der tschechischen Verfassung kann jeder Mensch frei über seine *národnost* entscheiden. Dieser Grund deckt somit sowohl die nationale als auch die ethnische Herkunft ab, unabhängig davon, ob der Status mit der Geburt folgt oder vom Betroffenen frei gewählt wird. Das Gesetz enthält eine Aufzählung der abgedeckten Diskriminierungsgründe. In Übereinstimmung mit der Verordnung (EU) Nr. 492/2011 existiert eine Gesetzesvorlage zur Änderung des Antidiskriminierungsgesetzes zwecks Einbeziehung des Diskriminierungsgrunds „Unionsbürgerschaft“. Die Vorlage soll 2017 im Abgeordnetenhaus diskutiert werden.⁹¹

5. Rechtsdurchsetzung

Im tschechischen Rechtssystem können Rechte auf zivilem, strafrechtlichem oder verwaltungsrechtlichem Wege durchgesetzt werden. In Bezug auf die Gesetzgebung gibt es keine ernststen Probleme bei der Umsetzung der Gleichbehandlungsrichtlinien. Es bestehen jedoch weiterhin Probleme bei der Durchsetzung des bestehenden Rechts.

In Fällen mutmaßlicher Diskriminierung kann das Opfer gemäß den besonderen Bestimmungen des Antidiskriminierungsgesetzes klagen. Es gilt die Zivilprozessordnung und die Umkehrung der Beweislast.⁹² Das heißt, wenn der Kläger dem Gericht Tatsachen vorlegt, die eine unmittelbare oder mittelbare Diskriminierung glaubhaft machen, muss der Beklagte beweisen, dass er nicht gegen den Gleichbehandlungsgrundsatz verstoßen hat. Im Jahr 2006 urteilte das Verfassungsgericht, dass die tschechischen Bestimmungen zur Beweislast das Recht auf ein faires Gerichtsverfahren nicht verletzt.⁹³ Später hat der

⁹⁰ In einem wichtigen Verfahren zum Thema sexuelle Orientierung stellte das Verfassungsgericht 2016 fest, dass eingetragene Partner Kinder adoptieren können. Vgl.: Verfassungsgericht der Tschechischen Republik, Pl. ÚS 7/15, 14. Juni 2016;

<http://nalus.usoud.cz/Search/ResultDetail.aspx?id=93271&pos=1&cnt=1&typ=result>.

⁹¹ Abgeordnetenhaus (2015), *Sněmovní tisk 688/0* (Drucksache des Abgeordnetenhauses Nr. 688/0); <http://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=688&CT1=0> (letzter Zugriff am 28. Januar 2017).

⁹² Siehe Artikel 133a des Gesetzes Nr. 99/1963, Zivilverfahrensordnung (*Zákon č. 99/1963 Sb., občanský soudní řád*), 4. Dezember 1963.

⁹³ Tschechische Republik, Verfassungsgericht (*Ústavní soud*) Nr. Pl. ÚS 37/04, 26. April 2006; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=45&pos=1&cnt=1&typ=result> (letzter Zugriff am 28. Januar 2017).

Oberster Gerichtshof auch die Anwendung der Beweislastregelung genauer definiert.⁹⁴ Nach der Zivilprozessordnung kommt die Verlagerung der Beweislast jedoch nicht in allen Fällen zur Anwendung.⁹⁵ Der Ombudsmann empfahl, Artikel 133a dahingehend zu ändern, dass die Verlagerung der Beweislast in allen Diskriminierungsverfahren angewandt werden sollte;⁹⁶ die Regierung akzeptierte diese Änderung jedoch nicht.

Zivilgerichte haben 2016 in 18 Diskriminierungsfällen ein Urteil gefällt.⁹⁷ Die meisten dieser Fälle (11) betrafen den Beschäftigungsbereich.⁹⁸

2015 legte der Ombudsmann einen Bericht vor, der die wichtigsten Hindernisse für Diskriminierungsoffer beim Zugang zur Justiz benannte.⁹⁹ Der Ombudsmann wies unter anderem darauf hin, dass die Verfahrenskosten Betroffene davon abhalten, wegen Diskriminierung vor Gericht zu ziehen. Andererseits wird eine Klage vor Gericht von der breiten Öffentlichkeit als letzte Möglichkeit gesehen. Die Opfer lösen ihre Probleme lieber auf anderem Wege (z. B. durch Verwaltungsverfahren oder indem sie Fälle bei NROs melden), nicht zuletzt, weil sie – zu Recht – daran zweifeln, dass vor Gericht eine gerechte und hilfreiche Lösung erzielt wird.

Tatsächlich wurden nur in wenigen Fällen Strafen wegen diskriminierender Handlungen verhängt. Die Verfahren dauern sehr lange. Rechtsbeistand wird unter eng definierten Bedingungen durch vom Gericht ernannte Anwälte, die Tschechische Rechtsanwaltskammer oder durch eine Zusammenarbeit mit dem Tschechischen Ombudsmann und der Nichtregierungsorganisation Pro Bono Alliance geleistet.¹⁰⁰

In Fällen von Diskriminierung aufgrund von Geschlecht, Rasse oder ethnischer Herkunft, Religion, Überzeugung, Behinderung, Alter oder sexueller Orientierung kann sich eine Verfahrenspartei durch eine Rechtsperson¹⁰¹ vertreten lassen, deren Tätigkeitsbereich vorwiegend im Schutz vor Diskriminierung liegt. Diese Rechtspersonen können Opfer von Diskriminierung Informationen und Beratung anbieten und Beschwerden bei behördlichen Stellen einreichen, die gesetzeskonformes Verhalten von natürlichen und juristischen Personen in ihrem jeweiligen Zuständigkeitsbereich beaufsichtigen. Allerdings genießen

⁹⁴ Tschechische Republik, Oberster Gerichtshof (*Nejvyšší soud*) Nr. 21 Cdo 246/2008, 11. November 2009; http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/0A33D83B7E3D04D2C1257A4E0064BF0E?openDocument&Highlight=0 (letzter Zugriff am 28. Januar 2017).

⁹⁵ Sie gilt beispielsweise nicht in Fällen, in denen eine Person mit Behinderung den Zugang zu Dienstleistungen oder Bildung beanstandet.

⁹⁶ Bürgerbeauftragter (Ombudsmann) (2015), *Výroční zpráva o ochraně před diskriminací* (Jahresbericht über den Schutz vor Diskriminierung), S. 23; http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocní_zpravy/2015-DIS-vyrocní-zprava.pdf (letzter Zugriff am 28. Januar 2017).

⁹⁷ Tschechische Republik, Justizministerium (2016), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistische Daten zu rechtswirksamen Entscheidungen von Gerichten in Zivilsachen nach Kategorien von Streitfällen), abrufbar unter: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

⁹⁸ Tschechische Republik, Justizministerium (2016), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistische Daten zu rechtswirksamen Entscheidungen von Gerichten in Zivilsachen nach Kategorien von Streitfällen), abrufbar unter: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

⁹⁹ Bürgerbeauftragter (Ombudsmann) (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Diskriminierung in der Tschechischen Republik: Diskriminierungsoffer und Hindernisse für ihren Zugang zur Justiz), <http://www.ochrance.cz/en/discrimination/research/>, S. 50-58 (letzter Zugriff am 28. Januar 2017).

¹⁰⁰ Bürgerbeauftragter (Ombudsmann) (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Diskriminierung in der Tschechischen Republik: Diskriminierungsoffer und Hindernisse für ihren Zugang zur Justiz), <http://www.ochrance.cz/en/discrimination/research/> (letzter Zugriff am 28. Januar 2017).

¹⁰¹ Siehe Tschechische Republik, Antidiskriminierungsgesetz Nr. 198/2009, 23. April 2009, Art. 11. Nach Art. 26 Abs. 3 Zivilprozessordnung kann in einem Verfahren wegen Diskriminierung aufgrund des Geschlechts, der Rasse oder der ethnischen Herkunft, der Religion, der Überzeugung, einer Behinderung, des Alters oder der sexuellen Orientierung eine Verfahrenspartei durch eine juristische Person vertreten werden, deren Aktivitäten sich gemäß ihrer Satzung auf den Schutz vor Diskriminierung konzentrieren.

diese Rechtspersonen in Verfahren zu Diskriminierungsfällen keinen speziellen Status. Sie können Opfer nur in konkreten Fällen in einer speziellen Form der rechtlichen Vertretung nach der Zivilprozessordnung vertreten. Sie können vor tschechischen Gerichten weder in Form einer Popularklage noch durch eine Sammelklage selbst Klage einreichen. Nach Ansicht des Ombudsmanns sollte zwischen NROs und staatlichen Einrichtungen eine bessere Zusammenarbeit entwickelt werden, um den Zugang von Betroffenen zur Justiz zu verbessern.¹⁰²

Gewerkschaften können ihre Mitglieder als Partei in jedem Rechtsstreit vertreten, mit Ausnahme von Wirtschafts- und Handelsstreitigkeiten. Sie machen jedoch nur selten von diesem Recht Gebrauch.

In Bezug auf Testing-Verfahren zum Nachweis von Diskriminierung haben die tschechischen Gerichte in mehreren Fällen¹⁰³ bestätigt, dass jeder Mensch berechtigt ist zu prüfen, ob er seine Rechte ausüben kann. Wenn eine gesetzwidrige Rechtsverletzung vorliegt, sind die Ansprüche der Testperson in einer Situation, in der keine Diskriminierung zu erwarten ist, identisch. Der Oberste Gerichtshof hat bestätigt, dass den Opfern in solchen Fällen eine Entschädigung zusteht.¹⁰⁴

In der Praxis setzen NROs Testing-Verfahren ein, um Diskriminierung beim Zugang zu Beschäftigung, Dienstleistungen und Wohnraum nachzuweisen. Im Jahr 2012 wurde eine Kooperation zwischen einigen NROs und dem Ombudsmann im Bereich der Testing-Verfahren initiiert. Die meisten Fälle betrafen bisher Diskriminierung aufgrund der Rasse oder ethnischen Herkunft. Obwohl statistische Daten als Beweismittel zulässig sind, ist ihre Verwendung vor den Gerichten in Diskriminierungsfällen nicht sehr verbreitet.

Es muss bezweifelt werden, ob die für Diskriminierung verhängten Sanktionen wirksam und abschreckend sind. Die Höhe des von den Gerichten zugesprochenen Schmerzensgelds (Entschädigung für ideelle Schäden durch die Diskriminierung) schwankt stark. Die Beträge, die als Entschädigung für Diskriminierung zugesprochen werden, liegen in der Praxis zwischen 200 Euro (5000 CZK) und 10 000 Euro (250 000 CZK). Andererseits müssen Kläger, die ihren Fall verlieren, der beschuldigten Partei unter Umständen die Gerichtskosten erstatten, die in der Regel zwischen 1000 und 2000 Euro betragen. In einem wichtigen Fall gegen einen Restaurantbesitzer, der in seinem Restaurant eine Statue mit einem Baseballschläger aufgestellt hatte, auf dem gut sichtbar „Immer drauf auf die Zigeuner“ geschrieben stand, beurteilte das Obergericht Prag die Handlung als Diskriminierung und sprach dem Kläger eine Entschädigung in Höhe von 926 Euro (25 000 CZK) zu.¹⁰⁵

Nach dem Strafgesetzbuch müssen Straftaten, die mit Rassendiskriminierung oder Diskriminierung aufgrund der Religion oder Weltanschauung in Zusammenhang stehen, als Verbrechen verfolgt werden, die zu Hass oder Gewalt aufgrund der Rasse, Religion oder Weltanschauung anstiften. Das Strafgesetzbuch sieht auch vor, dass Straftaten gegen Leben, Gesundheit oder persönliche Freiheit besonders streng definiert werden, wenn sie durch Rassismus oder religiösen Hass motiviert sind. Straftaten in Bezug auf Rassendiskriminierung oder Diskriminierung wegen der Religion werden jedoch nur selten strafrechtlich verfolgt und in der Regel nur bei schweren Straftaten, wie rassistisch motiviertem Mord oder neonazistischer Propaganda.

¹⁰² Bürgerbeauftragter (Ombudsmann) (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Diskriminierung in der Tschechischen Republik: Diskriminierungsopfer und Hindernisse für ihren Zugang zur Justiz), <http://www.ochrance.cz/en/discrimination/research/>, S. 84 (letzter Zugriff am 28. Januar 2017).

¹⁰³ Tschechische Republik, Oberster Gerichtshof (*Nejvyšší soud*) /30 Cdo 2314/2012, 28. Februar 2013; http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/BD306CF3DD626402C1257B410032B5CB?openDocument&Highlight=0 (letzter Zugriff am 28. Januar 2017).

¹⁰⁴ Tschechische Republik, Oberster Gerichtshof (*Nejvyšší soud*) /30 Cdo 2314/2012, 28. Februar 2013.

¹⁰⁵ Tschechische Republik, Obergericht Prag (*Vrchní soud v Praze*) / 1 Co 99/2006, 17. Februar 2014.

Auf administrativem Wege können Ordnungswidrigkeiten und Amtsvergehen sanktioniert werden. Nach den einschlägigen Verwaltungsverfahren sind die Aufsichtsbehörden, zum Beispiel die Arbeitsaufsicht oder die Tschechische Handelsinspektion, für die Untersuchung dieser Fälle zuständig. 2016 verhängte die Tschechische Handelsinspektion ein Bußgeld in Höhe von 925 Euro (25 000 CZK) gegen eine Immobilienagentur, deren Makler es abgelehnt hatten, eine Wohnung an Roma zu vermieten, die ein Testing-Verfahren angewandt hatten. Zudem stellte der Ombudsmann in dem konkreten Fall eine unmittelbare Diskriminierung fest und erklärte, das Verfahren der Tschechischen Handelsinspektion sei korrekt gewesen und die Beschwerdeführer hätten im Zuge eines gerichtlichen Verfahrens möglicherweise auch Anspruch auf eine Entschädigung.¹⁰⁶ In Fällen, in denen es um diskriminierende Stellenanzeigen ging, verhängt die tschechische Gewerbeaufsicht Bußgelder in Höhe von durchschnittlich 883 Euro (28 850 CZK); der höchste jemals verhängte Betrag waren 9259 Euro (250 000 CZK). Die Tschechische Handelsinspektion beschäftigt sich hauptsächlich mit doppelter Preisbildung, wo die Bußgelder im Durchschnitt 1620 Euro (43 750 CZK) betragen. Den Untersuchungen des Ombudsmanns zufolge haben die Verwaltungsbehörden vor allem diskriminierende Handlungen bestraft, die durch Urkundenbeweise oder persönliche Aussagen ausreichend belegt waren.¹⁰⁷

Die Untersuchung von Ordnungswidrigkeiten in Verwaltungsverfahren war extrem ineffizient. Nach dem Gesetz über Ordnungswidrigkeiten muss die Untersuchung innerhalb eines Jahres nach dem mutmaßlichen Verstoß abgeschlossen sein oder eingestellt werden, daher wurde Diskriminierung in diesem Zusammenhang so gut wie nie bestraft. Seit Oktober 2015 kann diese Frist allerdings auf zwei Jahre ausgeweitet werden.

In den vergangenen Jahren gab es keine merklichen Anstrengungen, um den Dialog mit NROs zu fördern, um den Gleichbehandlungsgrundsatz zu stärken. Für den Dialog zwischen den Sozialpartnern über den Grundsatz der Gleichbehandlung in der Praxis des Arbeitsalltags sind die trilateralen Verhandlungen (in der wichtige Arbeitsmarktakteure – Arbeitgeber, Gewerkschaften und Regierung – zusammenkommen) und das Arbeitsministerium zuständig. In dieser Hinsicht hat es jedoch keine weiteren wesentlichen Entwicklungen oder Möglichkeiten gegeben.

6. Gleichbehandlungsstellen

Die Gleichbehandlungsstelle der Tschechischen Republik wurde am 1. Dezember 2009 eingerichtet. Das Antidiskriminierungsgesetz richtet keine neue Stelle ein, sondern betraut den Bürgerbeauftragten (Tschechischer Ombudsmann) mit den in Artikel 13 der Richtlinie 2000/43/EG genannten Aufgaben. Der Tschechische Ombudsmann ist mit den Aufgaben der Gleichbehandlungsstelle betraut; seine Vollmachten erstrecken sich auf den gesamten Anwendungsbereich des Antidiskriminierungsgesetzes.

Im Rahmen der Antidiskriminierungsvorschriften trägt der Bürgerbeauftragte dazu bei, Rassismus und Fremdenfeindlichkeit zu bekämpfen und die Gleichbehandlung aller Menschen ungeachtet von Geschlecht, Rasse, ethnischer Herkunft, sexueller Orientierung, Alter, Behinderung, Religion oder Glaube und „Nationalität“ (tschechisch: *národnost*) zu fördern. Er kann Opfern eine unabhängige Unterstützung anbieten, Studien durchführen, unabhängige Berichte veröffentlichen und Empfehlungen aussprechen. Die tschechische Gleichbehandlungsstelle ist unabhängig und arbeitet sehr proaktiv.

¹⁰⁶ Bürgerbeauftragter (Ombudsmann) (2016), *Zpráva o šetření č. 6780/2014/VOP* (Bericht zur Untersuchung Nr. 6780/2014/VOP), 19. Januar 2016; <http://eso.ochrance.cz/Nalezene/Edit/3922> (letzter Zugriff am 28. Januar 2017).

¹⁰⁷ Bürgerbeauftragter (Ombudsmann) (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Diskriminierung in der Tschechischen Republik: Diskriminierungsopfer und Hindernisse für ihren Zugang zur Justiz), (), S. 137; <http://www.ochrance.cz/en/discrimination/research/>.

2016 gingen beim Zentralbüro des Bürgerbeauftragten 451 neue Beschwerden wegen Diskriminierung ein; lediglich in neun dieser Fälle (weniger als 2 %) wurde eine Diskriminierung festgestellt. Die meisten Beschwerden bezogen sich auf mutmaßliche Diskriminierung in den Bereichen Arbeitsrecht (23 % der Fälle), Bereitstellung von Gütern und Dienstleistungen (19 %), Wohnungswesen (11 %), Bildung (11 %) und öffentliche Verwaltung (11 %). Die im Jahr 2016 am häufigsten genannten Diskriminierungsgründe waren „sonstiger Grund“ (39 % der Fälle), Behinderung (23 %), Rasse und ethnische Herkunft (15 %), Geschlecht (10 %), Alter (10 %) und Staatsangehörigkeit (5 %). Sexuelle Orientierung und Religion wurden bei 2 % der Beschwerden genannt.¹⁰⁸

Derzeit kann der Ombudsmann aufgrund der eingeschränkten personellen und finanziellen Mittel Opfer von Diskriminierung nur beschränkt unterstützen. Der Tschechische Ombudsmann ist nicht berechtigt, Opfer vor Gericht zu vertreten. Er kann nur prüfen, ob eine Diskriminierung vorliegt, und dem Opfer mitteilen, ob sein Fall vor den tschechischen Gerichten vermutlich Erfolg hat.

Allerdings arbeitet der Tschechische Ombudsmann seit 2012 mit der Nichtregierungsorganisation Pro Bono Alliance zusammen, die bestimmten Opfern, die nach Einschätzung des Ombudsmanns sehr wahrscheinlich diskriminiert wurden, kostenlose rechtliche Unterstützung anbietet. Eine spezifische rechtliche Unterstützung wird auf der Grundlage eines Vertrags zwischen der Klägerpartei (Mandant) und einer Anwaltskanzlei erbracht, die mit Pro Bono Alliance zusammenarbeitet und die Kosten über eine von dieser betriebenen Verrechnungsstelle abrechnet. Seit 2012 haben mehr als 15 Diskriminierungsopfer diese Unterstützung in Anspruch genommen.¹⁰⁹ 2016 übernahm eine der Anwaltskanzleien fünf Fälle vom Bürgerbeauftragten, um rechtliche Unterstützung zu leisten.¹¹⁰

Der Tschechische Ombudsmann darf keine Testing-Verfahren einsetzen. 2012 initiierte der Ombudsmann allerdings eine Zusammenarbeit mit NROs, die in den vom Ombudsmann identifizierten Fällen Testing-Verfahren durchführen.

7. Schlüsselpunkte

Das größte Problem bei der Umsetzung der Antirassismusrichtlinie 2000/43/EG besteht darin, den gleichberechtigten Zugang von Roma-Kindern zum Bildungssystem zu gewährleisten. 2015 stellte der Ombudsmann fest, dass die Zahl der Roma-Schülerinnen und -Schüler, die nach dem Bildungsprogramm für Schüler mit leichten geistigen Behinderungen erzogen werden, im Vergleich zum Vorjahr um 4 % gestiegen ist.¹¹¹

2012 führte der Tschechische Ombudsmann eine Untersuchung durch, um Daten über die Schülerschaft der ehemaligen Sonderschulen (heute meist „praktische Primarschulen“) zu

¹⁰⁸ Bürgerbeauftragter (Ombudsmann) (2016), *Souhrnná zpráva o činnosti veřejného ochránce práv 2016* (Zusammenfassender Bericht über die Tätigkeit des Bürgerbeauftragten im Jahr 2016), Brno, Veřejný ochránce práv; https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snmovnu/Vyrocní-zpráva-2016_web.pdf.

¹⁰⁹ Bürgerbeauftragter (Ombudsmann) (2015), *„Pro bono síť advokátů proti diskriminaci se rozrůstá o další tři kanceláře“* („Pro-bono-Allianz von Rechtsanwälten gegen Diskriminierung wird um drei Anwaltskanzleien erweitert“); <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2015/pro-bono-sit-advokatu-proti-diskriminaci-se-rozrusta-o-dalsi-tri-kancelare/> (letzter Zugriff am 28. Januar 2017).

¹¹⁰ Bürgerbeauftragter (Ombudsmann) (2016), *Advokátní kancelář zapojená do sítě pro bono převzala již pátý případ* (Anwaltskanzlei übernimmt fünften Fall im Rahmen der Pro-bono-Unterstützung); <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2016/advokatni-kancelar-zapojena-do-site-pro-bono-prevzala-jiz-paty-pripad-v-tomto-roce/> (letzter Zugriff am 28. Januar 2017).

¹¹¹ Bürgerbeauftragter (Ombudsmann) (2015), *Stanovisko sp. zn. 16/2015/DIS* (Stellungnahme Nr. 16/2015/DIS), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Odlozene/Edit/2412> (letzter Zugriff am 28. Januar 2017).

erheben. Die Daten wurden durch Studien „Dritter“ erfasst, d. h. von Mitarbeitern der Gleichbehandlungsstelle und von Lehrern. Diese Studie, die in 67 zufällig ausgewählten ehemaligen Sonderschulen auf dem gesamten Gebiet der Tschechischen Republik durchgeführt wurde, hat gezeigt, dass Roma-Kinder 32 % bis 35 % aller Schüler ausmachen. Vergleicht man diese Zahlen mit dem Anteil der Roma an der Gesamtbevölkerung der Tschechischen Republik (die Zahlen schwanken zwischen 1,4 % und 2,8 %), wird offensichtlich, dass der Anteil der Roma-Kinder an diesen Schulen unverhältnismäßig hoch ist. Anhand dieser außergewöhnlichen Studie des Ombudsmanns lässt sich beweisen, dass Roma-Kindern im tschechischen Schulsystem weiterhin durch mittelbare Diskriminierung der gleichberechtigte Zugang zu Bildung verwehrt wird.¹¹²

Im Februar 2015 wurde eine Änderung des Schulgesetzes beschlossen, die eine bessere Integration von Schülerinnen und Schülern mit Behinderungen und solchen mit sonderpädagogischem Förderbedarf im Allgemeinen vorsieht. Die Änderung legt unter anderem fest, dass Einzelintegration der Gruppenintegration vorzuziehen ist.¹¹³ Dies bedeutet, dass betroffene Schüler und Schülerinnen, wo immer möglich, mit angemessener Unterstützung individuell in das reguläre Umfeld integriert werden sollen. Die wesentlichen Teile der geänderten Bestimmungen sind am 1. September 2016 in Kraft getreten, und inzwischen wurde die sogenannte inklusive Bildung eingeführt. Es wurden diverse Verbesserungen beschlossen, darunter verschiedene Fördermaßnahmen¹¹⁴ für Schülerinnen und Schüler mit sonderpädagogischem Bedarf, ein System zur Finanzierung dieser Maßnahmen und die Einrichtung einer Prüfstelle im Bereich der Diagnostik. Obwohl in der Praxis einige Verbesserungen festzustellen sind, kann mehrere Monate nach Verabschiedung der Änderungen noch nicht beurteilt werden, ob diese für eine angemessene Absicherung von Roma-Kindern gegen Diskriminierung beim Zugang zu Bildung gesorgt haben.

Strukturelle Probleme lassen sich nicht in erster Linie mit Zwangsmaßnahmen und Sanktionen, sondern vor allem auf der politischen Ebene lösen – sie müssen von den Regierungsparteien als Priorität behandelt werden. Die Grundursache des Problems ist nicht der Bereich der Rechtsdurchsetzung, sondern das Fehlen einer systematischen Politik der Regierung. Die jüngsten Regierungen haben dem Thema Menschenrechte im Allgemeinen und Diskriminierung im Besonderen zu wenig Aufmerksamkeit gewidmet. Es gibt keine wirksame Regierungspolitik, um die strukturellen Ursachen von Diskriminierung zu bekämpfen.

¹¹² Bürgerbeauftragter (Ombudsmann) (2012), *Výzkum etnického složení žáků bývalých zvláštních škol* (Untersuchung des Bürgerbeauftragten zur ethnischen Zusammensetzung der Schülerschaft ehemaliger Sonderschulen – Abschlussbericht), Brno, Bürgerbeauftragter; <http://www.ochrance.cz/en/discrimination/research/>; http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf (letzter Zugriff am 28. Januar 2017).

¹¹³ Der Begriff „Gruppenintegration“ wird im tschechischen Schulsystem verwendet und bezeichnet die Einrichtung spezieller Lerngruppen oder Klassen innerhalb der Regelschule.

¹¹⁴ Festgelegt per Dekret Nr. 27/2016 über die Erziehung von Schülerinnen und Schülern mit sonderpädagogischem Förderbedarf sowie begabten Schülerinnen und Schülern, 28. Januar 2016; <https://www.zakonyprolidi.cz/cs/2016-27>.

INTRODUCTION

The national legal system

The constitutional order of the Czech Republic comprises constitutional laws and other sources of Czech constitutional law. It follows from Article 112 of the Czech Constitution that the constitutional order means the sum of certain constitutional laws and other specifically mentioned sources of law with the highest level of legal force.

The Charter of Fundamental Rights and Freedoms (the Charter) occupies a superior position to ordinary laws.¹¹⁵ The Constitution¹¹⁶ invests the Charter with a place at the highest level of the legislative hierarchy.¹¹⁷ Constitutional laws and international treaties are not on the same level of the hierarchy as the Charter and the Constitution, but are superior to ordinary laws, and must prevail in the event of a conflict with ordinary laws. According to Article 10 of the Constitution, in the event of conflict with national law, self-executing provisions of international treaties must be applied prior to the law. This applies to all courts and other administrative bodies. Where the provision of the domestic law is not in clear conflict with the provision of international law, the domestic law must be interpreted in compliance with the international provision (Article 1(2) of the Constitution).

The Constitutional Court has the jurisdiction to annul laws and other legal enactments if they are in conflict with the Charter, Constitution or constitutional laws.¹¹⁸ According to the Constitutional Court, it also has a jurisdiction to do so when such laws are in conflict with international treaties on human rights.¹¹⁹

If conflict between a law and the constitutional order arises in a lower court, its judge is obliged to refer the case to the Constitutional Court.¹²⁰ However, in a case of conflict between Czech law and EU law, even the lower courts must apply EU law as a matter of priority.¹²¹ All ordinary laws are on a lower level of the hierarchy and are equal to each other. Ordinary laws are superior to decrees of the Ministries or Government Resolutions, which can only regulate issues if ordinary laws expressly allow this.

The only body competent to interpret the Charter with binding effect is the Constitutional Court.¹²² The Constitutional Court can only deliver such interpretation through a judicial decision. The Constitutional Court has already dealt with cases concerning discrimination on the grounds of sexual orientation,¹²³ age and racial or ethnic origin, which are covered by the equality directives (Directives 2000/43/EC and 2000/78/EC).

¹¹⁵ Czech Republic, Resolution of the Czech National Council on the Declaration of the Charter of Fundamental Rights and Freedoms (2/1993 Sb., usnesení předsednictva České národní rady o vyhlášení Listiny základních práv a svobod) 1 January 1993; http://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/prilohy/Listina_English_version.pdf, all the hyperlinks were accessed 31 January 2017.

¹¹⁶ Czech Republic, Constitution of the Czech Republic (1/1993 Sb., *Ústava České republiky*), 1 January 1993; http://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/prilohy/Listina_English_version.pdf.

¹¹⁷ Any newly approved constitutional laws must be in accordance with the Constitution and the Charter. The Constitutional Court is allowed to annul a constitutional law if it is considered contrary to the material core of the Czech constitutional order or if it was not adopted through the prescribed procedure. See Czech Republic, Collection of Rulings and Resolutions of the Constitutional Court no. 54, Law no. 318/2009 (*Pl. ÚS 27/09, 318/2009 Sb., Sbírka nálezů a usnesení ústavního soudu*), Ruling no. 199, p. 443. Public authorities, including courts, are not allowed to apply any laws that contradict any of the basic rights guaranteed by the Charter. In such cases, they should refer to the Constitutional Court.

¹¹⁸ The jurisdiction of the Constitutional Court to annul laws stems from Article 87(1) of the Czech Constitution.

¹¹⁹ Constitutional Court of the Czech Republic (*Ústavní soud*) No. Pl. ÚS 36/01, 25 June 2002. All case law of the Constitutional Court can be found at: <http://nalus.usoud.cz/Search/Search.aspx>.

¹²⁰ According to Article 95(2) of the Czech Constitution.

¹²¹ Constitutional Court of the Czech Republic, No. Pl. ÚS 19/04, 21 February 2006; <http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-19-04>.

¹²² Czech Republic, Constitution of the Czech Republic, 1 January 1993, Article 89(2): 'Enforceable rulings of the Constitutional Court shall be binding for all agencies and individuals.'

¹²³ Constitutional Court of the Czech Republic (*Ústavní soud*) No. Pl. ÚS 7/15, 14 June 2016. All case law of the Constitutional Court can be found at: <http://nalus.usoud.cz/Search/Search.aspx>.

It should be underlined that the transposition of the directives into the Czech legal system cannot be regarded as an omnipotent remedy that will solve or fully remove the problems in Czech society in the area of discrimination. These issues are mainly structural, related to the integration of the Roma community in the education system, segregation in housing and discrimination in the labour market, problems with the integration of people with disabilities in the workforce and, even more importantly, the integration of disadvantaged minorities and groups in the everyday life of society generally. A major barrier in the fight against discrimination is the fact that victims rarely report that they have been discriminated against. The Czech Ombudsman has criticised the current situation in which many barriers remain in enforcing anti-discrimination law, such as lack of proof, inaccessibility of good legal advice, length of proceedings and the amount of the judicial fee for filing an anti-discrimination action.¹²⁴

The directives formulate minimum requirements and Czech law sets the rules beyond the requirements of EU law.¹²⁵ However, the societal problems in the Czech Republic cannot be solved solely by means of an equality body that functions effectively, through definitions of discrimination in the form prescribed by the directives or by securing effective access to the courts. Resolving the structural problems within society requires the investment of consistent political will and focus.

List of main legislation transposing and implementing the directives

Law No. 2/1993 Coll., Charter of fundamental rights and freedoms

Abbreviation: Charter

Date of adoption: 16 December 1992

Entry into force: 1 January 1993

Latest amendment: Constitutional Law No. 162/1998 Sb., in force since 1 January 1999

Grounds covered: sex, race, colour, language, religion or belief, political or other orientation, national or social origin, adherence to national or ethnic minority, property, birth or other status.

Material scope: fundamental rights declared by the Charter.

Law No. 198/2009 Coll., Anti-discrimination Law

Abbreviation: Anti-discrimination Law

Date of adoption: 23 April 2009

Entry into force: 1 September 2009 / 1 December 2009

Latest amendment: Law No. 332/2014

Grounds covered: race, ethnic origin, 'nationality' (in Czech *národnost*), sex, sexual orientation, age, disability, religion or belief.

Material scope: public employment, private employment, access to goods or services (including housing), social protection, social advantages, education.

Law No. 361/2003 Coll., on service by members of the security forces

Abbreviation: Law on service by members of the security forces

Date of adoption: 23 September 2003

Latest amendment: Law No. 303/2013, in force since 1 January 2014

Entry into force: 1 January 2007

Grounds covered: age, race, colour, sex, sexual orientation, religion and belief, political orientation, national origin, 'nationality' (in Czech *národnost*), ethnic or social origin,

¹²⁴ Public Defender of Rights (Ombudsman), (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: Victims of discrimination and obstacles to the access to justice); http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/aktuality/diskriminace_EN_titulka_zadnistrana.pdf.

¹²⁵ For example: Section 2(3) of Law no. 198/2009, the Anti-discrimination Law, determines 'nationality' as a discriminatory ground, in contrast to the directives.

property, birth, marital and family status or family duties, membership of trade unions and other organisations.

Material scope: public employment.

Law No. 262/2006 Coll., Labour Code

Abbreviation: Labour Code

Date of adoption: 21 April 2006

Latest amendment: Law No. 298/2015 Coll., in force since 25 November 2015

Entry into force: 1 January 2007

Grounds covered: race, ethnic origin, 'nationality', sex, sexual orientation, age, disability, religion or belief.

Material scope: employment relations, labour relations, rights and duties of an employer and an employee.

Law No. 435/2004 Coll., on employment

Abbreviation: Law on Employment

Date of adoption: 13 May 2004

Latest amendment: Law. No. 131/2015 Coll., in force since 5 July 2015

Entry into force: 1 October 2004

Grounds covered: race, ethnic origin, 'nationality', sex, sexual orientation, age, disability, religion or belief.

Material scope: state employment policy, protection against unemployment.

Law No. 561/2004 Coll., on pre-school, primary, secondary, higher technical and other education

Abbreviation: Schools Act

Date of adoption: 24 September 2004

Latest amendment: Law. No. 82/2015 Coll., in force since 1 May 2015 Entry into force: 1 January 2005

Grounds covered: race, colour, ethnic origin, 'nationality', sex, sexual orientation, age, disability, religion or belief, language, social origin, property or other status.

Material scope: conditions of pre-school, primary, secondary, higher technical and other education.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of the Czech Republic includes the following articles dealing with non-discrimination: Article 3 of the Charter of Fundamental Rights and Freedoms.

An anti-discrimination clause can be found in the Charter of Fundamental Rights and Freedoms, which forms part of the constitutional order. The Charter includes a chapter on general provisions, which establishes 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. Other grounds, such as disability, age, or sexual orientation also fall under 'other status', if the treatment in question were to be identified as discriminatory by the courts.¹²⁶

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

The constitutional anti-discrimination provisions are directly applicable, but cannot be enforced against private persons.

Constitutional clauses (and those of the Charter) apply directly to the state. However, 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).¹²⁷ The indirect applicability of social, economic and cultural rights is an issue concerning the interpretation of Czech constitutional law and is outside the scope of EU law. According to the Constitutional Court's own interpretation, these rights 'are explicitly concretised by appropriate legislation and can be invoked only within the framework and limits set by this legislation'.¹²⁸ All other rights guaranteed by the Charter (fundamental, political and civil rights) and the Constitution can be directly invoked.

For example, if an LGBT parent is discriminated against in relation to the care of their child for no other reason than that they live in a same-sex relationship, they 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 their occupation as a dentist (for example, if an insurance company refuses to insure them because, in their view, they are at higher risk than heterosexuals of contracting HIV/AIDS and endangering the health of their patients), they 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 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.

¹²⁶ The Constitutional Court has not had an opportunity to provide any interpretation concerning sexual orientation, for example. Age, on the other hand, has been clearly considered as falling under 'other status' in the judgment of the Constitutional Court of 30 April 2009, no. II. ÚS 1609/08.

¹²⁷ Rights declared in Article 26, Article 27(4), Articles 28-31, Article 32(1) and (3) and Articles 33 and 35 of the Charter.

¹²⁸ Constitutional Court of the Czech Republic (*Ústavní soud*), no. Pl. ÚS 35/95 (206/1996), 14 February 2001; http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-35-95_1.

Constitutional equality clauses cannot 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 that allows constitutional provisions to 'radiate' through the formulations of ordinary laws, which are directly binding on private persons. Therefore, every application of the Anti-discrimination Law is simultaneously an indirect application of the constitutional order. However, such 'radiation' of the constitutional 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 that identifies the type and form of this 'radiation' effect.

However, thanks to the 'radiation' effect, the Czech courts have identified protection against discrimination as an integral part of protection of the personal rights of the individual in accordance with the Civil Code, applicable in situations where no provision of the Civil Code prohibits discrimination on any of the grounds prohibited by the Charter, and before the Anti-discrimination Law was approved.¹²⁹

¹²⁹ Constitutional Court of the Czech Republic, IV. ÚS 412/04, 7 December 2005; <http://nalus.usoud.cz/Search/GetText.aspx?sz=4-412-04>: '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 explicitly covered

The following grounds of discrimination are explicitly prohibited in national law:

Race, colour, ethnic origin, nationality (in Czech *národnost*), sex, sexual orientation, age, disability, religion or belief.

In compliance with Regulation (EU) no. 492/2011, there is a bill proposing the addition of 'EU citizenship' to the above mentioned discrimination grounds. The bill is likely to be discussed in the Chamber of Deputies in 2017.¹³⁰

2.1.1 Definition of the grounds of unlawful discrimination within the directives

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

However, the grounds of unlawful discrimination are interpreted as follows.

a) religion or belief

There is no normative definition of religion or belief in Czech national law. Detailed regulations on churches and religious organisations exist, but their purpose is to regulate the existence of churches and religious organisations as legal entities *sui generis*,¹³¹ rather than to provide detailed regulations for the protection of freedom of belief. Freedom of religion is not limited only to churches and religious organisations listed in the State Register. Law No. 3/2002 on the freedom of belief and the status of churches and religious organisations,¹³² declares the right to freedom of thought, conscience and religion. Any religion may 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 organisations.

A definition which sets out what comprises a religion or belief would very probably be constitutionally problematic.¹³³ 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),¹³⁴ and as such it is perceived not as a "positive" right, but as a right of a "defensive" character.

¹³⁰ Chamber of Deputies (2015), *Sněmovní tisk 688/0* (Press of the Chamber of Deputies No. 668/0); <http://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=688&CT1=0>.

¹³¹ The status of churches and religious organisations as legal entities *sui generis* is created by their registration with the state. It is up to churches and religious organisations to decide whether to register. Those that do not wish to register can exist and conduct 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 others. On registration, churches and religious organisations 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 individuals with Czech citizenship and it must include a list of signatures of at least 300 people who support the registration.

¹³² Czech Republic, Law No. 3/2002 on the freedom of belief and the status of churches and religious organisations (*Zákon č. 3/2002 Sb., o svobodě náboženského vyznání a postavení církví a náboženských společností*), 27 November 2001.

¹³³ Article 15(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.'

¹³⁴ Jellinek G. (2011), *System der subjektiven öffentlichen Rechte* (System of Subjective Public Rights), Mohr Siebeck, Tübingen, p. 13.

It is characterised by a line demarcating the individual's free space which public authorities are not permitted to enter'.¹³⁵

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.

Generally, cases of religious discrimination are rarely discussed in the media and are rarely monitored by NGOs and other bodies.¹³⁶ The reason for the lack of monitoring and publicity may be the absence of public interest in religious issues. As Czech society is largely secular, problems with the manifestation of belief and religious discrimination do not arise very often.¹³⁷

b) disability

Section 5(6) of the Anti-discrimination Law defines disability as physical, sensory, mental, psychological or other impairment, which restricts or may restrict individuals in their right to equal treatment within the scope of the Anti-discrimination Law. According to the academic interpretation, the term 'mental' relates to intellectual disabilities, while 'psychological' relates to psychosocial disabilities. In other words, the law says that it protects people who face difficulties asserting their right to equal treatment where this difficulty is related to a disability. This disability must be long-term, if it is lasting, or must be expected to last, according to medical opinion, for a minimum of one year. The concept of disability can be compared to the concept adopted by the Court of Justice of the European Union (CJEU) in case *C-13/05 Chacón Navas v Eurest Colectividades SA*.

The Czech Ombudsman has previously highlighted that only certain kinds of long-term illness are protected under the current definition of disability in the Anti-discrimination Law.¹³⁸ Although the legislation recognises disability as resulting from the interaction of a person with the environment, a certain type of diagnosis is still required. According to the *Academic Commentary on the Anti-discrimination Law*¹³⁹ and the Public Defender of Rights, the Czech Anti-discrimination Law is based on a social model of disability.¹⁴⁰ Nevertheless, judicial interpretation may still be required to see whether it is in fact in absolute conformity with the concept of the social model of disability used in the Convention on the Rights of Persons with Disabilities and the definition adopted by the CJEU in *Skouboe Werge and Ring*.¹⁴¹ However, the new amendment to the Schools Act adopted in 2015, the aim of which is to support the integration of children with special needs into mainstream schools, embraces the social model of disability by defining children with special needs through the identification of support measures (i.e. means to overcome the interactional environmental barriers) required to satisfy their educational needs.

¹³⁵ Constitutional Court of the Czech Republic, Pl. ÚS 6/02, 27 November 2002; <http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-6-02>.

¹³⁶ Cases of discrimination against Jehovah's Witnesses have been identified, and media coverage of discrimination and prejudice against Muslims is increasing.

¹³⁷ Public Defender of Rights (Ombudsman), (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv, pp. 15, 17; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnnazprava_VOP_2014.pdf.

¹³⁸ Those are, for example kidney stones or HIV (also in its initial stage). See Public Defender of Rights (2015), *Zpráva o zjištění diskriminace*, sp. zn. 5560/2014/VOP (Report on discrimination No. 5560/2014/VOP), Brno, Veřejný ochránce práv.

¹³⁹ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 109.

¹⁴⁰ Public Defender of Rights (2015), *Zpráva o zjištění diskriminace*, sp. zn. 159/2011/DIS (Report on discrimination No. 159/2011/DIS), Brno, Veřejný ochránce práv.

¹⁴¹ European Court of Justice, *Skouboe Werge and Ring*, No. C-335/11 and C-337/11, 11 April 2013; <http://curia.europa.eu/juris/document/document.jsf?text=&docid=136161&pageIndex=0&doclang=EN&mde=lst&dir=&occ=first&part=1&cid=2009148>.

Besides the definition provided by the Anti-discrimination Law, a certain overlap of terms can be found in different laws. In general, definitions apply only within the material scope of the specific laws containing them. Although the Anti-discrimination Law relies almost exclusively on the social model of disability, the social security law is still predominantly based on the medical model, considering disabled persons as passive beneficiaries of benefits.¹⁴² For example, the Law on Social Services describes disability in Section 3(g) as: 'physical, mental, psychic, sensory or combined disability, which causes or may cause that the person is dependent on the care of someone else.'¹⁴³ The legislation governing construction uses the phrase 'persons with limited mobility and orientation',¹⁴⁴ which includes people with disabilities, older people, pregnant women and people accompanying a minor under three years of age or in a pram or pushchair. In contrast, Law No. 329/2011 contains various categories of people with disabilities in order to distinguish their entitlement to special allowances for mobility and for special aid.¹⁴⁵ The specific definition of disability, which is also adopted by the Labour Code, is enshrined in the Law on Employment.

With effect from 1 January 2012, an amendment to the Law on Employment¹⁴⁶ removed from the law definitions of direct and indirect discrimination, together with the terminology previously used by the Law on Employment, which distinguished between 'state of health' in its definition of direct discrimination and 'disability' for the purpose of indirect discrimination only. This was replaced by an open-ended equality clause.

However, Section 67(2) of the Law on Employment retained a special definition of disability. Following the amendment that came into force from January 2012, this definition only applies to the employment of people with disabilities where certain positive measures are in place. This definition of disability relies on an official decision by the social security authorities, granting one of three levels of disability, rather than on the real degree of disability recognised by a specialist. The Law on Employment states that persons with disability are natural persons who are recognised by the social security authorities as (a) on the third level ('people having a serious disability'), or (b) on the first or second level of disability, or (c) 'disadvantaged in terms of health'. The last category was amended by Law No. 136/2004, with effect from 1 January 2015. The term person 'disadvantaged in terms of health' was recently defined in Section 67(3) of the Law on Employment as a

'person, whose capabilities enable him to perform permanent employment or other gainful occupation, but his abilities to be or to stay integrated in terms of work, to perform his existing occupation, to apply a gained qualification or to gain a new qualification are considerably limited for the reason of his unfavourable and long-lasting state of health.'

The amended Section 67(4) of the Law on Employment determines in more detail the term 'unfavourable and long-standing state of health' as a situation that is going to last longer than one year and that considerably limits person's physical, sensory or mental abilities

¹⁴² Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 109.

¹⁴³ Czech Republic, Law No. 108/2006 on Social Services (*Zákon o sociálních službách*), 14 March 2006; <http://portal.gov.cz/app/zakony/zakonPar.jsp?page=0&idBiblio=62334&fulltext=&nr=108~2F2006&part=&name=&rpp=15>.

¹⁴⁴ Czech Republic, Decree No. 398/2009, on general barrier-free accessibility requirements (*Vyhláška č. 398/2009, o obecných technických požadavcích zabezpečujících bezbariérové užívání staveb*), 5 November 2009, states that this category includes persons with a physical, visual, hearing or intellectual disability, older people, pregnant women, persons accompanying a child in a pram or pushchair or a child younger than three years of age; <http://portal.gov.cz/app/zakony/zakon.jsp?page=0&fulltext=&nr=398~2F2009&part=&name=&rpp=15>.

¹⁴⁵ Czech Republic, Law No. 329/2011 on providing allowances to people with disabilities. (*Zákon o poskytování dávek osobám se zdravotním postižením*), 13 October 2011; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=329~2F2011&rpp=15#seznam>.

¹⁴⁶ Czech Republic, Law No. 435/2004 on Employment (*Zákon č. 436/2004 Sb., o zaměstnanosti*), 13 May 2004; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=435~2F2004&rpp=15#seznam>.

and therefore has an impact on their employment. It is important to note that a person qualified as 'disadvantaged in terms of health' according to Section 67(2)(c) cannot be a person falling into the scope of (a) or (b) described above. In order to be recognised as a person 'disadvantaged in terms of health' it is necessary to be awarded this status by the district social security administration according to the amendment to Law No. 582/1991.¹⁴⁷ An employer employing person 'disadvantaged in terms of health' is entitled to various allowances according to the Law on Employment and such a person can be included in the compulsory percentage of employed people with disabilities according to Section 81 of the Law on Employment.

Potentially, the existence of several different legal definitions could cause problems of implementation in situations where individuals are refused reasonable accommodation provided for by Article 3(2) of the Anti-discrimination Law, because they are not officially recognised as having a disability. However, there is no evidence that those problems are actually caused by the existence of several definitions.

Since 1 January 2012, the Law on Employment has referred to the Anti-discrimination Law in regard to protection against discrimination, for example on the ground of disability. Nevertheless, in relation to access to employment, it is not sufficiently clear whether and when an individual may be refused reasonable accommodation in recruitment and duration of employment purely because they have not been registered as a person with a disability by the social security authorities. No official data have been published or research conducted to identify whether there are such cases of objective concern.

The Law on Employment states that a person with a disability must deliver an expert assessment or an official certificate to prove their disability status (Section 67(5) of the Law on Employment). This is an administrative requirement that does not oblige the person with disability to bear any additional burden. The certificate is issued in the course of the registration of a person's disability status for the purpose of the Law on Employment and does not involve any costs for the individual concerned.

High unemployment among people with disabilities and low levels of job opportunities creates an environment in which people with disabilities are subject to exploitation. Employers often abuse their statutory right to reduce the minimum wage for people in receipt of invalidity benefit by 25–50 %. The intention of the legislator was to make the employment of people with disabilities more attractive for employers and to increase employment opportunities for people with disabilities. However, this approach leads to a situation where people with disabilities do not receive a wage corresponding to the work done and this statutory arrangement thus leads to de facto discrimination on the ground of disability.¹⁴⁸

The problem of exploitation at work of people with disabilities and the parliamentary initiative to remedy it led to the introduction of Amendment No. 367/2011 to the Law on Employment. With effect from 1 January 2012, employment agencies could not temporarily assign an employee with disabilities to work for a client. Although this legislative measure was presented as being of a protective nature, in order to prevent the exploitation of people with disabilities in the labour market and to support their regular employment, the absolute ban on one type of employment for people with disabilities was discriminatory, in breach of the Employment Equality Directive 2000/78/EC. This fact was acknowledged in 2014 and the relevant Section 66 of the Law on Employment was amended by Law No. 136/2014

¹⁴⁷ Czech Republic, Law No. 582/1991 on the organisation and performance of social security (*Zákon o organizaci a provádění sociálního zabezpečení*), 17 December 1991; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=582~2F1991&rpp=15#seznam>.

¹⁴⁸ Government of the Czech Republic (2011), *Zpráva o stavu lidských práv v České republice v roce 2011* (Report on the State of Human Rights in the Czech Republic in 2011), p. 57; <http://www.vlada.cz/cz/ppov/rlp/dokumenty/zpravy-lidska-prava-cr/zprava-o-stavu-lidskych-prav-v-ceske-republice-v-roce-2011-104281/>.

of 18 June 2014 (in force since 1 January 2015). This completely removed the prohibition of employment agencies employing persons with disabilities for temporary work contracts. However, employment agencies are no longer entitled to receive allowances for the period of time during which a person with disability is being temporarily employed, nor to receive any allowance for operational expenses of the protected workplaces. Furthermore, employment agencies cannot include temporarily employed people with disabilities in the compulsory percentage of persons with disabilities who must be employed according to Section 81 of the Law on Employment.

c) age

There is no normative definition of age and no interpretative terms used to define age in national law.

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 the statistics of the Czech Ombudsman, age was the fourth most frequently claimed ground of discrimination in 2016.¹⁴⁹ The Czech Ombudsman has led several inquiries concerning discrimination on the ground of age, for instance discrimination in the access of people to services, health care or employment (for example, the necessity of an employer to gather documents from open competition in order to rebut the presumption of discrimination, discrimination caused by the removal of an older employee and ensuing employment of someone younger, discrimination by an employment agency by refusing a job applicant after he had given information about his age).¹⁵⁰

Large international companies (e.g. hypermarkets) reportedly discriminate on grounds of age and gender, but employment offices do not usually intervene, due to lack of sufficient evidence. It was also reported to the Ombudsman¹⁵¹ that employers often avoid promoting young people, as they find it inappropriate for young people to supervise and give instructions to older employees.

The Constitutional Court has declared that statistical data about dismissals of elderly employees may be held as evidence of discrimination on the ground of age, although they do not lead to the reversal of the burden of proof. As a result, the Constitutional Court has stated that organisational changes in the composition of an office must be based on the real needs of the office not on a criterion of age.¹⁵²

According to the *Academic Commentary on the Anti-discrimination Law*, in cases concerning differential treatment of those employees who are entitled to a pension, the Constitutional Court tends to be quite rigid and strict in respect of the abilities of the legislature, in comparison with the ECJ case law.¹⁵³ For example, in an important case the

¹⁴⁹ Public Defender of Rights (2016), *Výroční zpráva VOP* (Annual report of the Public Defender of Rights), Veřejný ochránce práv; https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Vyrocní-zpráva-2016_web.pdf.

¹⁵⁰ Public Defender of Rights, Cases: Discrimination based on age, available at: <http://www.ochrance.cz/en/discrimination/cases/diskriminace-dle-zakazanych-duvodu/cases-age/>.

¹⁵¹ Public Defender of Rights, Cases: Discrimination based on age, available at: <https://www.ochrance.cz/en/discrimination/cases/diskriminace-dle-zakazanych-duvodu/cases-age/>

¹⁵² Constitutional Court of the Czech Republic, II. ÚS 1609/08, 30 April 2009; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=62904&pos=1&cnt=2&typ=result>.

¹⁵³ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 103.

Constitutional Court found that the abolition of the tax discount for working pensioners was discriminatory.¹⁵⁴

d) sexual orientation

According to Section 2(4) of the Anti-discrimination Law, discrimination for reasons of pregnancy, maternity, paternity or sexual identification is considered as discrimination on the ground of sex. The term 'sexual identification' reflects the development of the jurisprudence of the European Court of Justice in relation to the rights of transsexuals. Nevertheless, there is no normative definition nor any distinctive interpretative terms used to define sexual orientation in Czech national law.

Most of the cases of discrimination on grounds of sexual orientation in the Czech Republic relate to discrimination in employment. However, in an important recent case the Constitutional Court found that the provision of the Law on registered partnership¹⁵⁵ was discriminatory since it had forbidden the registered partners or one of them from adopting a child (while adoption by a single homosexual person was lawful). Therefore, the Constitutional Court annulled the contested provision holding that it infringed registered partners' rights to private life and dignity. In its reasoning, the Constitutional Court referred to the doctrine explaining that sexual orientation is inborn and an unchangeable state and thus stated that it cannot be the pretext for any discrimination.¹⁵⁶

e) racial and ethnic origin

There is no normative definition of racial or ethnic origin in Czech national law. Czech law does not clearly distinguish between the terms race and ethnic origin. The widely used *Academic Commentary on the Anti-discrimination Law* distinguishes race and ethnicity in the following manner: 'Race refers to physiological signs, whereas ethnicity also involves social signs such as nationality, language, culture, history or religious tradition.'¹⁵⁷ 'Nationality' constitutes a separate discriminatory ground; nationality, as opposed to ethnic origin, depends on the free choice of the individual.¹⁵⁸ However, in connection with discrimination towards Roma people, the discrimination based on ethnic origin is used for preference, although the Constitutional Court employs the terms ethnic or racial discrimination interchangeably.¹⁵⁹ In 2015, the Czech Ombudsman stated that ethnic origin is the ground of discrimination requiring the strongest protection and that the law considers it to be particularly unacceptable. Later in the statement, the Ombudsman continues using both racial and ethnic origin.¹⁶⁰

The Constitutional Court considers differentiation based on racial or ethnic origin as absolutely prohibited, however, it is doubtful whether in practice that ensures the applicants any specific position before the Constitutional Court.¹⁶¹ For example, in the case

¹⁵⁴ Constitutional Court of the Czech Republic (*Ústavní soud*), no. Pl. ÚS 31/13 (162/2014), 10 July 2014; http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-31-13_1.

¹⁵⁵ Czech Republic, Law No. 115/2006 on registered partnership (*Zákon č. 115/2006 Sb., o registrovaném partnerství*), 26 January 2006; <https://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=62343&nr=115~2F2006&rpp=15#local-content>.

¹⁵⁶ Constitutional Court of the Czech Republic, Pl. ÚS 7/15, 14 June 2016; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=93271&pos=1&cnt=1&typ=result>. See details of the decision in the Section 12.2 below.

¹⁵⁷ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 44.

¹⁵⁸ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 59.

¹⁵⁹ Constitutional Court of the Czech Republic, no. I. ÚS 1891/13, 11 August 2015; http://nalus.usoud.cz/Search/GetText.aspx?sz=1-1891-13_1.

¹⁶⁰ Public Defender of Rights (2015), *Zpráva o nezjištění diskriminace sp. zn. 788/2015/VOP* (Report on discrimination No. 788/2015/VOP), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/3302>.

¹⁶¹ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 49.

of *D. H. and Others*, the Constitutional Court did not ascertain indirect discrimination of Roma pupils in the field of education. In that case, the Constitutional Court declared that the fact that Roma children represent about 70 % of the pupils in special schools is a fact demonstrated by the statistics and does not present an individual infringement.¹⁶² In 2013, the Constitutional Court did not find indirect discrimination in a similar case concerning access of Roma to education. The Constitutional Court differentiated the individual case from the case of *D.H. and Others* and declared that individual guarantees for the applicant were ensured since he was repeatedly examined during his school attendance.¹⁶³

It emerges from the *Academic Commentary on the Anti-discrimination Law* that it can be argued that the Constitutional Court gives greater attention in its case law to other criteria of differentiation rather than to racial discrimination, although racial discrimination was classified as a 'traditionally prohibited discrimination ground' in its case law.¹⁶⁴

Protection against racial discrimination also includes the protection of national minorities. There is no difference between national and ethnic minorities in the Czech legislation. Law No. 273/2001 on the rights of members of national minorities only recognises national minorities, who are

'a community of citizens of the Czech Republic who live on the territory of the present Czech Republic and as a rule differ from other citizens by their common ethnic origin, language, culture and traditions; they represent a minority of citizens and at the same time they show their will to be considered a national minority for the purpose of common efforts to preserve and develop their own identity, language and culture and at the same time express and preserve interests of their community which has been formed during history.'¹⁶⁵

There are 14 officially recognised national minorities, including Roma, which are represented in the Government Council for National Minorities.

According to Section 4 of the Data Protection Law,¹⁶⁶ 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 the ethnic origin of an individual without such consent, this would lead to a circumvention of the Data Protection Law, as such data might no longer be regarded as 'sensitive'. There is no special definition for the purposes of the Anti-discrimination Law. The aims of the anti-discrimination legislation are satisfied by anonymous data collection.

In practice, incidents of racial discrimination are widely identified by the media and NGOs. As a result of an analysis mapping the private TV channels broadcasting daily news, the Council for Radio and TV Broadcasting¹⁶⁷ issued a decision announcing violation of the law by CET 21, the owner of the major Czech private TV channel, TV Nova, in September 2012. The Council stated that the news presented during the first five months of 2012 provided, almost without exception, only negative information on Roma. Most reports involving Roma

¹⁶² Constitutional Court of the Czech Republic, no. I. ÚS 297/99, 20 October 1999; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=32969&pos=2&cnt=4&typ=result>.

¹⁶³ Constitutional Court of the Czech Republic, no. III. ÚS 1136/13, 12 August 2015; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=89444&pos=1&cnt=1&typ=result>.

¹⁶⁴ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 49. However, the commentary does not specify these 'other criteria'.

¹⁶⁵ Czech Republic, Law No. 273/2001 on the rights of members of national minorities (*Zákon č. 273/2001 Sb., o právech příslušníků národnostních menšin a o změně některých zákonů*), 10 July 2001, Section 2(1).

¹⁶⁶ Czech Republic, Law No. 101/2000 on the protection of personal data (*Zákon č. 101/2000 Sb., o ochraně osobních údajů*), 4 April 2000; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=101~2F2000&rpp=15#seznam>.

¹⁶⁷ Czech state agency, established by Law No. 231/2001, to monitor whether the law in the area of radio and TV broadcasting is observed and respected.

were connected to criminality and, in contrast to offenders from the majority community, the culprits were identified as Roma. The news repeatedly publicised actions presented by TV Nova itself as anti-Roma demonstrations. The TV channel only allotted time for the opinions of representatives of the majority community, who emphasised their fear of Roma. The Council for Radio and TV Broadcasting issued a warning to CET 21, stating that the TV broadcaster had violated the law. It set a deadline for CET 21 to take corrective measures within seven days. There is no information available about any further steps taken by CET 21 or whether any penalty was imposed for non-compliance.

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. The author is not aware of any court decisions providing comprehensive definitions of racial or ethnic origin. For the purpose of research carried out in 2012, the Czech Ombudsman used an approach which considered as Roma those persons (pupils) who were perceived as Roma by third parties, i.e. equality body employees and teachers.¹⁶⁸

Concerning criminal sanctioning of racial discrimination, the Criminal Code specifically penalises the foundation of and participation in an organisation promoting racial discrimination or the crime of racially motivated murder.¹⁶⁹

According to the Czech Ombudsman, race and ethnicity discrimination is the third most frequently invoked discrimination ground (69 of 451 complaints) in 2016.¹⁷⁰

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

2.1.2 Multiple discrimination

In the Czech Republic, prohibition of multiple discrimination is not included in the law. The *Academic Commentary on the Anti-discrimination Law* recommends paying specific attention to cases of alleged multiple discrimination, because such discrimination could have a more harmful impact on society and leads to greater infringement of a victim's rights.¹⁷¹

In the Czech Republic, there is no case law dealing with multiple discrimination. However, in 2014 the Czech Ombudsman began to record cases of multiple discrimination. In that year, a total of 27 such cases, mostly involving a combination of age and disability (nine cases), were recorded.¹⁷² In 2016, 29 cases of multiple discrimination were reported, mostly involving discrimination on the ground of race and nationality (6 cases).¹⁷³ Further cases involving the sterilisation of Roma women might well involve this element, although

¹⁶⁸ Public Defender of Rights (2012), Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools Final Report (*Výzkum etnického složení žáků bývalých zvláštních škol*), Brno, Public Defender of Rights;

http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Survey_Ethnic_Special-schools.pdf.

¹⁶⁹ Czech Republic, Law No. 40/2009, Criminal Code (*Zákon č. 40/2009 Sb., trestní zákoník*), 8 January 2009; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=40~2F2009&rpp=15#seznam>.

¹⁷⁰ Public Defender of Rights (2016), *Souhrnná zpráva o činnosti veřejného ochránce práv 2016* (Summarising report on Ombudsman's activities in 2016), Brno, Veřejný ochránce práv, p. 74; https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Vyrocnizprava-2016_web.pdf.

¹⁷¹ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck pp. 133, 137.

¹⁷² Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnnazprava_VOP_2014.pdf.

¹⁷³ Public Defender of Rights (2016), *Souhrnná zpráva o činnosti veřejného ochránce práv 2016* (Summarising report on Ombudsman's activities in 2016), Brno, Veřejný ochránce práv, p. 74; https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Vyrocnizprava-2016_web.pdf.

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.¹⁷⁴ Although a considerable number of the sterilised women were Roma, ethnic grounds for these sterilisations were never proven in proceedings before the Czech courts.

Compensation for health damages awarded in one of these cases was approximately EUR 8 000 (CZK 200 000). In a second case, compensation of approximately EUR 6 000 (CZK 150 000) was awarded to a woman whose ovaries were surgically removed by doctors without her informed consent. In 2013 the compensation was increased to approximately EUR 12 000 (CZK 300 000);¹⁷⁵ it is also very likely that the intervention was not necessary.

The Czech Government issued official apologies for sterilisations carried out by doctors on women without their informed consent – in Decree No. 1424, approved on 23 November 2009, the Government expressed its concern that at least some sterilisations carried out in the past were contrary to the law. The Government decree on apology for sterilisation was based on a 2007 initiative of the Minister for Human Rights. In February 2012, the Government Council for Human Rights approved a recommendation from its committee against torture that the Government should introduce a new set of legal provisions governing sterilisation and introduce a new, efficient compensation mechanism for unlawfully sterilised women.¹⁷⁶

According to a response prepared by the Czech Government to an observation by the UN Human Rights Committee, the Government should have been presented with a legislative proposal on compensation for victims of illegal sterilisation.¹⁷⁷ The law should regulate the claims of individual victims as well as the functioning of the redress mechanism so as to lead to compensation for victims and satisfaction of their claims. The Minister for Human Rights proposed that unlawfully sterilised women could be awarded damages up to the amount of EUR 11 100 (CZK 300 000), but this was refused in 2015 by the Czech Government, which argued that the women should make a claim in court.¹⁷⁸

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In the Czech Republic, the following national law (including case law) prohibits discrimination based on perception or assumption of what a person is:

Section 2(5) of the Anti-discrimination Law provides for prohibition of discrimination on the ground of assumed characteristics. This provision protects against discrimination based on subjective attitude, for example refusing to rent a flat to a person with a dark skin colour assuming that he is a Roma person or because he behaves as a homosexual. This provision

¹⁷⁴ The claims were declared by the Czech courts as statute-barred (they cannot be enforced, because a certain period of time has elapsed) in late 1990. This conclusion was somewhat compromised by judgment no. 30 Cdo 2819/2009 of the Supreme Court. In regard to cases of unlawful sterilisation taking place after the Velvet Revolution of 1989, serious shortcomings were identified by the Czech courts with respect to the duty to obtain informed consent from the women concerned.

¹⁷⁵ Ústí nad Labem Regional Court, Liberec Department, no. 36 C 15/2008 – 228, 16 January 2013.

¹⁷⁶ Czech Republic, Human Rights Council, Committee for Human Rights, Motion on the unlawful sterilisation of women (*Podnět k protiprávním sterilizacím žen v ČR*), 9 May 2011; www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-9--kvetna-2011-86162/.

¹⁷⁷ United Nations (UN), Human Rights Committee (HRC), *Information received from the Czech Republic on follow-up to the concluding observations*, date received: 3 November 2014; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/017/21/PDF/G1501721.pdf?OpenElement>.

¹⁷⁸ Czech News Agency (2015), 'Vláda nesouhlasí s návrhem na odškodnění obětí sterilizace' (The Czech Government disagrees with the proposal on compensation of victims of sterilisation); <http://www.ceskenoviny.cz/zpravy/vlada-nesouhlasi-s-navrhem-na-odskodneni-obeti-sterilizace/1264618>.

is applied in the cases of direct discrimination, while it usually not applied in cases of indirect discrimination.¹⁷⁹ In 2014 the Czech Ombudsman issued an opinion in the area of access to employment. According to this opinion, if an employment agency does not include job seekers in its database on the ground that the applicants refuse to disclose information on their age, there is discrimination on the basis of assumed discrimination on the ground of age.¹⁸⁰

b) Discrimination by association

In the Czech Republic, there is no legislation expressly prohibiting discrimination based on association with persons with particular characteristics.

Judicial interpretation is needed to reach a clear conclusion as to whether discrimination based on association is prohibited by Czech legislation. There is no 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(3) of the Anti-discrimination Law also allows for a broader interpretation, in conformity with EU law, encompassing discrimination based on association with persons with particular characteristics.¹⁸¹

The Czech Ombudsman has encountered complaints concerning discrimination by association in relation to employment and housing issues. According to the Ombudsman, it is uncertain that government authorities would actually apply European case law related to discrimination by association to all grounds and forms of discrimination. To strengthen the position of victims, the Ombudsman recommends¹⁸² that the Chamber of Deputies proposes a bill amending Section 2 of the Anti-discrimination Law as follows:

'Discrimination is also less favourable conduct towards any person due to association or relationship with another person who has characteristics which are prohibited in the meaning of Section 3' [discrimination based on race, ethnic origin, nationality, sex, age etc].¹⁸³

However, this amendment has not yet been introduced in the Chamber of Deputies by either the Deputies or the Government.

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

a) Prohibition and definition of direct discrimination

¹⁷⁹ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 200.

¹⁸⁰ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnnazprava_VOP_2014.pdf.

¹⁸¹ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnnazprava_VOP_2014.pdf.

¹⁸² Public Defender of Rights (2015), *Incorporation of Discrimination by Association in the Czech Anti-discrimination Law*, Brno, Veřejný ochránce práv; <http://www.ochrance.cz/en/discrimination/news-from-discrimination/news-from-discrimination-2015/incorporation-of-discrimination-by-association-in-the-czech-anti-discrimination-act/>.

¹⁸³ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnnazprava_VOP_2014.pdf.

In the Czech Republic, direct discrimination is prohibited in national law. It is defined.

Currently, two definitions of discrimination exist in Czech legislation. The Anti-discrimination Law, Section 2(3), defines discrimination as any 'conduct, including omission, where one person is, has been or would be treated less favourably than another in a comparable situation' (... on specified grounds). In addition, there is a special definition included in Section 77(2) of the Law on the service of members of security forces. For the purpose of this law direct discrimination shall be deemed to be any conduct whereby a member (of the security forces) is treated less favourably than another is, has been or would be treated in a comparable situation on specified grounds.¹⁸⁴ Both definitions comply with the definitions given in the directives.¹⁸⁵ Furthermore, the Labour Code explicitly refers to the definition of direct discrimination contained in the Anti-discrimination Law.¹⁸⁶

b) Justification of direct discrimination

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.

Section 6 of the Anti-discrimination Law defines exceptions of lawful differential treatment with respect to direct discrimination. In Section 6(1), the law implements exceptions on the ground of age, corresponding to Article 6(1) of Directive 2000/78/EC. The provisions of Section 6 also allow for different pensionable ages for women and men; however, this only applies to the state pension system. Genuine occupational requirements are provided for in Section 6(3). In Section 6(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 young people under 18 years of age. Section 6(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(1) of the Anti-discrimination Law deals with differential treatment corresponding to the material scope of the law. Thus, the law provides for lawful differential treatment that can be objectively justified by legitimate aims and where the measures are proportionate and necessary.

Furthermore, Section 16(3) of the Labour Code explicitly provides that differential treatment that results from an important performance requirement of a certain employment cannot be considered as discrimination on the condition that the aim of that requirement is justified and adequate.

The rules on protection of persons with disabilities are in the position of *lex specialis*, therefore special conditions also apply to disability in this respect. No specific provision nor jurisprudence, however, explains the scope to which differential treatment on the basis of disability is justified and therefore does not amount to unlawful discrimination. The Czech Ombudsman seems to adopt the view that differential treatment based on signs resulting

¹⁸⁴ Czech Republic, Law No. 361/2003 on the service of members of security forces (*Zákon č. 46/2000 Sb., o služebním poměru bezpečnostních sborů*), 23 September 2003; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=361~2F2003&rpp=15#seznam>.

¹⁸⁵ There is no case law indicating that the term 'one person' in this provision should be interpreted as excluding groups of persons from protection.

¹⁸⁶ See Section 16(2) of the Labour Code.

from disability (such as tiredness), where it is not reasonably justified and where reasonable accommodation can be provided, amounts to direct discrimination.¹⁸⁷

It emerges from the case law of the Constitutional Court that the differential treatment can be justified under two conditions: it pursues a legitimate aim and is proportionate (according to the so-called test of direct discrimination).¹⁸⁸ The *Academic Commentary on the Anti-discrimination Law* specifies in four steps how justification of differential treatment should be verified. The four steps, which must be fulfilled cumulatively, consist of identification of the legitimate aim, possibility of reaching this aim, proportionality in comparison with the right to equal treatment and examination of alternative measures.¹⁸⁹ Within the decision-making practice of the courts, the test of direct discrimination was sometimes modified or combined with other tests. Therefore, there is no well-established case law clearly defining criteria for justification of differential treatment.¹⁹⁰

A decision of the Supreme Court indicates that discriminatory intent is needed both in cases of direct and indirect discrimination.¹⁹¹ This is, however, contradicted by the Constitutional Court, according to which an explicit intent to discriminate against somebody can hardly be expected and cannot be a condition for proving direct discrimination. According to the Constitutional Court therefore, intent is not necessary for proving direct discrimination.¹⁹² Requiring the proof of intent in cases of indirect discrimination would also clearly be contrary to the case law of the European Court of Human Rights.¹⁹³ It can therefore be said that further judicial interpretation is needed.

2.2.1 Situation testing

a) Legal framework

In the Czech Republic, situation testing is not clearly permitted in national law.

According to the Czech Constitution, 'Everyone may do that which is not prohibited by law; and nobody may be compelled to do that which is not imposed upon them by law.' The Constitution guarantees this right to every individual, in contrast to public persons and bodies, which may only act where the law expressly authorises them to act.¹⁹⁴ Therefore the law does not need to permit situation testing or define it – any private individual may perform situation testing in situations where the law does not expressly prohibit or forbid it. Section 125 of the Civil Procedure Code also states that anything may be introduced as evidence, as long as it can serve as a measure to clarify the material circumstances of the case. The limits are set primarily by Sections 84 to 90 of the Civil Code and relevant

¹⁸⁷ Public Defender of Rights (2015), *Zpráva o zjištění diskriminace sp. zn. 49/2013/DIS* (Report on discrimination No. 49/2013/DIS), Brno, Veřejný ochránce práv; Public Defender of Rights (2015), *Zpráva o zjištění diskriminace sp. zn. 48/2013/DIS* (Report on discrimination No. 48/2013/DIS), Brno, Veřejný ochránce práv.

¹⁸⁸ See, among others: Constitutional Court of the Czech Republic (*Ústavní soud*), Pl. ÚS 31/13, 10 July 2014; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=84884&pos=1&cnt=1&typ=result> and Constitutional Court of the Czech Republic (*Ústavní soud*), Pl. ÚS 49/10, 28 January 2014; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=82406&pos=1&cnt=1&typ=result>.

¹⁸⁹ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 319.

¹⁹⁰ See, for example: Píčová, L. (2014), 'Žonglování Ústavního soudu s diskriminačními testy' (Juggling of the Constitutional Court with the discrimination tests) *Bulletin Centra pro lidská práva a demokratizaci*, no. 7, vol.8/2014, Praha, p. 18.

¹⁹¹ Supreme Court of the Czech Republic (*Nejvyšší soud*), no. 21 Cdo 4586/2010, 27 March 2012; http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/4ED3DA547D85D55BC1257A4E00687866?openDocument.

¹⁹² Constitutional Court of the Czech Republic (*Ústavní soud*), no. Pl. ÚS 37/04, 26 April 2006; <http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-37-04>.

¹⁹³ European Court of Human Rights, *Horváth and Kiss v. Maďarsku*, no. 11146/11, 29 April 2013. European Court of Human Rights. *D.H. and Others v. Czech Republic*, no. 57325/00, 13 November 2007.

¹⁹⁴ Czech Republic, Law No. 1/1993, Constitution of the Czech Republic (*Zákon č. 1/1993 Sb., Ústava České republiky*), 19 December 1992, Article 2(4).

provisions of the Data Protection Law. According to the Civil Code (Section 88), the consent of a person to use audio-visual recordings is not needed if the recordings are used to protect the rights or rightful interests of other persons, in cases when they are used for administrative purposes based on law or in cases when somebody publicly uses them in the matter of public interest.

The legislation places other limitations on recording situation testing especially with regard to the protection of personal honour and dignity, family and private life:

- a. The secrecy of messages delivered must be respected. Therefore, evidence including secret recordings of telephone calls in many cases does not constitute admissible evidence before the courts.
- b. The protection of personal privacy must be respected; any evidence obtained through secret tape recordings made in private places, such as homes, may therefore be declared inadmissible before the courts.

The protection of personal privacy must be respected; the introduction of video recordings including a person's face or image without their consent as admissible evidence before the courts would therefore probably be problematic, however according to Section 88 of the Civil Code, they can be used to protect the rights or rightful interests of other persons or in cases of public interest. This does not apply to recordings under press licence, including images of people active in public and political life, or performing public duties.

b) Practice

In the Czech Republic, situation testing is used in practice.

In practice, situation testing is used by NGOs in order to prove discrimination in access to employment, services and housing. Most cases of situation testing in the Czech Republic in recent years were carried out in relation to discrimination on the ground of racial or ethnic origin in various fields: housing, employment, access to goods and services and education.¹⁹⁵

Testing is often carried out in situations where a Roma person attempts to obtain access to a service, benefit or employment and because they are concerned that they will be refused on discriminatory grounds, agrees to be accompanied by another person or other people.

The aim is to test whether the other person or people will receive the service, benefit or employment while the Roma person is turned away. This testing method has been used effectively to gather evidence of discrimination in a number of cases, with the cooperating testers appearing as witnesses in subsequent court proceedings.¹⁹⁶ Thus testing has been used almost exclusively for litigation purposes, although research has also been carried out where testing was used to obtain statistics on possible discriminatory behaviour by employers (for example, to investigate discriminatory patterns in recruitment).¹⁹⁷

The Czech equality body is not allowed to use situation testing (as this power is not explicitly mentioned in legislation). However, in 2012 the Ombudsman initiated

¹⁹⁵ 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 claimants before the courts.

¹⁹⁶ For more on testing cases, see: Poradna pro občanství (2006) *Situační testing. Zpráva z průzkumu* (Situation testing. Research report); http://poradna-prava.cz/www/old/situacni_testing_vysledky.pdf.

¹⁹⁷ For more see the publication: Poradna pro občanství (2006) *Situační testing. Zpráva z průzkumu* (Situation testing. Research report); http://poradna-prava.cz/www/old/situacni_testing_vysledky.pdf.

collaboration with NGOs who might conduct situation testing in cases identified by the Ombudsman. In the 2014 annual report, the Ombudsman mentions that situation testing performed by an NGO, *Poradna pro občanství, občanská a lidská práva*, proved discrimination by real estate agents against members of the Roma minority.¹⁹⁸ The Ombudsman stated that according to the Anti-discrimination Law it does not matter whether there is a real victim of discrimination or the situation is artificially set up (the Ombudsman refers to the jurisprudence of ECJ and Swedish or US court rulings).¹⁹⁹ The practical application of situation testing, as one of the methods to prove discrimination used by the Ombudsman, is explained in great detail in the Ombudsman's seminar collection on equality and the prohibition of discrimination, which was published in 2016.²⁰⁰ Situation testing is a method used to obtain evidence about discrimination or to measure it.²⁰¹ The Ombudsman used the situation testing method for the first time in 2013 in respect of the treatment of the elderly in accessing financial services. Based on the situation testing results, the Ombudsman concluded that the elderly have limited access to financial services and/or are charged more for financial services. However, the Ombudsman said that although such practices exist, they are seldom used.²⁰²

Even the Czech courts have already accepted in some cases that everyone is authorised to verify whether their rights can be exercised. If an unauthorised infringement of rights occurs, the claims of the testing persons are identical in a situation where discrimination would not be expected. However, it is important that the person participating in the testing who is discriminated against is at the same time a real victim of discrimination, i.e. that the person has a real interest in exercising the right in question; it should not be the case that the person is merely pretending to exercise their rights. In such situations, problems could arise when enforcing rights through the courts. According to the *Academic Commentary on the Anti-discrimination Law*, situation testing should not detract from the importance of discriminatory behaviour. In general, it should be borne in mind that financial compensation in discrimination cases has both a satisfactory function and a preventive function, since it should sanction the discriminator and dissuade others from discriminatory behaviour.²⁰³ In a case decided by the Prague City Court, the court noted that it did not 'question the right of the claimant to test the reactions of others, and where, during this testing, an illegal act affecting the claimant's personal rights may have taken place (for example, denial of service because of [their] racial or ethnic origin), it cannot be ruled out that this might affect [their] personal rights as protected by Section 11 of the Civil Code'.²⁰⁴

In its judgment in the appeal against the decision of the Prague City Court, the High Court in Prague assessed contradictions in the evidence submitted by the claimants with regard to the fact that it was obtained by situation testing as follows: 'When assessing the course of events [...] the Appellate Court also took into consideration contradictions in the testimonies of the claimants themselves [...] the court dismisses as ungrounded the claimants' objection that these contradictions were caused by the extensive time-lapse

¹⁹⁸ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnnazprava_VOP_2014.pdf.

¹⁹⁹ Public Defender of Rights (2014), *Zpráva o šetření, sp. Zn. 112/2012/DIS/VP* (Report on inquiry No. 112/2012/DIS/VP), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/2000>.

²⁰⁰ Public Defender of Rights (2016), *Rovnost a zákaz diskriminace v činnosti veřejného ochránce práv* (Equality and prohibition of discrimination in the activities of the Public Defender of Rights), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Knihovna/Rovnost_a_zakaz_diskriminace_-_eBook.pdf.

²⁰¹ Public Defender of Rights (2016), *Rovnost a zákaz diskriminace v činnosti veřejného ochránce práv* (Equality and prohibition of discrimination in the activities of the Public Defender of Rights), p. 177.

²⁰² Public Defender of Rights (2016), *Rovnost a zákaz diskriminace v činnosti veřejného ochránce práv* (Equality and prohibition of discrimination in the activities of the Public Defender of Rights), p. 178.

²⁰³ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, pp. 392, 396.

²⁰⁴ Prague City Court (*Městský soud v Praze*), no. 34C 66/2001–42, 7 March 2002.

between the incident and the interrogation before the court of first instance, especially because the claimants themselves admitted that they went to the restaurant in order to test discrimination and were therefore prepared for the situation beforehand.²⁰⁵

In 2009, the Supreme Court set out a general requirement for monetary compensation, holding that a victim's dignity must be significantly reduced and it can be reliably concluded that every person in the same situation, place and position would experience a serious harm. In the case under consideration, the victims, who participated in the situation test, were not served in a bar because of their Roma origin. It was declared that the personal motive of the victims, who voluntarily run the risk of potential discrimination, does not negate unlawful infringement of their personal rights.²⁰⁶

In 2011 a judgment in another case by the Prague City Court identified the factual consequences of situation testing as a reason for denying the claimant the right to compensation and awarded him only an apology. The action was filed to obtain an apology and compensation because of 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'.²⁰⁷ The Prague High Court, in an appellate judgment in December 2011, held that the human dignity of the claimant was not considerably affected, given that neither the claimant nor the witnesses were able to explain precisely why the claimant went to the restaurant to see the baseball bat. Consequently, the court did not see any grounds for awarding him the compensation claimed.²⁰⁸ In 2013, the Supreme Court quashed the decision of the Prague High Court and ruled that the High Court must consider the claim for financial compensation again and explain properly why in this case an apology is sufficient to compensate the applicant.²⁰⁹ In the repeated proceedings,²¹⁰ the Prague High Court awarded the claimant compensation of EUR 926 (CZK 25 000).

In 2014 the Czech Ombudsman stated that the injury arising from situation testing is comparable with an injury caused in a real case, because the dignity of a victim is insulted in both situations.²¹¹ However, the actual compensation can be reduced in order to reflect the fact that victims within situation testing were not denied anything that they had really wanted.

In 2015, the District Court in Litoměřice tried a case concerning situation testing in housing. The claimant of Roma origin was refused the advertised flat for lease by the real estate agent because of alleged disagreement of the proprietor. The District Court concluded that the real estate agent committed direct discrimination because the claimant was excluded from a group of applicants because of her Roma origin. The District Court ordered the defendant to send the claimant a written apology, but the compensation for non-pecuniary loss was rejected. When evaluating the amount of non-pecuniary damages, the District Court held that the claimant's dignity had not been decreased in a considerable extent because she had participated in situation testing as part of her working duties.²¹²

²⁰⁵ High Court in Prague (*Vrchní soud v Praze*), no. 1 Co 321/2003-196, 17 August 2003.

²⁰⁶ Supreme Court (*Nejvyšší soud*), no. 30 Cdo 4431/2007, 7 October 2009.

²⁰⁷ The incident described here took place in 2001. It was reported to the police, but was classified as a misdemeanour, not as a criminal offence.

²⁰⁸ High Court in Prague (*Vrchní soud v Praze*), no. 1 Co 321/2003-196, 17 August 2003.

²⁰⁹ Supreme Court of the Czech Republic (*Nejvyšší soud*), no. 30 Cdo 2314/2012, 28 February 2013; http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/BD306CF3DD626402C1257B410032B5CB?openDocument&Highlight=0.

²¹⁰ High Court in Prague (*Vrchní soud v Praze*), no. 1 Co 203/2013-136, 17 February 2014.

²¹¹ Public Defender of Rights (2014), *Zpráva o šetření, sp. Zn. 112/2012/DIS/VP* (Report on inquiry No. 112/2012/DIS/VP), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/2000>.

²¹² District Court in Litoměřice (*Okresní soud v Litoměřicích*), no. 14 C 46/2013/ 14 August 2015.

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

a) Prohibition and definition of indirect discrimination

In the Czech Republic, indirect discrimination is prohibited in national law. The prohibition of indirect discrimination is included in Sections 1(3) with 2(2) of the Anti-discrimination Law and in Section 77(2) of the Law on service by members of the security forces. It is defined.

In current legislation, two definitions of indirect discrimination are provided:

According to Section 3(1) of the Anti-discrimination Law, indirect discrimination shall mean an act or omission where a person is put at a disadvantage compared to other persons on any of the specified grounds on the basis of an apparently neutral provision, criterion or practice.²¹³

In addition, there is a special definition included in Section 77(4) of the Law on the service of members of security forces. For the purpose of this law indirect discrimination shall be deemed any ostensibly non-discriminatory conduct that discriminates against another member (of the security forces) on the grounds specified in this law.

These definitions conform to the definitions given in the directives.

b) Justification test for indirect discrimination

According to Section 3(1) of the Anti-discrimination Law, indirect discrimination as specified in this provision shall not be taken to occur if such a provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

No definite answer can be given as to what test must be satisfied to justify indirect discrimination, as there is a lack of case law on indirect discrimination in the Czech Republic. Nevertheless, some decisions have indicated that the concept of indirect discrimination is interpreted rather more narrowly by the Czech courts.²¹⁴

According to the Ombudsman, the main reasons why victims of discrimination do not want to file a discrimination complaint with civil courts include unpredictability of court decision-making, lack of case law concerning discrimination, the amount of court fees and difficulties in finding qualified (and free) legal assistance. Another possible reason for there being almost no case law on indirect discrimination might be that neither the public nor the courts are familiar with the concept of indirect discrimination, regardless of the fact that the definition of indirect discrimination is provided in the Anti-discrimination Law. An additional reason might be that the opinion prevails among the public that the courts are generally not very well equipped to solve legal problems effectively, including possible human rights violations.²¹⁵

²¹³ There is no case law indicating that the term 'one person' in this provision should be interpreted as excluding groups of persons from protection.

²¹⁴ Supreme Court of the Czech Republic (*Nejvyšší soud*), no. 21 Cdo 2754/2014, 28 January 2016 or Supreme Court of the Czech Republic (*Nejvyšší soud*), no. 21 Cdo 230/2015, 24 March 2016;
http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf/WebSpreadSearch

²¹⁵ Public Defender of Rights (Ombudsman), (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: Victims of discrimination and obstacles to the access to justice);
http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/aktuality/diskriminace_EN_titulka_zadnistrana.pdf.

However, the Supreme Court adjudicated an important case in 2012.²¹⁶ The alleged victim of discrimination complained that she was discriminated against on the ground of property because the National Heritage Institute, where she had applied for a job, had sent the invitations for personal interview to the candidates by email less than 24 hours prior to the date of the interview. The Supreme Court confirmed conclusions reached by the lower courts that in this case, as the applicant did not state in the application or other correspondence that she did not possess a personal computer and did not have all-day access to an email service, the defendant had no way of knowing these facts. Therefore, these matters of fact could not serve as grounds for any actions of the defendant and it was also impossible to deduce that the defendant had, by sending the invitation for personal interview by email, pursued any disadvantageous treatment towards the applicant compared to the other applicants for the job. It is therefore not possible to consider as discriminatory any such actions of an employer, whose motive is not any circumstance which the candidate sees as the reason of discrimination, even if – were this known by the employer – it could otherwise objectively be considered to be a ground for discrimination. The court made no clear distinction as to whether the case was considered under provisions of direct or indirect discrimination. However, the court indicated that it is necessary for discriminatory intent to be present in cases of both direct and indirect discrimination. It seems clear that the court did not examine whether the action (sending out invitations via email 24 hours before interview) was objectively neutral but had disproportionate effects on persons in an economic situation such as that of the applicant.

In 2013, the Constitutional Court did not find indirect discrimination of a Roma pupil, who claimed he had been placed in a special school because of his Roma origin. The Constitutional Court declared that despite the statistical evidence proving that a high percentage of pupils in the special schools are Roma children, the applicant was repeatedly examined in order to be placed in the special school and individual guarantees were ensured in his case.²¹⁷

In 2015, the Constitutional Court examined the case of an applicant who claimed indirect discrimination on the ground of religion and belief. The applicant, who was a cleric in one of the churches, asserted that the conditions under which his job was terminated were less favourable than those stipulated under the Labour Code. The applicant alleged indirect discrimination as a result of the different job termination conditions to which he was subject as a cleric. The applicant also asked the court to submit a preliminary reference to the CJEU concerning the question whether the employment relationship of a cleric is an employment relationship according to EU legislation, such as Directive No. 2000/78/ES. However, the Constitutional Court declared that the general courts decided in compliance with the CJEU case law and there was no need to submit a preliminary question to the CJEU as demanded by the applicant.²¹⁸ In 2015, the Constitutional Court came to the conclusion that the applicant, whose service as a spiritual leader was terminated under conditions which were less favourable than those stipulated by the Labour Code, was not discriminated against since he freely gave up his protection under the Labour Code.²¹⁹

In 2015, the Constitutional Court adjudicated a case²²⁰ concerning indirect discrimination on the ground of Roma origin in relation to assigning municipal flats in socially excluded localities. The Constitutional Court criticised the courts for not dealing properly with the

²¹⁶ Supreme Court of the Czech Republic (*Nejvyšší soud ČR*), no. 21 Cdo 4586/2010, 27 March 2012; http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/4ED3DA547D85D55BC1257A4E00687866?openDocument&Highlight=0.

²¹⁷ Constitutional Court of the Czech Republic (*Ústavní soud*), no. III. ÚS 1136/13, 12 August 2015; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=89444&pos=1&cnt=1&typ=result>.

²¹⁸ Constitutional Court of the Czech Republic (*Ústavní soud*), no. III. ÚS 2860/14, 10 November 2014; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=89328&pos=1&cnt=1&typ=result>.

²¹⁹ Constitutional Court of the Czech Republic (*Ústavní soud*), no. III. ÚS 2860/14, 10 November 2014; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=89328&pos=1&cnt=1&typ=result>.

²²⁰ Constitutional Court of the Czech Republic (*Ústavní soud*), no. I. ÚS 1891/13, 11 August 2015; http://nalus.usoud.cz/Search/GetText.aspx?sz=1-1891-13_1.

alleged discriminatory behaviour, because their reasoning lacked any explanation of the kind of indirect discrimination and by whom it could be actually ascertained. Therefore, the Constitutional Court annulled certain statements of the courts in order to deal properly with the alleged discrimination.

Recently, the Czech Ombudsman led an inquiry into indirect discrimination on the ground of age; indirect discrimination was finally not found, but some specifics on the control of indirect discrimination were considered. In more detail, the Czech Ombudsman criticised the Labour Inspectorate for not adapting the investigation to the conditions of indirect discrimination in order to recognise whether there was less favourable treatment of the protected group (the Ombudsman suggested a comparison of the group of people who hold the discriminatory characteristic with a neutral group of people).²²¹

c) Comparison in relation to age discrimination

The laws containing definitions give no details of how comparisons are to be made regarding a person'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.

2.3.1 Statistical evidence

a) Legal framework

In the Czech Republic, there are national rules permitting data collection. Generally, data through which it is possible to identify an individual can only be collected with the individual's consent. The conditions under which the data can be gathered and processed without consent include situations when it is necessary for fulfilling the legal obligation of the administrative body and if the data is necessary to protect the rights or rightful interests of the collector or another person (although the right to privacy should still be respected).

Data on nationality, racial or ethnic origin, political attitudes, trade-union membership, religious and philosophical beliefs, conviction for a criminal offence, state of health and sexual life of the data subject and genetic data of the data subject belong to the category of 'sensitive data' and according to Section 4(b) of the Data Protection Law, can be gathered and processed only under very strictly controlled conditions (for example, the consent of the subject is required for collecting and processing sensitive data).²²² Sensitive data shall also mean biometric data permitting direct identification or authentication of the data subject.

According to the Civil Procedure Code (Section 125), 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.²²³ Although the Civil Procedure Code does not expressly mention statistical evidence, it does not exclude it either, which means that, generally

²²¹ Public Defender of Rights (2015), *Zpráva za 1. čtvrtletí roku 2015* (Report from the first quarter of 2015), Brno, Veřejný ochránce práv, p. 8; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Ctvrtletky/2015_1_O.p df.

²²² Czech Republic, Law No. 101/2000 on the Protection of Personal Data, 4 May 2000.

²²³ See specifically Section 125 of: Czech Republic, Law No. 99/1963, Civil Procedure Code (*Zákon č. 99/1963 Sb., občanský soudní řád*), 4 December 1963. <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=99~2F1963&rpp=15#seznam>.

speaking, it is admissible evidence. However, whether a court considers statistical data as convincing evidence in specific cases is a matter to be assessed on a case-by-case basis.

However, information used in court still need to abide by the rules introduced by the Data Protection Law and therefore cannot include sensitive data without the consent of the subjects. Sensitive data can be collected or published under very strict conditions formulated by the Data Protection Law, including where it is necessary to protect the life or health of the data subject or other people, where it is necessary to fulfil the legal obligations of an administrative body in relation to labour and employment law or where it is necessary for securing other legal entitlements.

b) Practice

In the Czech Republic, statistical evidence is used in practice to establish indirect discrimination.

Although statistical evidence can be used as means of proof, the use of such evidence before the courts in discrimination disputes is not widespread.

Statistical evidence was not accepted as a means to establish indirect discrimination before the Czech courts in the case which resulted in the European Court of Human Rights (ECtHR) judgment *D.H. and Others v. the Czech Republic*.²²⁴ The case is unique in many respects and concerned indirect discrimination against Roma children in special schools for children with intellectual disabilities. It originated in 1996 in Ostrava in the Czech Republic, and after being ruled inadmissible on procedural grounds by the Constitutional Court (1999), the claimants lodged an application with the ECtHR in Strasbourg (2000).

The petitions filed with both the Czech Constitutional Court and the ECtHR 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 racial segregation of Roma in education. The petitions were based on a comparison of statistical data from 8 special schools and 69 primary schools in the city of Ostrava (at that time Ostrava had 70 primary schools and 8 special schools), which indicated an over-representation of Roma pupils in special schools. The proportion of the Ostrava Roma school population in special schools outnumbered the proportion of the 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 than non-Roma children. The statistics further indicated that, although Roma represented less than 5 % of all students of primary age in Ostrava, they constituted more than 50 % of the special school population. The petitioners also referred to official data quoted by the Czech Government,²²⁵ according to which approximately 75 % of Roma children attend special schools and substantially more than half of all special school students are Roma.²²⁶

The renowned *D.H. and Others v. the Czech Republic* judgment, delivered by the Grand Chamber of the ECtHR,²²⁷ 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 ECtHR had seized an

²²⁴ ECtHR, *D.H. and Others v. the Czech Republic*, No. 57325/00, 13 November 2007; [http://hudoc.echr.coe.int/eng?i=001-83256#{"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/eng?i=001-83256#{).

²²⁵ Czech Republic, Government of the Czech Republic, Resolution No. 279 on draft government policy on the Roma community (*Usnesení vlády o koncepci politiky vlády vůči příslušníkům romské komunity, napomáhající jejich integraci do společnosti*), 7 April 1999, states in Paragraph 5: 'three-quarters of Roma children attend special schools for children with a moderate intellectual impairment and more than 50 % (estimations are that it is about three-quarters) of all special school pupils are Roma'.

²²⁶ The applicants 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.

²²⁷ ECtHR, *D.H. and Others v. the Czech Republic*, No. 57325/00, 13 November 2007; [http://hudoc.echr.coe.int/eng?i=001-83256#{"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/eng?i=001-83256#{).

opportunity which was unlikely to be repeated in future.²²⁸ On the basis of persuasive evidence consisting of statistical data, the ECtHR identified the racially discriminatory impact of an apparently neutral practice and for the first time in its history declared indirect racial discrimination as non-justifiable in a democratic society.²²⁹

At the end of 2012 the Supreme Court heard a case, which was later adjudicated by the Constitutional Court, regarding alleged discrimination based on the ethnic origin of a person in access to education.²³⁰ The complainant was placed in a special school where he later completed his primary education. The Supreme Court dealt in detail with the issue of statistical evidence. The court rejected the arguments presented by the claimant, pointed out recent developments in the case law of the ECtHR, and argued that, according to the ECtHR's decision in the case of *Oršuš and Others v. Croatia*,²³¹ statistics can be considered prima facie evidence of discrimination only in cases where they prove that the proportion of disadvantaged children in special schools was over 50 %.

In the case of the claimant, the proportion of Roma pupils in special schools was below 50 % and according to the Supreme Court, it was therefore up to the claimant to prove that he was discriminated against by being placed in a special school. The Constitutional Court confirmed the decision of Supreme Court, but criticised the reasoning of its judgement. The Constitutional Court adjudicated²³² that the shifted burden of proof might be based on the test of indirect discrimination formulated by the European Court of Justice. The Constitutional Court declared that even if the statistical evidence presented proved that placing of Roma children to special schools was widespread practice, it would not prove that it actually happened in the complainant's case. The Constitutional Court argued that the situation of the complainant differed from the case *D. H. and Others*,²³³ because of the fact that his intellectual abilities were regularly tested (although testing in 1980s probably did not properly consider the cultural and language differences of Roma pupils). Finally, the Constitutional Court declared that the presumption of indirect discrimination would be disproved by all means.

Employers are allowed to keep records of sensitive data where they can prove the express consent of the person in question, but given this restriction, they prefer not to keep such records at all. According to Section 12(2) of the Law on Employment,²³⁴ an employer is prohibited from requesting information regarding nationality (in Czech: *národnost*), 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.²³⁵ Similarly, an employer is prohibited from requesting information which is contrary to ethical principles and personal data which do not serve to fulfil conditions set out by legislation (for example, evidence and reporting for the purposes of social and health insurance or taxation). Employers are required to prove, on request from job applicants, the necessity for the collection of such information.

²²⁸ See, for example, the commentary on the 2006 ECtHR Senate judgment: Čechová, B. (2007), 'ESLP: umístění dětí romského původu do zvláštních škol' ('ECtHR: Placement of children of Roma origin in special schools'), in Bobek, M., Boučková, P., Kühn, Z. (eds), *Rovnost a diskriminace* (Equality and discrimination).

²²⁹ European Court of Human Rights (ECtHR), *D.H. and Others v. the Czech Republic*, No. 57325/00, 13 November 2007, Section 176.

²³⁰ Supreme Court of the Czech Republic (*Nejvyšší soud ČR*), no. 30 Cdo 4277/2010, 13 December 2012.

²³¹ European Court of Human Rights (ECtHR), *Oršuš and Others v. Croatia*, No. 15766/03, 16 March 2010; [http://hudoc.echr.coe.int/eng?i=001-97689#{"itemid":\["001-97689"\]}](http://hudoc.echr.coe.int/eng?i=001-97689#{).

²³² Constitutional Court of the Czech Republic (*Ústavní soud*), no. III. ÚS 1136/13, 12 August 2015; http://nalus.usoud.cz/Search/GetText.aspx?sz=3-1136-13_1.

²³³ European Court of Human Rights (ECtHR), *D.H. and Others v. Czech Republic*, no. 57325/00, 13 November 2007; <http://hudoc.echr.coe.int/eng?i=001-83256>.

²³⁴ Czech Republic, Law No. 435/2004 on Employment, 13 May 2004.

²³⁵ The Law on Employment contains references to substantial occupational requirements and conditions required by legislation for certain occupations.

Health institutions keep information regarding the state of health of individual patients (and therefore data referring indirectly to disability). Such institutions are not allowed to disclose the content of patient records without the consent of the person concerned.²³⁶

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.²³⁷ There are no laws and regulations providing for positive measures and therefore there is no data collection for this purpose.

The lack of definition of racial or ethnic origin makes any attempt to collect ethnic data difficult. However, there remains the possibility of collecting such data anonymously. An attempt to define who can be considered as Roma was made in 2012 during the course of research by the Czech Ombudsman. Ethnic data were gathered by means of observations by 'third parties', i.e. equality body employees and teachers. This approach was based on the assumption that discrimination is determined by the neighbourhood's perception of the person and is never based on the person's own choice about their adherence to a specific ethnic minority. Data were gathered simultaneously by the employees of the equality body, who observed children in classrooms, and by class teachers who knew their pupils very well. The collected data were subsequently handled and processed purely as numerical identifiers, with no links to specific persons. The combination of these two approaches was used by the researchers as the prevailing method for the collection of anonymous ethnic data in schools.²³⁸

In 2009, the Constitutional Court decided that statistical data about dismissals of older employees can lead to evidence of discrimination on the ground of age. Specifically, it stated that such statistics might lead to a reversion of the burden of proof according to Section 133a of the Civil Procedure Code.²³⁹ It can be added that, even though the Ombudsman has no direct power to collect data, the collection of ethnic data in the case of 'special schools' was undertaken on the basis of the Ombudsman's power to carry out research concerning questions related to the problem of discrimination.

In 2016, the Ombudsman published a study on statistical and experimental measurements of discrimination focused on discrimination against Roma in the labour market.²⁴⁰ It refers to the Roma survey by the European Union Agency for Fundamental Rights from 2011²⁴¹ and underlines that more precise statistical data are needed in order to carry out a proper analysis of the situation in the Czech Republic.

²³⁶ Czech Republic, Law No. 372/2011 on health services and conditions of their provision (*Zákon č. 372/2011 Sb., o zdravotních službách a podmínkách jejich poskytování*), 6 April 2011; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=372~2F2011&rpp=15#seznam>.

²³⁷ 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 <https://www.czso.cz/csu/czso/domov>, 20 January 2007. In contrast, other estimates of the Roma population vary between 150 000 and 300 000. See, for example: Kalibová, K. (1999), 'Romové z pohledu statistiky demografie' (Roma people according to the statistics of demography) in *Romové v České republice*, Socioklub, Praha, 1999, p. 10.

²³⁸ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna-zprava_VOP_2014.pdf.

²³⁹ Constitutional Court of the Czech Republic (*Ústavní soud*), no. II. ÚS 1609/08, 30 April 2009; http://nalus.usoud.cz/Search/GetText.aspx?sz=2-1609-08_1.

²⁴⁰ Public Defender of Rights (2016), *Rovnost a zákaz diskriminace v činnosti veřejného ochránce práv* (Equality and prohibition of discrimination in the activities of the Public Defender of Rights), Brno, Veřejný ochránce práv, p. 152; http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Knihovna/Rovnost_a_zakaz_diskriminace_-_eBook.pdf.

²⁴¹ European Union Agency for Fundamental Rights (2012), *Roma Pilot Survey*, 2012, FRA; <http://fra.europa.eu/en/survey/2012/roma-pilot-survey>.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In the Czech Republic, harassment is prohibited in national law. The prohibition of harassment in general is provided in Section 1(3) together with Section 2(2) of the Anti-discrimination Law. It is defined.

In the Czech Republic, harassment explicitly constitutes a form of discrimination.

According to Section 2(2) of the Anti-discrimination Law, harassment and sexual harassment, on the grounds specified in the law, will be considered to be discrimination. According to Section 1(3) of the Anti-discrimination Law, discrimination, including harassment, is prohibited.

Harassment is prohibited in relation to all grounds covered by Section 2(3) of the Anti-discrimination Law and falls within the material scope of Article 1(1). The Anti-discrimination Law contains definitions of both harassment and sexual harassment, which comply with the definitions of the directives. According to Section 4(1) of the Anti-discrimination Law, harassment means any unwanted conduct associated with the grounds specified in Section 2(3) of the law, (a) taking place with the purpose or effect of diminishing the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment,²⁴² or (b) which could be legitimately perceived as a precondition for a decision affecting the exercise of rights and obligations following from legal relationships.

According to the Anti-discrimination Law, the bad intention of the discriminator need not be proved, although the intention or impact are significant elements for the courts to take into account. The term 'unwanted conduct' constitutes an objective criterion and therefore, it is essential to decide whether an ordinary person would feel that such behaviour is unwanted. The *Academic Commentary on the Anti-discrimination Law* specifies the means of harassment, such as multiple discriminators, long-standing and one-off harassment, hostile environment and 'quid pro quo' conduct.²⁴³ Sexual harassment means any conduct of a sexual nature under the definition mentioned above.

Harassment is also prohibited by Section 77(2) of Law No. 361/2003 on service by members of the security forces. According to the Section 77(5) of the Law on service by members of the security forces, harassment means conduct that is rightly perceived by another member as unwelcome and the aim or consequence of which leads to a reduction in that person's dignity or creates a hostile or degrading environment. Section 2(3) of Law No. 221/1999 prohibits discrimination and all acts resulting in discrimination, although harassment is not forbidden explicitly.

Neither harassment in general nor racial harassment constitutes a specific criminal offence.

Serious instances of harassment may amount to one of the criminal offences established by the Criminal Code.²⁴⁴ 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

²⁴² There is no case law indicating that the term 'one person' in this provision should be interpreted as excluding groups of persons from protection.

²⁴³ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, pp. 241-247.

²⁴⁴ Czech Republic, Law No. 40/2009, Criminal Code (*Zákon č. 40/2009 Sb., trestní zákoník*), 8 January 2009; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0 &nr=40~2F2009&rpp=15#seznam>.

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, in accordance with 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.

In addition, 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 or 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.²⁴⁵

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in the Czech Republic the employer is liable and the employee can be liable, depending on the circumstances of individual cases. In particular, if an employee behaves in a discriminatory manner in the course of his duties, the employer is liable, according to the Labour Code.²⁴⁶

According to the Ombudsman, 'an employee, who has a position of authorised representative, is liable for discrimination in the meaning of Section 4(3) of the Anti-discrimination Law, if he had sexually harassed another employee and afterwards he dismissed this person from employment.'²⁴⁷

In 2011, the Czech Ombudsman reproached the Labour Inspectorate for not leading an effective inquiry in a case of alleged harassment. Specifically, the Ombudsman criticised the Labour Inspectorate for questioning company representatives about the alleged harassment rather than the employees, who would probably have been more willing to give information about the actual situation.²⁴⁸

Natural or legal persons are liable where damage is caused by activities 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 a right of recourse against such persons. Therefore, liability in all the respects mentioned above is theoretically possible or at least not excluded. It always depends on the facts of the individual case.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In the Czech Republic, instructions to discriminate are prohibited in national law. Instructions are defined.

²⁴⁵ Czech Republic, Law No. 89/2012, Civil Code (*Zákon č. 89/2012 Sb., občanský zákoník*), 3 February 2012; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=89~2F2012&rpp=15#seznam>.

²⁴⁶ See Czech Republic, Law No. 262/2006, the Labour Code, 21 April 2006, Section 265; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=262~2F2006&rpp=15#seznam>.

²⁴⁷ Public Defender of Rights (2014), *Souhrnná zpráva VOP za rok 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnnazprava_VOP_2014.pdf, p. 85.

²⁴⁸ Public Defender of Rights (2011), *Zpráva o šetření sp. Zn. 134/2010/DIS/JŠK* (Report of inquiry No. 134/2010/DIS/JŠK), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/1992>.

Instructions to discriminate are prohibited by national law in Section 2(2) of the Anti-discrimination Law. According to Section 4(4) of the Anti-discrimination Law, the concept is defined as an abuse of authority in the instruction of a subordinate to discriminate against a third person.²⁴⁹ There is no specific provision on liability of legal persons for such actions. Legal persons are liable for instructions to discriminate under the general liability rules of the Civil Code. Article 4(5) of the Anti-discrimination Law, which is subsidiary to Article 4(4), regulates incitement to discrimination between formally equal subjects, i.e. subjects whose relationship is not hierarchical (for example, a vendor-vendee relationship).²⁵⁰

In the Czech Republic, instructions explicitly constitute a form of discrimination.

b) Scope of liability for instructions to discriminate

In the Czech Republic, the instructor is liable and the discriminator can be liable, depending on the facts of the individual case.

Natural or legal persons are liable where the damage was caused by activities conducted by persons acting on their behalf. Persons acting on behalf of a natural or legal person are not themselves liable under civil law; however, the natural or legal person may have a right of recourse against such persons, provided that they were employed to act on their behalf. They might be also criminally liable. Generally, any person giving instructions to discriminate, which leads to a criminal offence (for example, under Sections 352, 355, 356 or 402 of the Criminal Code), might be found guilty according to Section 24 of the Criminal Code. Section 356 of the Criminal Code creates a specific crime of public incitement to hatred against a group of people or the restriction of their rights. Specifically, support and expressions of support for movements organised to suppress the rights and freedoms of others are punishable, in accordance with Sections 403 and 404 of the Criminal Code.

Therefore, establishing liability in all the respects mentioned above is theoretically possible or at least not excluded. It always depends on the facts of the individual case.

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

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In the Czech Republic, the duty to provide reasonable accommodation is included in the law. It is defined.

According to the Section 3(2) of the Anti-discrimination Law, indirect discrimination on grounds of disability shall also mean 'refusal or failure to take appropriate measures to enable a person with a disability to have access to a certain employment, working activities, career progression or other promotion, to use employment advice, or participate in other vocational training, or to use services available to the public, unless such a measure represents an unreasonable burden'.²⁵¹ The legislation goes beyond European Directive 2000/78 since it declares that failure to provide reasonable accommodation for a person with a disability is a form of indirect discrimination.²⁵² Unlike the directive, the Anti-

²⁴⁹ There is no case law indicating that the term 'third person' in this provision should be interpreted as excluding groups of persons from protection.

²⁵⁰ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, pp. 254-255.

²⁵¹ Czech Republic, Law No. 198/2009, Anti-Discrimination Law (*Anti-diskriminační zákon*), 23 April 2008; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=198~2F2009&rpp=15#seznam>.

²⁵² Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 219.

discrimination Law does not give any illustrative list of reasonable accommodation. The law covers access to services as well as all relevant aspects of employment.

b) Practice

The law sets out the general basis for the evaluation of what might be regarded as a 'disproportionate burden' in the context of the duty to provide 'reasonable' accommodation. According to the Section 3(3) of the Anti-discrimination Law, particular attention should be paid to:

- the extent to which the measure would accommodate the needs of the person with disability;
- 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 person with disability.

According to the *Academic Commentary on the Anti-discrimination Law*, other factors might be relevant in practice, such as any health and security risks for the person for whom the reasonable accommodation should be provided, but also risks for other persons. This should be considered in any event and the list in the Section 3(3) might be interpreted as being non-exhaustive.²⁵³

The duty to provide reasonable accommodation is imposed on employers acting within the scope of the Law on Employment and the Labour Code. According to Section 103(5) of the Labour Code, employers are obliged at their own cost to secure for people with disabilities the necessary workplace accommodation, labour conditions, protected workshops and workplaces, special training and guidance. These obligations on employers exist independently alongside the anti-discrimination protection of the Anti-discrimination Law.

As there is a very limited amount of case law, it is not clear whether the courts would deny protection to persons who are not registered as persons with disabilities 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 persons with disability. With respect to the Anti-discrimination Law, they would also have to provide evidence of their disability other than the administrative decision which they do not possess. There is also a lack of state financial support expressly dedicated to accommodation costs, the only exception being allowances under the specific provisions of Section 78 of the Law on Employment.

In 2016, the Ombudsman examined a case of employee who wanted to work from home (as a reasonable accommodation), since she wanted to take care of her disabled son. Although there was a lack of evidence, the Ombudsman found no discrimination since only her son (the person with disability) was entitled to reasonable accommodation.²⁵⁴

c) Definition of disability and non-discrimination protection

There are no differences in the definition of disability. Despite the position presented by the Ombudsman,²⁵⁵ it is still not clear whether the courts would deny protection to people

²⁵³ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 230.

²⁵⁴ Public Defender of Rights (2015), *Zpráva o šetření sp. zn. 48/2013/DIS* (Report on inquiry No. 48/2013/DIS), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/3692>.

²⁵⁵ Public Defender of Rights (2015), *Zpráva o šetření sp. zn. 48/2013/DIS* (Report on inquiry No. 48/2013/DIS), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/3692>.

who are not registered as persons with disabilities by the social security authorities if they were to claim reasonable accommodation.

- d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In the Czech Republic, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field.

The same concept of reasonable accommodation applies not only in the area of employment and labour relations, including counselling or vocational training but also to services provided to the public. This term is interpreted as services provided to an undefined group of persons, such as advertising, notice boards of premises, housing and services provided by mobile operators, restaurant operators, hairdresser and so on. Furthermore, transport services might also fall under the scope of Section 3(2). According to the *Academic Commentary on the Anti-discrimination Law*, it would not be systematic if the duty to provide reasonable accommodation did not cover healthcare and education. However, the Anti-discrimination Law does not recognise healthcare and education as services provided to the public and in this respect, judicial interpretation is needed. Provisions concerning reasonable accommodation do not relate to the access to goods.²⁵⁶

The duty to provide reasonable accommodation in the area of services provided to the public has been interpreted in a wider sense by the Czech Ombudsman, to also cover access to public parking places or to higher education.

Legislation does not define the term 'unreasonable burden', but it states that when deciding which specific measure represents an unreasonable burden, it is necessary to weigh the benefit for the person with disability against the financial costs for the obliged subject, along with the availability of finances and other means of realising the measure and the availability of alternative measures that could satisfy the needs of the disabled person. A measure that the subject is obliged to adopt according to a specific law is not considered to be an unreasonable burden. However, judicial interpretation is needed to conclude whether it also applies in other areas such as social protection.²⁵⁷

The Ombudsman's statement of 2014 concluded that a school is likely to commit discrimination on grounds of disability, if a pupil with an autism spectrum disorder or behavioural disorder, which is diagnosed as a disability and requires a care assistant, could not participate fully in daily after-school education in a school club to the same extent as children without disability. Unfavourable treatment cannot be justified only on the basis of concerns about the lack of a teaching assistant in the school club.²⁵⁸

In its 2015-2016 report, the Czech School Inspectorate ascertained that 88 % of primary schools educated pupils with health disabilities and 72 % of the schools employed a teaching assistant during the lessons. Further, it was found that teaching assistants fulfil various tasks outside of the lessons and also help students other than those to whom they are assigned and that their role in the school system is very important.²⁵⁹

²⁵⁶ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, pp. 227-229.

²⁵⁷ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, pp. 231-233.

²⁵⁸ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnnazprava_VOP_2014.pdf, p. 87.

²⁵⁹ Czech School Inspectorate (2016), *Výroční zpráva za školní rok 2015/2016* (Annual Report for 2015-2016), p. 51; http://www.csicr.cz/html/VZCSI2015_2016/flipviewerxpress.html.

In another case,²⁶⁰ the Czech Ombudsman criticised a school for refusing reasonable accommodation to a pupil with disability in access to the same school curriculum as other pupils. The school refused the pupil's participation at a school camp because her assistant could not be present at the camp. The Ombudsman asserted that the school was obliged to provide reasonable accommodation according to Section 3(2) of the Anti-discrimination Law, because the rules of prohibition of discrimination and access to education also apply to the school camp. The Ombudsman suggested that reasonable accommodation could have consisted in instructing a teacher about the duties of the assistant. Secondly, the Ombudsman criticised the cancellation of a certain subject (English in this case) and therefore exclusion from the mainstream curriculum based on the pupil's disability. Instead, reasonable accommodation should have been provided so that the pupil with disability could attend the English class as well. At the same time, however, the Ombudsman stated that a change in assistant cannot automatically be considered as a failure of the school and a breach of the duty to provide reasonable accommodation. In respect of the definition of disability, in this case the Ombudsman considered that a specific medical condition (in this case aspiration of phlegm from the respiratory system) falls under the definition.

e) Failure to meet the duty of reasonable accommodation for people with disabilities

In the Czech Republic, failure to meet the duty of reasonable accommodation counts as discrimination.

The failure to meet the duty of reasonable accommodation is deemed to be indirect discrimination on the ground of disability, according to Section 3(2) of the Anti-discrimination Law. Potential sanctions are the same as for other actions in discrimination cases. General rules concerning administrative procedures, covering both misdemeanours and administrative offences, apply. Relevant administrative procedures provide investigative powers for administrative bodies and inspectorates, as established within the scope of specific laws. These administrative bodies, such as labour inspectorates or trade inspectorates, are empowered to impose sanctions for prohibited activities and violations of obligations. According to Section 10 of the Anti-discrimination Law, the victim can also bring a general anti-discrimination civil action. The Civil Procedure Code and the shift of the burden of proof apply.

In the abovementioned case, where the school failed to meet the duty of reasonable accommodation for a pupil with disabilities who was refused permission to participate in a school camp, the Ombudsman suggested resolving the case in an out-of-court settlement. The court proceeding was not appropriate, because the case represented a unique failure of the school, which was otherwise very willing to accommodate the conditions for the pupil's education.²⁶¹

In the same case, the Czech Ombudsman criticised the Czech School Inspectorate for not providing continuity of English lessons for the pupil with disabilities, as these were cancelled by the school and re-introduced at the end of the school year. Specifically, the Ombudsman reproached the inspectorate for not informing the school what reasonable accommodation concerning the English lessons should have been taken.

There is no duty of reasonable accommodation if the specific measure to be taken represents an unreasonable burden e.g. for the employer. However, the concept of 'unreasonable burden' has not been further developed by the Czech courts.

f) Duties to provide reasonable accommodation in respect of other grounds

²⁶⁰ Public Defender of Rights (2015), *Zpráva o šetření sp. zn. 105/2013/DIS* (Report on inquiry No. 105/2013/DIS), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/2386>.

²⁶¹ Public Defender of Rights (2015), *Zpráva o šetření sp. zn. 105/2013/DIS* (Report on inquiry No. 105/2013/DIS), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/2386>.

In the Czech Republic, there is no duty to provide reasonable accommodation in respect of other grounds in the public or the private sector.

g) Accessibility of services, buildings and infrastructure

In the Czech Republic, national law requires buildings and infrastructure available to the public to be designed and built in a disability-accessible way.

Accessibility standards have been introduced into legislation on building and construction, such as the Law on spatial planning and construction²⁶² and Decree No. 398/2009 on general technical requirements securing general accessibility of buildings.²⁶³ Barrier-free accessibility of buildings is one of the general building requirements according to Section 2(2)(e) of the Law on spatial planning and construction. It includes technical requirements facilitating the use of buildings by older people, pregnant women, people accompanying children under three years of age and persons with a physical, visual, hearing or intellectual disability. 'Persons with limited mobility and orientation'²⁶⁴ should be able to access buildings used by the public, including buildings providing services, schools, blocks of flats or buildings used for work.

Decree No. 398/2009 is applicable to the conditions for issuing official planning and building permissions, from the spatial planning stage to building permits, approval of finished buildings and their inspection. In addition, this decree imposes the duty to ensure accessibility of public areas and communications. The rules imposed by the decree should also apply to the conditions of administrative permissions for changes to already completed construction work, where this is not excluded for reasons of a technical land-use or construction nature.

The decree also imposes a duty to ensure accessibility in respect of infrastructure measures and to make provision for persons with disabilities in regard to traffic-related constructions (such as special traffic signals, special measures for safe orientation by people with visual impairments, adjustments for the safe passage of people with physical disabilities, reserved parking places etc.) and in other situations.

As a result, the State Construction Administration (*Stavební úřad*) monitors all stages of construction procedures to ensure that accessibility requirements are met. In cases of non-compliance, remedial measures are applied. Construction permits cannot be issued and buildings cannot be approved for use, if accessibility standards are not met.²⁶⁵ The State Construction Administration also has a duty to prohibit the use of such buildings.²⁶⁶

In practice, people with disabilities encounter considerable difficulties when accessing buildings, although the situation has gradually improved in recent years. Problems with securing barrier-free access still persist. For example, in 2010, only 72 court buildings offered accessible entrances; to enter another 23 courts, the assistance of court guards

²⁶² Czech Republic, Law No. 183/2006, on spatial planning and construction (*Zákon č. 183/2006 Sb., o územním plánování a stavebním řádu*), 14 March 2006; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=183~2F2006&rpp=15#seznam>.

²⁶³ Czech Republic, Decree No. 398/2009 on general technical requirements securing general accessibility of buildings (*Vyhláška č. 398/2009 Sb., o obecných technických požadavcích zabezpečujících bezbariérové užívání staveb*), 5 May 2009; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=398~2F2009&rpp=15#seznam>.

²⁶⁴ Czech Republic, Decree No. 398/2009 on general technical requirements securing general accessibility of buildings, 5 May 2009.

²⁶⁵ For example, Czech Republic, Law No. 183/2006 on spatial planning and construction, 14 March 2006, Sections 115(1) and 122(3).

²⁶⁶ See Czech Republic, Law No. 183/2006 on spatial planning and construction, 14 March 2006, Section 120(2).

was necessary. The Ministry of Justice recommended that the courts establish on first contact with a party whether they have a disability.²⁶⁷

The Public Defender of Rights is also involved in resolving accessibility problems in relation to guide dogs. People with visual impairments were frequently faced with their dogs not being admitted to public places, such as shops, medical institutions, cinemas and theatres, with no regard for the fact that they are completely dependent on these specially trained animals.²⁶⁸ In 2016, the Ombudsman found that a rehabilitation institute failed to provide reasonable accommodation by allowing the applicant to be accompanied by a guide dog when staying at the rehabilitation centre. As a result of the Ombudsman's inquiry, the institute changed its operating regulations so as to enable access of people with guide dogs.²⁶⁹ The Ombudsman recommended that the Government adopt a law regulating access to public premises of people with disabilities who use the guide dogs. The Government has not yet discussed the recommendation.²⁷⁰

In 2016, the Ombudsman examined a case of a person with disability who wanted the municipality to change his flat, because he had difficulties in accessing it as it was on the first floor. The Ombudsman ascertained that the municipality failed to provide reasonable accommodation since the applicant was not offered any alternative, for example a barrier-free flat.²⁷¹

The Ombudsman also found failure to adopt reasonable accommodation since the municipality refused to set up a reserved parking place for the applicant who was disabled. According to Section 3(3) of the Anti-discrimination Law, in such cases it is necessary to take into account, among other things, the nature of the benefit resulting from the reasonable accommodation for the person with a disability. The Ombudsman emphasised that the mere fact that there was a lack of parking places in the area could not be the reason for the rejection of establishing a reserved parking place since the need of the disabled person to park near to his dwelling was essential.²⁷²

Furthermore, the Ombudsman considered that the housing association failed to provide reasonable accommodation since it did not arrange for the applicant, who was deaf, to have a videophone in her flat. The Ombudsman expressed the view that the phrase 'use the services meant for the public', contained in Section 3(2) of the Anti-discrimination Law, should be interpreted in an extensive way. Therefore, housing offered to the public, as well as education or healthcare should be covered by this provision.²⁷³

Similarly, the Public Defender of Rights found discrimination in the case of people with hearing impairments in access to TV broadcasts: the duty of TV broadcasters to provide

²⁶⁷ Council of the Government for Human Rights (2010), *Zpráva o stavu lidských práv v České republice v roce 2010* (Report on the state of human rights in the Czech Republic in 2010); www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy-lidska-prava-cr/Zprava-LP-2010_cz.pdf.

²⁶⁸ Public Defender of Rights (Ombudsman) (2010), *Doporučení veřejného ochránce práv pro přístup vodících a asistenčních psů do veřejných prostor* (Recommendation from the Public Defender of Rights to access for guide dogs to public places); www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Doporučení/31-10-DIS-JKV_doporučení-psi.pdf.

²⁶⁹ Public Defender of Rights (Ombudsman) (2016), *Report on inquiry No. 35/2013/DIS* (Zpráva z šetření sp. zn. 35/2013/DIS).

²⁷⁰ Public Defender of Rights (Ombudsman) (2016), *Doporučení vládě k vydání zákona, který by upravil některá práva osob se zdravotním postižením, které využívají doprovodu psa se speciálním výcvikem, sp. zn. 23/2015/SZD* (Recommendation to adopt a law, which would regulate the rights of disabled persons using a guide dog, no. 23/2015/SZD); http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Ctvrtletky/2016/2016_2-Q_doporučení.pdf.

²⁷¹ Public Defender of Rights (Ombudsman) (2016), *Report on inquiry No. 1307/2014/VOP* (Zpráva z šetření sp. zn. 1307/2014/VOP); <http://eso.ochrance.cz/Nalezene/Edit/3702>.

²⁷² Public Defender of Rights (Ombudsman) (2016), *Report on inquiry No. 3609/2015/VOP* (Zpráva z šetření sp. zn. 3609/2015/VOP); <http://eso.ochrance.cz/Nalezene/Edit/4604>.

²⁷³ Public Defender of Rights (Ombudsman) (2016), *Report on inquiry No. 2587/2015/VOP* (Zpráva z šetření sp. zn. 2587/2015/VOP); <http://eso.ochrance.cz/Nalezene/Edit/4180>.

subtitles for 15 % of TV broadcasting was not being respected, with some TV broadcasters providing subtitles not for 15 % of broadcasting time, but only for 15 % of the total number of broadcast programmes.²⁷⁴ In 2016, the Ombudsman examined the case of access of visually impaired people to audio information in the main TV reporting on Czech television. Since 2011, Czech television has broadcast the foreign language parts of main TV reports with written translated subtitles; before 2011, the foreign language parts were dubbed on Czech television. The Ombudsman found the new practice to be discriminatory in respect of people with disabilities and recommended that the director of Czech television change the practice.²⁷⁵

Czech Rails (*České dráhy*) makes efforts to make the stations and platforms accessible for wheelchair users, but also for individuals with reduced mobility or reduced ability to orient themselves (seniors, visually impaired people, parents with small children or prams, injured people). The Czech Rails website lists each station alongside information about its degree of accessibility.²⁷⁶

Health requirements are laid down in many different laws and statutes, such as the Decree on the basic requirements for safety at work and technical arrangements, which sets out basic standards for infrastructure.²⁷⁷ This covers 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, Government Decree No. 361/2007 establishes conditions for the health of employees at work.²⁷⁸ It lists risk factors which affect the health of employees and stipulates how these factors are to be assessed.

In the Czech Republic, national law does not contain a general duty to provide accessibility by anticipation for people with disabilities.

The Czech Paraplegic Association has set up a website and mobile application mapping barrier-free access to restaurants, museums, institutions, shops or accommodation in the Czech Republic, giving people the ability to evaluate those places.²⁷⁹ Similarly, there is an association that supports travellers with disabilities that runs a website providing information about the accessibility of public places.²⁸⁰

Social care services provided according to the Law on Social Services²⁸¹ should assist people with disabilities to enable their integration in the common social life to the maximum possible extent. The availability of such services varies in different regions and different social areas.

²⁷⁴ Public Defender of Rights (2010), *Souhrnná zpráva o činnosti Veřejného ochránce práv 2010* (Report on the activity of the Public Defender of Rights in 2010), Brno, Veřejný ochránce práv; www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna_zprava_VOP_2010.pdf.

²⁷⁵ Public Defender of Rights (Ombudsman) (2015), *Report on inquiry No. 44/2015/DIS* (Zpráva z šetření sp. zn. 44/2015/DIS).

²⁷⁶ Czech Rails, *Station Accessibility* (2015); <https://www.cd.cz/vnitrostatni-cestovani/sluzby-na-nadrazi/pristupnost-panic/-8768/>.

²⁷⁷ Czech Republic, Decree No. 48/1982 on the basic requirements for safety at work and technical arrangements (*Vyhláška č. 48/1982, Českého úřadu bezpečnosti práce*), 15 April 1982; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=48~2F1982&rpp=15#seznam>.

²⁷⁸ Czech Republic, Decree No. 361/2007, establishing conditions for employees' health at work (*Nařízení vlády č. 361/2007 Sb., kterým se stanoví podmínky ochrany zdraví při práci*), 12 December 2008. <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=361~2F2007&rpp=15#seznam>

²⁷⁹ Czech Paraplegic Association (2015), *Vozejkmap.cz*; <http://www.vozejkmap.cz/>.

²⁸⁰ *Disway -travelling without barriers*; <http://www.disway.org/cs>.

²⁸¹ Czech Republic, Law No. 108/2006 on Social Services (*Zákon o sociálních službách*), 14 March 2006 <http://portal.gov.cz/app/zakony/zakonPar.jsp?page=0&idBiblio=62334&fulltext=&nr=108~2F2006&part=&name=&rpp=15>.

h) Accessibility of public documents

Czech national law does not contain a general duty to provide translation of public documents in Braille or translations in sign languages. However, Law No. 155/1998 on the communication systems of the deaf and deaf-blind persons establishes the right of deaf and deaf-blind persons to:

- a) use of communication systems for deaf and deaf-blind persons;
- b) education using communication systems for deaf and deaf-blind persons;
- c) teaching communication systems for deaf and deaf-blind persons.

Deaf and deaf-blind persons also have the right to an interpreter providing interpretation services in their chosen communication system when visiting a doctor, dealing with official matters and in providing other necessary needs. Deaf and deaf-blind persons, who are due to complete or partial deafness or deaf-blindness granted ZTP ('severe health disability') or ZTP/P ('extremely badly affected with guide') levels of disability, are provided with interpretation services in court proceedings free of charge.

Children, pupils and students with disabilities are entitled to free use of special textbooks and special didactic and compensatory aids provided by the school. Deaf and deaf-blind children, pupils and students have the right to free education with or through communication systems for deaf and deaf-blind persons under other legislation. Children, pupils and students who cannot communicate in spoken language are entitled to free education with or through alternative forms of communication.

The Czech public broadcaster has an obligation to provide closed or open subtitles or simultaneous interpreting into sign language in at least 70 % of broadcast programmes. For private television stations, there is a mandatory minimum of 15 % of programmes with subtitles or sign-language interpreting.

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)

In the Czech Republic, the following residence/citizenship/nationality requirements are applied for protection under the relevant national laws transposing the directives.

Anti-discrimination provisions apply to every natural person, irrespective of nationality, citizenship or residence status, as specified in Section 1(3) of the Anti-discrimination Law. According to Section 20 of the amended Schools Act, effective from 1 January 2008,²⁸² equal access to education is guaranteed to every Czech citizen, EU national and any lawfully residing third-country national. In respect of primary education, the law guarantees its provision irrespective of the legality of a third-country national's residence in the Czech Republic.

According to Section 1(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 in the territory of the Czech Republic. However, the provision will soon be amended in order to ensure compliance with Directive 2014/54/EU, since the protection against discrimination should also cover relatives of EU citizens, who are third-country nationals.²⁸³

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

a) Protection against discrimination

In the Czech Republic, the personal scope of the Anti-discrimination Law (Section 1(3)) covers natural persons for the purpose of protection against discrimination. Legal persons are not expressly covered by the personal scope of the Anti-discrimination Law; however, they are protected by the anti-discrimination provisions of Article 1 (general differential treatment) and Article 3(1) (differential treatment in access to rights) of the Charter.

According to the Anti-discrimination Law, only natural persons have a right to equal treatment and protection against discrimination. Due to interpretation of the Charter and other provisions, it can be said that to a certain extent protection against unequal treatment is also provided to legal persons. For example, no issue regarding applicability of the principle of anti-discrimination to legal persons arose when the Constitutional Court was considering alleged unequal treatment in taxation (concerning consumption taxes).²⁸⁴ Furthermore, it follows from the Civil Code²⁸⁵ that a legal person can also make a claim for protection of moral rights on behalf of an individual (member, employee, etc.) who was discriminated against, if the discriminatory intervention is related to the activity of the victim as part of that legal person. In particular, the legal person can demand the cessation of the unlawful action, removal of the consequences or just satisfaction, although only during the lifetime of a victim.²⁸⁶

²⁸² Czech Republic, Amendment to the Schools Act, Law No. 343/2007 (*Zákon č. 343/2007 Sb., kterým se mění zákon č. 561/2004 Sb. a některé další zákony*), 27 November 2007; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=343~2F2007&rpp=15#seznam>.

²⁸³ Chamber of Deputies (2015), *Sněmovní tisk 688/0* (Press of the Chamber of Deputies No. 668/0); <http://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=688&CT1=0>.

²⁸⁴ The applicability was regarding Article 3(1) of the Charter in connection with Article 11 of the Charter (the right to property). See Constitutional Court of the Czech Republic (*Ústavní soud*), no. Pl.ÚS 3/13, 15 October 2013; http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-3-13_1.

²⁸⁵ Czech Republic, Law No. 89/2012, Civil Code, 3 February 2012, Section 83.

²⁸⁶ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 166.

b) Liability for discrimination

In the Czech Republic, the personal scope of the Anti-discrimination Law (Section 1(3)) covers natural and legal persons for the purpose of 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 act on instructions from a superior.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In the Czech Republic, the personal scope of national law covers private and public sectors, including public bodies, for the purpose of protection against discrimination. This is implied by the wording of Section 1(3) of the Anti-discrimination Law.

There are no specific provisions stating whether particular laws would apply only to public bodies. Generally, laws (such as the Anti-discrimination Law) apply to both public and private bodies. The application of some laws can be restricted to certain types of public bodies (such as municipalities, state authorities, police etc.). In such cases, this is stated in the law itself.

b) Liability for discrimination

In the Czech Republic, the personal scope of the Anti-discrimination Law covers private and public sectors, including public bodies, for the purpose of liability for discrimination. The national provisions comply with the directives.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In the Czech Republic, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, military service and holding statutory office, for the five grounds.

According to Section 1(1), Section 5(3) and Section 5(4) of the Anti-discrimination Law, Czech legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, military service, holding statutory office, for the five grounds. Section 5(3) of the Anti-discrimination Law imposes on employers an obligation to ensure equal treatment according to Section 5(2). It follows from Section 5(2) that protection measures against discrimination must be adopted and that those measures must be effective. Nevertheless, it is not clear how an employer should ensure equal treatment in entrepreneurship or self-employment. Furthermore, it is not clear from the Section 5(2) what measures an employer should adopt. The nature of such measure might be interpreted in relation to Sections 7(2) and 7(3), which specify positive measures.²⁸⁷

The Czech Ombudsman reported that 23 % of complaints received in 2016 fell under the category of 'work and employment'²⁸⁸

²⁸⁷ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 269.

²⁸⁸ Public Defender of Rights (Ombudsman) (2016), *Výroční zpráva o ochraně před diskriminací, 2016* (Annual report on protection from discrimination, 2016); https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocní_zpravy/2016-DIS-vyrocní-zprava.pdf.

In 2013,²⁸⁹ the Supreme Administrative Court considered a case of alleged breach of the Law on the regulation of advertisements.²⁹⁰ To interpret the term 'discrimination', which is prohibited by the Law on the regulation of advertisements, the court referred to the Anti-discrimination Law and the grounds covered in it.

In an advertisement for a database of Czech schools, Roma manual workers wore T-shirts bearing the writing 'I should have studied better'. The Supreme Administrative Court stated that discrimination on the grounds of ethnicity must be considered very strictly and therefore, a violation of the Law on the regulation of advertisements and its anti-discrimination provisions was established. Concerning the alleged discrimination on 'other grounds', that is discrimination on the ground of social status of manual workers, the Supreme Administrative Court declared that this discriminatory reason is not so serious as discrimination on the ground of ethnic origin and therefore a certain intensity of discrimination must be ascertained.

In 2015, the maximum sanction for an employer, who is a legal person, for a violation of the prohibition of discrimination or a failure to ensure equal treatment was increased to CZK 1 000 000 (approximately EUR 37 379) according to the Law on Employment.²⁹¹ In 2016, the sanctions remained the same.

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))

In the Czech Republic, national legislation prohibits discrimination in the following areas: 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, for the five grounds, in both private and public sectors, as described in the directives. These are specified in Section 1(1) together with Sections 5(3) and 5(4) of the Anti-discrimination Law.

National legislation covers access to employment, self-employment²⁹² and to professions, as well as to selection criteria, recruitment conditions and promotion in respect of these two areas through the Anti-discrimination Law.

The same can be said with respect to certain defined types of self-employment and professions performed in a self-employed capacity, for example lawyers, medical doctors, interpreters and many others,²⁹³ which are governed by specific laws.²⁹⁴

²⁸⁹ Supreme Administrative Court of the Czech Republic (*Nejvyšší správní soud*), No. 1 As 46/2013, 15 October 2013;

http://www.nssoud.cz/files/SOUDNI_VYKON/2013/0046_1As_130_20131031163253_prevedeno.pdf.

²⁹⁰ Czech Republic, Law No. 40/1995 on the regulation of advertisements (*Zákon č. 40/1995 Sb., o regulaci reklamy*), 9 February 1995, Section 2(3).

<https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=40~2F1995&rpp=15#seznam>.

²⁹¹ Czech Republic, Law on Employment, 13 May 2004, Section 140(4)(a).

²⁹² Czech Republic, Law No. 455/1991 on Self-employment (*Zákon č. 455/1991 Sb., o živnostenském podnikání*), 2 October 1991;

<https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=455~2F1991&rpp=15#seznam>.

²⁹³ See: Czech Republic, Law No. 455/1991 on Self-employment, 2 October 1991, Section 3(2).

²⁹⁴ For example: Czech Republic, Law No. 85/1996 on Barristers (*Zákon č. 85/1996 Sb., o advokacii*), 13 March 1996; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=85~2F1996&rpp=15#seznam>; Czech Republic, Law No. 220/1991 on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Pharmacy Chamber (*Zákon č. 220/1991 Sb., o České lékařské komoře, České stomatologické komoře a České lékárnické komoře*), 8 May 1991;

<https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=220~2F1991&rpp=15#seznam>; Czech Republic, Law No. 36/1967 on Experts and Interpreters (*Zákon č. 36/1967 Sb., o znalcích a tlumočnících*), 6 April 1967; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=36~2F1967&rpp=15#seznam>.

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 work relations are governed by special laws. Definitions used in these laws are in conformity with the directives, with the exception that the Law on service by members of the security forces and the Law on career soldiers contain a special anti-discrimination provision, which does not contain 'disability' in the list of grounds of discrimination. This may not be in conformity with Employment Equality Directive 2000/78/EC. Where there are no specific anti-discrimination provisions in these laws, the Anti-discrimination Law applies.

In 2016, the Supreme Court examined a case concerning alleged discrimination on the ground of ethnic origin in access to employment. The applicant claimed that the recruitment conditions were discriminatory in his case and he did not get a job because of his Roma origin. According to the legally shifted burden of proof, the applicant had to prove to the court that he was treated differently to other persons in the same position while the defendant had to prove that if he treated the applicant differently it was not on any of the discrimination grounds. The Supreme Court ascertained that the applicant was not successful in the recruitment process among tens of other candidates and the defendant proved that he did not discriminate against the applicant on the ground of the applicant's Roma origin. The Supreme Court found no discrimination and dismissed the applicant's claim for just satisfaction.²⁹⁵

The self-governing professional bodies are on the boundary between the private and public sectors, as they have the capacity to issue internal rules that are binding on their members and trainees, setting out conditions for training and admission to the profession, and they also have disciplinary powers.

In general, discriminatory statements or job vacancy announcements by employers are capable of constituting direct discrimination and as such should be penalised by the Labour Inspectorate or the Czech Trade Inspectorate. Vacancy announcements, such as in the CJEU *Feryn* case,²⁹⁶ do not constitute a serious problem from the point of view of proof. Instead of complaining to the labour inspectorates or the Czech Trade Inspectorate, individuals can also bring civil actions to court. In 2011 the Czech Ombudsman conducted research on job vacancy announcements. The research team studied more than 12 000 advertisements for vacancies published on the web portal www.prace.cz in the period between 1 April and 7 April 2011, examining their compliance with non-discrimination law. In the sample under survey, 17 % of advertisements contained a discriminatory requirement for jobseekers. Age-related and gender-related requirements were the most common.²⁹⁷ According to the 2015 annual report produced by the State Labour Inspectorate, labour inspectorates identified 37 discriminatory job vacancy announcements by employers in 2015 and imposed fines as sanctions—the form of sanction most frequently used in such cases.²⁹⁸

²⁹⁵ Supreme Court of the Czech Republic (*Nejvyšší soud*), No. 21 Cdo 230/2015, 24 March 2016; http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/A18EA2659D293180C1257FC0003BFA5A?openDocument&Highlight=0.

²⁹⁶ European Court of Justice (ECJ) *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Feryn*, no. C-54/07, 10 July 2008; <http://curia.europa.eu/juris/liste.jsf?language=cs&num=C-54/07>.

²⁹⁷ Public Defender of Rights (2011), *Annual Report on the Activities of the Public Defender of Rights in 2011*, Brno, Veřejný ochránce práv, p. 91; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2011.pdf.

²⁹⁸ State Labour Inspectorate (2015), *Roční souhrnná zpráva* (Annual summary report); <http://www.suip.cz/files/suip-ff052a3c86273e3ed0bcaab9504b0042/rocní-souhrnná-zpráva-o-vysledcích-kontrolních-akcí-provedených-inspekci-práce-v-roce-2015.pdf>, p. 176.

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

In the Czech Republic, national legislation prohibits discrimination in the following areas: working conditions including pay and dismissals, for all five grounds and for both private and public employment (Section 1(1)(c) with Section 1(3) of the Anti-discrimination Law).

In conformity with the directive, Section 5(1) of the Anti-discrimination Law defines what falls under the scope of remuneration for the purposes of the law. However, it does not specify how equality in remuneration should be assessed.²⁹⁹ Nevertheless, the definition of the principle of 'same work for the same pay' can be found in special non-discrimination provisions on equal pay in the Labour Code (Sections 16 and 110 of Law No. 262/2006) and, for institutions in the public sector, in Section 3(3) of Law No. 143/1992—the Law on Salaries. 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. Grounds protected by the Law on Salaries include race, ethnic origin, 'nationality' (in Czech: *národnost*), sex, sexual orientation, age, disability, religion, belief or other conviction. The Labour Code contains detailed provisions on equal pay for work of equal value for women and men and prohibits 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.

In 2016, the Supreme Court examined the case of an applicant who claimed to be discriminated against as he was dismissed from his job at the Ministry of Labour and Social Affairs because of his age. The Supreme Court examined the statistics that showed that the employer (the ministry) dismissed 37 employees in total, 14 of whom were younger than the applicant. Although the applicant claimed that only the dismissals in his division should be taken into account (which showed that average age of its employees decreased from 49 to 44 after the dismissals), the Supreme Court assessed that dismissals stemmed from the minister's decision and so should be considered as a whole. The court found no discrimination on the ground of age.³⁰⁰

The Ombudsman also examined potential discrimination in the case of an employee who was dismissed after she reached pensionable age. The Ombudsman found that the provision of a collective agreement that required vacancies to be filled by employees of working age was discriminatory. The Ombudsman also criticised mistakes made by the local Labour Inspectorate in monitoring the employer.³⁰¹

In 2015, the Ombudsman found differential treatment of an applicant who was an employee over 50 whose employment contract was extended for unreasonably short periods. The employer always extended the employment contract by a year although the employment contracts of other employees in similar position were extended by more than a year. After the State Labour Inspectorate led an inquiry at the employer, which was a university, it was discovered that the applicant was treated less favourably in various ways, such as the monitoring of her absence, and repeated experienced insulting behaviour on the ground of her age.³⁰²

²⁹⁹ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, pp. 392, 396.

³⁰⁰ Czech Republic, Supreme Court (*Nejvyšší soud*), Brno/21 Cdo 2754/2014, 28 January 2016; http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/F2920E361E6DF0F6C1257F950030ECE?openDocument&Highlight=0.

³⁰¹ Public Defender of Rights (2016), *Zpráva o šetření, sp. zn. 182/2013/DIS* (Report on inquiry No. 182/2013/DIS), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/4154>.

³⁰² Public Defender of Rights (2014), *Zpráva o šetření, sp. zn. 134/2013/DIS* (Report on inquiry No. 134/2013/DIS), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/3576>.

The Ombudsman examined several cases of discrimination against disabled persons who received lower remuneration (as well as bonuses) because of the fact that they were beneficiaries of invalidity pension. Such a situation stemmed from the provision of Government Regulation No. 567/2006 on the minimum wage, which prescribed a lower minimum wage for beneficiaries of invalidity pension. This led to the discrimination, since the employees performing the same job gained a different remuneration due only to the fact that one of them received an invalidity pension.³⁰³ In 2016, the Ombudsman filed an application for the annulment of this provision with the Constitutional Court. However, during the proceeding before the Constitutional Court, the contested discriminatory provision was annulled by the parliament, with effect from 1 January 2017.³⁰⁴

A breach of the duty not to discriminate was created by an amendment to Law No. 586/1992 on income taxes. Since January 2013, persons receiving a pension were deprived of the possibility of reducing their income tax by EUR 918 (CZK 24 840) per year. This measure put persons receiving a pension who also have income subject to the Law on income taxes, including workers and self-employed persons, at a disadvantage in comparison to persons who did not receive a pension. The legislation was challenged before the Constitutional Court and in July 2014 the Constitutional Court repealed³⁰⁵ these provisions of the Law on income taxes,³⁰⁶ with effect from 1 January 2014 for all taxpayers. In September 2014, the Constitutional Court ruled that the legislation was discriminatory and aggrieved persons who had not had the possibility of reducing their income tax in 2013 are allowed to file a new tax return and demand that the amount ruled as unconstitutional be paid back.³⁰⁷ In 2016, this provision was annulled by the Constitutional Court as discriminatory.³⁰⁸

3.2.3.1 Occupational pensions constituting part of pay

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, no formal system of occupational pensions exists. Nevertheless, resulting from a reform of the pension system, there is now a supplementary pension scheme, through which an individual can save some extra money for retirement. This can be paid directly by the employer as an employee benefit. This is not, however, a common practice. This payment by the employer constitutes part of pay and the Anti-discrimination Law applies to this payment.

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))

In the Czech Republic, national legislation applies to vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities (Section 1(1)(a), Section 1(1)(i) and Section 1(3) of the Anti-discrimination Law).

³⁰³ Public Defender of Rights (2016), *Zpráva pro Poslaneckou sněmovnu za 1. čtvrtletí* (Report from the 1st Quarter of 2016), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Ctvrtletky/2016/2016_1_Q.pdf, p. 8.

³⁰⁴ Constitutional Court of the Czech Republic (*Ústavní soud*), no. Pl. ÚS 6/16, 3 January 2017; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=95629&pos=1&cnt=1&typ=result>.

³⁰⁵ Constitutional Court of the Czech Republic (*Ústavní soud*), no. Pl. ÚS 31/13 (162/2014), 10 July 2014; http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-31-13_1.

³⁰⁶ Specifically, Section 35ba(1)(a) of the Law No. 586/1992 on Income Taxes.

³⁰⁷ Constitutional Court of the Czech Republic (*Ústavní soud*), no. I. ÚS 2340/13, 16 September 2014; http://nalus.usoud.cz/Search/GetText.aspx?sz=1-2340-13_3.

³⁰⁸ Constitutional Court of the Czech Republic (*Ústavní soud*), no. Pl. ÚS. 18/15(271/2016), 28 June 2016; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=93518&pos=33&cnt=716&typ=result>.

The general equality clause of the Law on Employment (Section 4) applies to vocational guidance, training and retraining, including outside the employment relationship, connected to state-subsidised employment programmes and measures. The general equality clause of the Labour Code (Section 16(1) of the Labour Code) 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 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 security forces). Where special definitions of discrimination are absent in these specific laws, the provisions of the Anti-discrimination Law apply.

As regards educational activities covered by the Schools Act and the Law on higher education,³⁰⁹ the Anti-discrimination Law applies.

Access to self-employment and other occupations conducted in a self-employed capacity is often limited 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.

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 the Czech Republic, national legislation prohibits discrimination in the following areas: membership of, and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment (Section 1(1)(d) and Section 1(1)(e) of the Anti-discrimination Law).

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

In the Czech Republic, national legislation prohibits discrimination in the following areas: social protection, including social security and healthcare as formulated in the Racial Equality Directive.

According to Section 1(1)(f), the Anti-discrimination Law applies to social security. According to Section 1(1)(h), the Anti-discrimination Law applies to access to and provision of healthcare. In addition to race or ethnicity; age, disability, religion, belief and sexual orientation are also covered by the legislation. Social protection, social security and healthcare are governed by a number of special laws that cover areas such as social

³⁰⁹ Czech Republic, Law No. 111/1998 on higher education (*Zákon č. 111/1998 Sb., o vysokých školách*), 22 April 1998; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=111~2F1998&rpp=15#seznam>.

benefits,³¹⁰ social services,³¹¹ pension insurance,³¹² health insurance³¹³ and healthcare.³¹⁴ In all these areas, the Anti-discrimination Law applies.

In 2016, the European Committee of Social Rights issued a decision concerning access of Roma people to health care in the Czech Republic. The committee found that Roma people often lacked health insurance and could not receive the necessary care. Furthermore, territorial segregation of the Roma leads to the situation that many Roma families do not live in a healthy environment, for example they have no access to clean water or lack sanitary and cooking facilities.³¹⁵

3.2.6.1 Article 3.3 exception (Directive 2000/78)

Czech legislation does not rely on the exception in Article 3.3 of the Employment Equality Directive.

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

In the Czech Republic, national legislation prohibits discrimination in the following area: social advantages as formulated in the Racial Equality Directive.

According to Section 1(1)(g), the Anti-discrimination Law applies to the granting and provision of social advantages. In addition to race or ethnicity; age, disability, religion, belief and sexual orientation are also covered by the legislation.

In the Czech Republic, the lack of definition of social advantages does not raise problems.

Typical advantages for socially disadvantaged people, e.g. the elderly (special reductions on admission prices or cheap fares) and other advantages such as child maintenance allowances or study grants, are currently regulated by a variety of laws, including the Civil Code. Social benefits are mainly provided to persons with disabilities and families with children. The Anti-discrimination Law sets out a definition of social advantages in Section 5(5). These include any reduction or waiver of fees or monetary or non-monetary benefit provided, directly or indirectly and independently of state social 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)

In the Czech Republic, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive (Section 1(1)(i) of the Anti-discrimination Law).

The Schools Act contains a general anti-discrimination clause,³¹⁶ forbidding discrimination against EU and Czech citizens. According to Section 2(1), education shall be based on the principles of equal access of all citizens of the Czech Republic or nationals of any other EU Member State to education without any discrimination based on any ground such as race,

³¹⁰ For example: Czech Republic, Law No. 117/1995 on state social support (*Zákon č. 117/1995 Sb., o státní sociální podpoře*), 26 May 1995;

<https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=117~2F1995&rpp=15#seznam>.

³¹¹ Czech Republic, Law No. 108/2006 on social services, 14 March 2006.

³¹² Czech Republic, Law No. 155/1995 on pension insurance (*Zákon č. 155/1995 Sb., o důchodovém pojištění*), 30 July 1995; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=155~2F1995&rpp=15#seznam>.

³¹³ For example, see: Czech Republic, Law No. 187/2006 on sickness insurance (*Zákon č. 187/2006 Sb., o nemocenském pojištění*), 14 March 2006.

³¹⁴ For example: Czech Republic, Law No. 372/2011 on healthcare services, 6 November 2011;

<https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=187~2F2006&rpp=15#seznam>.

³¹⁵ European Committee of Social Rights (2016), *Decision no. 104/2014, ERTF v. the Czech Republic*, 17 May 2016;

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b36d9>.

³¹⁶ Czech Republic, Law No. 561/2004, Schools Act, 24 September 2004.

colour, sex, language, belief or religion, nationality, ethnic or social origin, property, kith or kin, or the health condition or any other status of a citizen. The non-discrimination provisions of the Anti-discrimination Law therefore apply to its material scope. The Anti-discrimination Law prohibits discrimination in access to education and provision of education. In addition to race or ethnicity; age, disability, religion, belief and sexual orientation are also covered by the legislation.

According to Section 20 of the Schools Act, nationals of third countries are given access to primary education under the same conditions as citizens of the Czech Republic. In respect of migrants, those residing legally in the Czech Republic also have equal access to secondary education and tertiary professional education. Access to pre-school education, language education and school services is guaranteed to those nationals of third countries who are in possession of a residence permit exceeding ninety days and who reside in the Czech Republic, or are persons who are permitted to reside in the Czech Republic for the purpose of research, asylum seekers, persons receiving subsidiary protection, international protection seekers, or persons receiving temporary protection.

Under Section 16 of the Schools Act, people who have been granted asylum, subsidiary protection and asylum seekers are considered to be socially disadvantaged. Other migrants can also be considered as socially disadvantaged. People with this status have the right to receive supportive measures.

There is no major anti-discrimination case law in the field of education involving migrants were involved.

Major policies aim to address the integration of migrants, including language assistance. There are no major policies that specifically aim to address discrimination against migrants in the context of education.

In 2016, the Ombudsman issued a recommendation concerning the admission of children to primary school. With effect from September 2016, the Ministry of Education, Youth and Sports satisfied the Ombudsman's recommendation and rearranged the organisation of primary school enrolment by amending Decree No. 48/2005.³¹⁷

It should be also mentioned that Law No. 178/2016 amending the Schools Act was adopted in September 2016, introducing an obligatory final year of preschool education for all children.³¹⁸ Furthermore, in 2016, the Ombudsman issued a recommendation to amend Decree No. 14/2005 of the Ministry of Education, Youth and Sports, in order to provide access to the free final year of preschool education to everyone. Relying on the examined applications, the Ombudsman criticised the fact that children who started preschool education earlier were not entitled to the free final year in the maternity school and were therefore discriminated against on the ground of age.³¹⁹

a) Pupils with disabilities

In the Czech Republic, the general approach to education for pupils with disabilities does raise problems.

³¹⁷ Public Defender of Rights (2016), *Legislativní doporučení VOP* (Legislative recommendation of the Public Defender of Rights), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Ctvrletky/2016/2016_1-Q_doporuceni.pdf.

³¹⁸ Czech Republic, Law No. 178/2016, Amendment to the Schools Act, 8 June 2016.

³¹⁹ Public Defender of Rights (2016), *Legislativní doporučení VOP* (Legislative recommendation of the Public Defender of Rights), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Ctvrletky/2016/2016_1-Q_doporuceni.pdf.

In 2015, the amendment to the Schools Act, Law no. 82/2015³²⁰ was adopted based on the *Strategy for Education in 2020*, in which equal access to education for all children is a top priority. The bill was adopted in February 2015 and the new Law No. 82/2015 was published on 17 April 2015. Among other things, the amendment establishes a de facto preference for individual rather than group integration (in the Czech school system the term 'group integration' means the creation of special study groups or classes in the mainstream school). This means, that wherever possible, a pupil should be integrated individually into the mainstream environment with adequate support. The provisions amended by Law No. 82/2015 came into force on different dates (1 May 2015, 1 September 2015 and 1 September 2016).

Law No. 82/2015³²¹ amending the Schools Act brought fundamental changes concerning the inclusive education of pupils with disabilities with effect from 1 September 2016.³²² Despite the legislative amendments, inclusive education needs time to be implemented in practice. Currently, pupils with disabilities still face difficulties in gaining access to ordinary schools and school facilities, which further causes segregation for some of them. However, according to the Council of Europe, statistics show a constant, annual decrease in the total number of pupils in special schools or classes from 17 755 in 2008 to 10 695 in 2014.³²³

With effect from 1 May 2015, the amendment brought changes concerning the education of pupils with medium or serious disability, with multiple disabilities or with autism, in that their statutory representatives must request education in a primary special school for those pupils (previously the law stated 'with the assent of a statutory representative'). If no such request is made (even on the recommendation of the Special Pedagogical Centre – SPC), the pupil will attend a mainstream school.

With effect from 1 September 2015, there exists a possibility for everybody to participate in preparatory classes for primary school (before, it was open only for socially disadvantaged children). According to the Czech Ombudsman, this could lead to segregation in pre-school education if the capacities of kindergartens are not increased.³²⁴

Most importantly, with effect from 1 September 2016, the so-called 'inclusive system' applies, according to the amended Sections 16, 16a and 16b of the Schools Act. Pupils with disabilities are no longer characterised by type of diagnosis, but by the degree of support required in their education, determined by a medical approach, and therefore focused on the child's needs, setting out specific intervention processes and practical assistance within teaching. In many of its provisions, the Schools Act replaces the phrase 'pupils with disability' with the phrase 'pupils mentioned in the Section 16(9) of the Schools Act' (described later on). This provides a much broader definition of a pupil with special needs as a person who needs to be provided with supporting measures in order to realise their educational abilities and exercise their rights on an equal basis.

The supporting measures are defined as necessary adjustments in education corresponding to the state of health, cultural environment or other life conditions of a person. From September 2016, Section 16(2) provides a list of these supporting measures:

- Counselling help in a school or special counselling centre.

³²⁰ Czech Republic, Law No. 82/2015 amending Law No. 561/2004, the Schools Act (*Zákon č. 82/2015 Sb., kterým se mění zákon č. 561/2004 Sb., školský zákon*), 19 March 2015.

³²¹ Czech Republic, Law No. 82/2015, amending Law No. 561/2004, the Schools Act (*Zákon č. 82/2015 Sb., kterým se mění zákon č. 561/2004 Sb. O předškolním, základním, středním vyšším odborném a jiném vzdělání*), 17 April 2015.

³²² The amendment to the Schools Act is explained in more detail in section 3.2.8 b, below.

³²³ Council of Europe (2014), 'Pending cases: current state of execution', June 2014; http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=d.h.&StateCode=&SectionCode.

³²⁴ Public Defender of Rights (2015), *Stanovisko sp. zn. 16/2015/DIS* (Statement No. 16/2015/DIS); Brno, Veřejný ochránce práv. <http://eso.ochrance.cz/Odlozene/Edit/2412>.

- Adjustments in the organisation, content, evaluation, forms and methods of education (including teaching of subjects of special pedagogic care or extending the length of secondary or higher education).
- Adjustments to the conditions of education and the conclusion of education.
- Compensation tools, special textbooks or special educational tools, communication systems for deaf and deaf-blind pupils, Braille and the supporting communication systems.
- Adjustments in the expected results of education according to the education programmes.
- Education according to the individual educational plan.
- Engaging of a teaching assistant.
- Engaging of another teacher, interpreter of sign language, rewriter for deaf people.
- Providing education in the areas specifically technically arranged.

With the effect from 1 September 2016, specific supporting measures must be ensured for the education of people who cannot perceive speech through the sense of hearing (education in a communication system of deaf and deaf-blind people, teaching of written Czech language using the methods of teaching foreign language parallel with education in sign language). Education of people with alternative ways of communicating must be provided through a communication system that reflects the needs of such people.

Section 16(9), which came into effect in September 2016, allows the possibility of the subsidiary placement of a person with mental, physical, visual or hearing disability, serious speech defect, serious development disorder, learning or behaviour disability, multiple disabilities or autism, into the special school, class department or study groups, but only if the support measures in a mainstream school would not be sufficient to ensure the educational needs of the pupil. A written request by a pupil or their statutory representative, the recommendation of the school consulting centre and compliance with the best interest of the pupil is needed for a pupil's placement in a special school. However, if the statutory representative of a pupil with special educational needs defined in Section 16(9) of the Schools Act decides that s/he wants his/her child to be educated in a mainstream school in line with a recommendation made by a SPC, the school will be obliged to provide the child with maximum support in the form of a broad range of support measures that include assistance of other expert staff including a teacher's assistant, adjustment of the organisation and methods of instruction and/or provision of necessary assistive devices. The children also have the right to obtain secondary education textbooks free of charge according to Section 27(5) of the amended Schools Act. Further, schools are obliged to address the issue of a number of pupils who will be integrated into mainstream classes and potentially also into classes where there will be pupils, the nature of whose special educational needs does not make it possible to integrate them into and educate them in a mainstream primary school.

From September 2016, according to Section 28 of the Schools Act, school registers have a duty to gather information concerning supporting measures provided to a pupil and the conclusions of recommendations of the special counselling centres.

The new Section 19 provides that the Ministry of Education, Youth and Sports will specify the new support measures and system of education of children with special educational needs by a decree. In September 2016, Decree No. 27/2016 came into effect, which sets out an overview of support measures, including individual educational plans of pupils with special needs, the duties of a teaching assistant, the support measures for pupils using special communication systems, interpreters of sign language, rewriters for deaf people, the procedure for providing support measures and the organisation of the education of pupils with a need for support measures etc. Decree No. 27/2016 fully replaced the Decree No. 73/2005 and partly represents *lex specialis* in relation to Decree No. 72/2005. The

supporting measures are categorised into five degrees (specified in Decree No. 27/2016)³²⁵ according to their organisational, educational and financial character. The measures of the second up to the fifth degree can be applied only with the recommendation of the special counselling centre and with the assent of an adult pupil. The measures of the first degree can be decided by the school itself and can be specified in a teaching support plan created by teachers concerned about the pupil. Problems may arise because of different interpretations, for example, of what might constitute the 'best interest of a child'.

In its effort to implement inclusive education as smoothly as possible, the Ministry of Education, Youth and Sports has come up with an information package containing concise methodological and explanatory texts related to the field of inclusive education and changes in the organisation of the education of pupils with special educational needs as of 1 September 2016.³²⁶ In March 2016, a new Framework Educational Programme for Basic Education, which created conditions for ensuing equal access to educational content for all pupils, came into effect. In accordance with a recommendation by the school counselling facility, the school creates an individual educational plan containing support for pupils with a mild intellectual disability. Since the former Framework for Basic Education of pupils with mild intellectual disabilities was abolished, necessary changes in the organisation of education of pupils with mild intellectual disabilities are needed, due to the transfer from various systems of education.³²⁷

Since September 2016, the Pedagogical and Psychological Counselling Division of the National Institute for Education has started to perform the tasks of a review body in the field of diagnostics. The establishment of the review body, its staffing and envisaged budget were approved by the Ministry of Education, Youth and Sports in June 2016. A pupil or his/her statutory representative (or the Czech School Inspectorate or the child protection authority) now have the ability to approach the National Institute for Education with a request to review a report and make a recommendation regarding the education of a particular pupil with special educational needs.

In 2016, the Ombudsman was occupied with a problem relating to the establishment and financing of a pedagogue assistant in after-school care.³²⁸ The Ombudsman found it to be discriminatory that the school did not provide a pedagogue assistant for a pupil with disabilities because of claimed lack of finances. However, with effect from September 2016, the procedure for ensuring a teaching assistant in after-school care was unified with the position of teacher's assistant. Therefore, the inquiry was discontinued.

In 2015, the Ombudsman encountered several cases of discrimination in education on the ground of disability. For example, the Ombudsman criticised a kindergarten for refusing children with a mild visual defect, but noted that in another similar situation the kindergarten proceeded in compliance with the provisions of the Anti-discrimination Law.³²⁹ In addition, the Ombudsman expressed an opinion that a kindergarten can refuse to prepare special food for children with a disability (for example intolerance of gluten), but

³²⁵ Czech Republic, Decree No. 27/2016, on the education of pupils with special educational needs and talented pupils, 28 January 2016; <https://www.zakonyprolidi.cz/cs/2016-27>.

³²⁶ Ministry of Education, Youth and Sports (2016), *Informace ke společnému vzdělávání* (Information on inclusive education); <http://www.msmt.cz/vzdelavani/spolecne-vzdelavani-1>.

³²⁷ Committee of Ministers (2016), *Complementary Report on the execution of the judgment in D. H. and Others*, 6 September 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0>.

³²⁸ Public Defender of Rights (2016), *Zpráva o šetření, sp. zn. 301/2015/VOP* (Report on inquiry No. 301/2015/VOP), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/4138>.

³²⁹ Public Defender of Rights (2015), 'Information on activities for the third quarter of 2015' (*Zpráva o činnosti za 3. čtvrtletí roku 2015*), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/2015_3_Q_EN.pdf.

there must be an objective reason that the preparation of a special meal would be an unreasonable burden for the institution.³³⁰

In 2015-2016, the Czech School Inspectorate found that 88 % of evaluated primary schools educated pupils with health disabilities³³¹ and 77 % of the schools educated pupils who were disadvantaged in terms of health or socially disadvantaged. The most common measure provided by the primary schools was an individual supporting measure (for example, an individual study plan).³³² In the 2015-2016 report, the Czech School Inspectorate said that 72 % of schools employed a teaching assistant during the lessons. Further, it was found that teaching assistants fulfil various tasks outside lessons, as well as helping students other than those to whom they are assigned and that their role in the school system is very important.³³³

According to the amended Section 16(11), upon the engagement of a teaching assistant, a school can claim an increase in finance provided from the state budget with the consent of a regional office or Ministry. In 2015, the Czech Ombudsman criticised the lack of teaching assistants for financial reasons, given that parents of pupils with special educational needs often had to co-finance the services of such assistants (mainly because the regional office has not provided sufficient finance to the school). The Ombudsman stated that this causes not only indirect discrimination according to Section 3(2) of the Anti-discrimination Law, but is also a violation of the right to education protected by Article 33(2) of the Czech Charter of Fundamental Rights and Freedoms. The Czech Ombudsman therefore recommended a reform of regional financing of education in order to secure a more systematic distribution of resources.

As of September 2016, support measures granted pursuant to Section 16 are funded from a reserve that is mandatorily generated by regional authorities. In order to fulfil this objective, at the beginning of January 2016 approximately CZK 528 million (more than EUR 19.5 million) from the state central budget was allocated to regions in order to fund inclusive education. At present, it is envisaged that an extra CZK 100 million (EUR 3.7 million) will be earmarked for development programmes for teachers' assistants compared to 2015. Further funds for the purposes of inclusive education have been released by the ministry through a development programme for teachers' assistants for pupils with a health disability for private and church Schools (CZK 150 million, i.e. more than EUR 5.5 million), a development programme for teachers' assistants for children and pupils with a social disadvantage (CZK 119 million, i.e. EUR 4.4 million) and a development programme for supporting an increase in the capacity of school counselling facilities in 2016 (CZK 80 million, i.e. nearly EUR 3 million). In addition, the ministry has prepared a new investment programme for purchasing new assistive devices and aids for inclusive education in the aggregate amount of CZK 275 million (more than EUR 10 million). Moreover, up to CZK 4.5 billion (more than EUR 166.5 million) will be allocated to kindergartens and primary schools as part of the research, development and educational programme, which provides readymade templates focused on staffing support or templates facilitating the writing of an application for support.³³⁴ Despite the budget declared by the ministry, certain

³³⁰ Public Defender of Rights (Ombudsman), '*Školky stále častěji vycházejí vstříc potřebám dětí se speciálním stravováním*' (Kindergartens are more willing to meet the needs of children with special diet), 24 August 2015; <http://www.ochrance.cz/aktualne/tiskove-zpravy-2015/skolky-stale-casteji-vychazeji-vstrec-potrebam-deti-se-specialnim-stravovanim/>.

³³¹ Pupils with health disabilities are understood as pupils with special educational needs under Section 16 of the Schools Act. It includes all forms of disabilities, e. g. mild, physical or learning, visual and hearing impairment etc.

³³² Czech School Inspectorate (2016), *Výroční zpráva za školní rok 2015/2016* (Annual Report for 2015-2016), p. 51; http://www.csicr.cz/html/VZCSI2015_2016/flipviewerexpress.html.

³³³ Czech School Inspectorate (2016), *Výroční zpráva za školní rok 2015/2016* (Annual Report for 2015-2016), p. 51; http://www.csicr.cz/html/VZCSI2015_2016/flipviewerexpress.html.

³³⁴ Committee of Ministers (2016), *Complementary Report on the execution of the judgment in D. H. and Others*, 6 September 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0>.

headmasters and teachers have complained that they did not receive the necessary funding in time and that they object to the chaotic system of financing the measures, which stem from the current reform.

The amendment to the Schools Act introduces an important control mechanism to address concerns about arbitrary conflicts of interest and decisions taken by special pedagogical centres (*speciálně pedagogická centra*) – SPCs.³³⁵ The SPCs provide pedagogical, psychological and other help to clients with disabilities (complex diagnoses, individual and group work with pupils and so on). The amendment establishes in Section 16b the right of a pupil and a school to appeal to an independent central authority³³⁶ against a decision taken by the SPC. This central authority is empowered to continue evaluation of the educational needs of the child and if necessary, to change the decision of the SPC. The amended Section 16a defines the function of special counselling centres, which provide consulting help on request by a pupil or their statutory representative. These centres issue reports and recommendations, which are necessary for the implementation of certain supporting measures.

The SPCs can choose from variety of up-to-date tests measuring intelligence, however, those tests cannot be the sole basis for determining special education needs. In the course of 2015, preparation of a test of adaptive skills (social and practical skills) began. Efforts to develop the test of adaptive skills and to intensify the application of dynamic diagnostics in practice continue.³³⁷

Further methodological support might be provided within a project concerned with quality inclusion counselling development (focused on raising the level of counselling and unifying the practice of SPCs), which will be implemented in 2016-2019.

An objective criticism has arisen concerning the lack of familiarisation and training of teachers. However, various training courses for teachers, special teaching centres, school psychologists and special teachers have already been organised under an initiative of the ministry. Continuous education of teachers of pre-schools, primary and secondary schools is taking place from February 2016 until December 2018. Special information courses, workshops and conferences have also been organised for head teachers, teachers and parents. In 2016, the ministry established an expert team for inclusive education, which should independently contribute to a broad debate related to inclusive education and its economic and legal aspects. Moreover, the ministry has issued a methodology providing an academic commentary on the supporting measures, the working methods of special teachers, frequently asked questions and so on. Such collective education was a no. 1 priority for the ministry for 2016 and its website provides various documents, such as a timetable of implementation of collective education, a guide for head-teachers, lists of information and education activities and so on.³³⁸ However, there is specific criticism from the schools about the fact that the ministry's support is not sufficient and that schools encounter various difficulties while implementing the inclusive education measures.³³⁹

³³⁵ Czech Republic, Decree No. 73/2005, on the education of children with special educational needs (*Vyhláška č. 73/2005, Ministerstva školství, mládeže a tělovýchovy*), 9 February 2005; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=73~2F2005&rpp=15#seznam>; Czech Republic, Decree No. 72/2005, on providing consulting services in schools and school advisory institutions (*Vyhláška č. 72/2005, Ministerstva školství, mládeže a tělovýchovy*), 9 February 2005; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=72~2F2005&rpp=15#seznam>.

³³⁶ Pedagogical and Psychological Counselling Division of the National Institute for Education.

³³⁷ Committee of Ministers (2016), *Complementary Report on the execution of the judgment in D. H. and Others*, 6 September 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0>.

³³⁸ Ministry of Education, Youth and Sports, *Priorita č. 1 – společné vzdělávání* (Priority No. 1 – collective education); <http://www.msmt.cz/o-webu-msmt/spolecne-vzdelavani>.

³³⁹ See, for example: *Učitelské profesní sdružení* (Professional association of teachers); <http://kantor8.webnode.cz/otevreny-dopis-ministryni-skolstvi/>.

Nevertheless, the National Institute for Education offers on its websites various materials and analyses about inclusive education. It also provides email and telephone advice related to supporting measures or diagnostics. The ministry's main partner is the National Institute for Further Education, which organises courses for teachers in order to offer them further education.³⁴⁰ Another source of important information is the project on systematic support of inclusive education in the Czech Republic (*Systémová podpora inkluzivního vzdělávání v ČR*), which ran from 2013 to 2015. Various materials relating to supporting measures, standards of work of teaching assistants, methods of education for pupils with special needs, analysis and research can be found on the official websites of the project.³⁴¹

As a result of the amendment to the Schools Act (Law No. 82/2015), from September 2016, 'practical' schools must change their status to become a mainstream school or a mainstream school with a class or group of pupils with disabilities that are specified in Section 16(9),³⁴² or a school intended for pupils with disabilities according to Section 16(9). If the establishing entity of a practical school decides that the practical school will continue to educate in a class under Section 16(9), the headmaster is obliged to ensure compliance with this provision as regards to keeping the current pupils and admission of such new pupils to these schools.

b) Trends and patterns regarding Roma pupils

In the Czech Republic, there are specific patterns existing in education regarding Roma pupils, such as segregation.

The most important case in the sphere of education is the case which resulted in the ECHR judgment in *D.H. and Others v. the Czech Republic*.³⁴³ The case was brought by Roma students from the Ostrava Region. During the late 1990s the applicants had been assigned to so-called special schools (designed for children with learning difficulties), where they received inferior education based on a diluted curriculum.

In 2000 the applicants complained to the ECHR, arguing that their treatment amounted to discrimination. In a decision in February 2006, the chamber of the ECHR stated that although the applicants had raised serious arguments, they did not amount to a violation of the Convention on Human Rights. The applicants filed an appeal and the Grand Chamber finally ruled in favour of the applicants and found that the applicants had suffered discrimination when denied their right to education.

The current Schools Act, adopted in 2004 and in effect from 1 January 2005, changed the former system of special and mainstream schools. It provides children with special educational needs, including 'socially disadvantaged' children, the right to be accommodated by means of 'supporting measures'.

In 2012 the Czech Ombudsman carried out research to gather ethnic data regarding pupils in former special schools (now mostly 'practical primary schools'). The data were gathered by means of observations by 'third parties', i.e. equality body employees and teachers. This survey, carried out in 67 randomly chosen former special schools across the Czech Republic, showed that Roma children represented 32 % to 35 % of all pupils. When these figures are compared to the percentage of Roma people in the total population of the Czech Republic (the figure varies between 1.4 % and 2.8 %), it is obvious that the percentage of Roma children found in these schools is disproportionate. Indirect discrimination in access

³⁴⁰ National Institute for Further Education (*Národní institut pro další vzdělávání*); <http://www.nidv.cz/cs/>.

³⁴¹ Palackého University in Olomouc (2015), *Systematic support of inclusive education in the Czech Republic* (*Systémová podpora inkluzivního vzdělávání v ČR*); <http://www.inkluzie.upol.cz/portal/>.

³⁴² The provision allows only pupils with intellectual, physical, visual, hearing disabilities, severe speech disorders or severe developmental disorders, to be placed in a special school, class or department.

³⁴³ ECtHR, *D.H. and Others v. Czech Republic*, No. 57325/00, 13 November 2007.

to education therefore continues, and the Czech authorities had by that point failed to remedy the situation quoted in the ECHR judgment.

Because of the persistent problem of segregation of Roma children in schools with reduced curricula rather than mainstream schools, the Czech Republic has been criticised repeatedly by international institutions. For example, infringement proceedings against the Czech Republic were initiated by the European Commission for the alleged failure to secure equal access to education for Roma children. In July 2013, the UN Human Rights Committee reiterated its concern that 'Roma children continue to be overrepresented in schools for pupils with mild mental disabilities or practical elementary schools'.³⁴⁴ The UN committee also highlighted that Roma pupils continue to be placed in Roma-only classes or classes with a limited curriculum in mainstream schools. It requested the Czech Government to take immediate steps to eradicate the segregation of Roma children in its education system, by ensuring that placement in schools and classes is carried out according to clear and objective criteria. In March 2013, during the adoption of the UN Universal Periodic Review outcome document on the Czech Republic, the Government repeated its commitment to desegregate schools and ensure equal access of Roma pupils to the right to education.³⁴⁵ According to the 2014 report of the UN Committee on Economic, Social and Cultural Rights³⁴⁶ Roma pupils are still disproportionally placed in 'practical schools'.³⁴⁷ Moreover the Committee was concerned at the high drop-out rates of Roma students at the various levels of education. The committee urged the Czech Republic to

- take steps to abolish procedures that lead to the segregation of Roma pupils;
- stop the practice of placement of pupils without disabilities in practical schools;
- transfer Roma pupils with inconclusive diagnoses from practical schools to mainstream schools;
- phase out practical schools, as provided for in the National Action Plan for Inclusive Education;
- provide support to mainstream schools for the education of socially disadvantaged pupils and Roma pupils from practical schools and promote their retention in school, including by recruiting school personnel from among Roma communities.

The Committee also recommended that the Czech Republic allocates adequate budget, defines clear responsibilities and a timeline, and secures participation of Roma parents, associations and local communities in the implementation of these activities.

By 2014, seven years had elapsed since the *D.H. and Others v. the Czech Republic* judgment of the European Court of Human Rights. legislative amendments were adopted, in force from 1 September 2014, which abolish the possibility of short-term placement of 'socially disadvantaged' pupils³⁴⁸ in classes for children with 'mild intellectual disability'.³⁴⁹

³⁴⁴ United Nations (UN), Human Rights Committee (HRC) (2013), *Concluding observations on the third periodic report of the Czech Republic*, 22 August 2013; <http://www.ohchr.org/EN/countries/ENACARRegion/Pages/CZIndex.aspx>.

³⁴⁵ Council of Europe, *DH-DD (2012)803: Communication from the Czech Republic concerning the case of D.H. and Others against Czech Republic* (Application No. 57325/00), 4 September 2012; http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/CZE-DH_en.asp.

³⁴⁶ United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) (2014), *Concluding observations on the second periodic report of the Czech Republic*, 23 June 2014; http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/CZE/CO/2&Lang=En.

³⁴⁷ The current Schools Act, adopted in 2004 and in effect from 1 January 2005, uses the term 'practical schools' as one of the types of special schools as opposed to mainstream schools.

³⁴⁸ Children from family environments that have low social and economic standards and are potentially endangered by socio-pathological phenomena.

³⁴⁹ For example: Czech Republic, Regulation No. 103/2014, Amendment to Regulation No. 72/2005 on providing consulting services in schools and school advisory institutions, Amendment to Regulation No. 73/200 on education of pupils with special educational needs and talented pupils, 30 May 2014.

At meeting No. 1201 (DH) of the Committee of Ministers of the Council of Europe, it was stated³⁵⁰ that developments were made in the implementation of the authorities' action plan and the adoption of the amended decrees, for example adoption of Section 16 of the Schools Act.³⁵¹ The Committee of Ministers has not ceased its supervision of the implementation of the judgment and encouraged the Czech authorities to pursue their efforts and to ensure that the measures are adopted without delay. The Committee of Ministers assumed that implementation of new diagnostic tools and reassessment of pupils raise questions about their effectiveness in relation to the low percentage of children diverted to the mainstream education system, to the follow-up given to pupils whose transfer to the mainstream education system is recommended and to the fate of children who do not respond to a call for reassessment.

In May 2014, the Government adopted the Strategy for Roma Integration until 2020,³⁵² according to which the Czech Republic should eliminate differences in education between the majority population and Roma people.

On 25 September 2014, the European Commission announced their decision to launch infringement proceedings against the Czech Republic. The proceedings call into question the Czech Republic's compliance with Article 21(1) of the EU Charter of Fundamental Rights, which prohibits discrimination based on any ground such as race or ethnic origin and the Racial Equality Directive (2000/43/EC), Articles 2.2a, 2.2b, 2.3, 3.1.g, which prohibit discrimination in access to education on the grounds of race or ethnicity.

In 2015, the Ombudsman stated that the number of Roma pupils educated according to the educational programme for pupils with mild intellectual disabilities has risen by 4 % year-on-year. The Ombudsman made the criticism that it is still possible to place pupils disadvantaged in terms of health in schools, classes or groups for pupils with disability – a situation which jeopardises Roma pupils' access to education.³⁵³

The Ombudsman declared that the Czech Republic must prevent personal connections between special counselling centres and schools where pupils with special needs are educated. Another problem may arise concerning inclusion and costly private schools, which are unavailable for pupils with special needs. Because of a trend of segregation in our society, it could lead to the situation that more students will avoid inclusion by attending private schools or secondary grammar schools.³⁵⁴ During 2015 the Ombudsman has also worked on the recommendation related to the decision about acceptance in the first class of a primary school. This document was issued in January 2015 and it emphasises the importance of making decisions based on objective criteria.³⁵⁵

Amnesty International in its 'shadow report' of 2015³⁵⁶ pointed out that the Government has failed to adopt measures (a) explicitly mandating the desegregation of Czech schools and (b) that would put in place sufficient safeguards against discrimination in access to education. Other NGOs presented similar conclusions. The Committee of Ministers inter alia reiterated the importance of rapidly obtaining specific results and encouraged the authorities to accelerate the implementation of outstanding measures, in particular with

³⁵⁰ Council of Europe (2014), 1201 DH meeting of the Ministers' Deputies, June 2014; [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2014\)1201/6&Language=lanFrench&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2014)1201/6&Language=lanFrench&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

³⁵¹ Czech Republic, Law No. 561/2004, Schools Act, 24 September 2004.

³⁵² Czech Republic, *Strategy for Roma Integration until 2020 (Strategie romské integrace do roku 2020)*, May 2014.

³⁵³ Public Defender of Rights (2015), *Stanovisko sp. zn. 16/2015/DIS* (Statement No. 16/2015/DIS), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Odlozene/Edit/2412>.

³⁵⁴ According to the statement of a deputy of a Minister of Education, Youth and Sports.

³⁵⁵ Public Defender of Rights (2016), *Doporučení veřejné ochránkyně práv – rozhodování o přijetí k základnímu vzdělání* (Recommendation of the Ombudsman on deciding about acceptance to primary education), Brno, Veřejný ochránce práv; <https://www.ochrance.cz/diskriminace/doporučení/>.

³⁵⁶ Amnesty International (2015), *Etnická diskriminace romských dětí v českých školách* (Ethnic discrimination of Roma children in Czech schools); <http://www.amnesty.cz/download/file/500>.

regard to the revised diagnostic tools and the legislative amendments aimed at removing the possibility of placing pupils without a disability (especially Roma children) in classes or groups for pupils with disabilities, and to consider the adoption of interim measures.

Decree No. 73/2005 (which was annulled on 1 September 2016 by Decree No. 27/2016)³⁵⁷ should have ended the use of a certain diagnostic procedure, but the changes were made rather formally to calm down the situation concerning the segregation of Roma children. According to this amendment it was not possible to carry out a diagnostic procedure of pupils with mild intellectual disability in schools, classes and groups specialised for those pupils, although in practice, the diagnostic procedure could have been performed in other schools without any ability to control it, because such schools *de iure* and *de facto* did not exist.

Since 2016 the 'inclusive system' applies, according to the amended Sections 16, 16a and 16b of the Schools Act (as described in section 3.2.8.a above). Nevertheless, although children, pupils and students with special educational needs are entitled to free support measures, which are financed by the school, problems may still arise because the estimate of the costs of support measures does not include all students with special educational needs.

As regards the monitoring of the education of Roma pupils, the analysis and electronic surveys are, and will be, performed by the Czech School Inspectorate. According to the statistics from 2016, the number of Roma pupils educated under the framework for basic education in mainstream schools increased year-on-year by 0.6 percentage points, which presents a slightly positive trend.³⁵⁸

An important document issued by the Ministry is new action plan for inclusive education for the period 2016-2018, which determines collective education priorities, strategies and deadlines for specific measures.³⁵⁹

In 2016, at meeting No. 1222 (DH), the Committee of Ministers of the Council of Europe³⁶⁰ expressed concern that the percentage of Roma pupils in classes or groups for children with 'mild intellectual disabilities' remains disproportionate and urged the authorities to ensure the necessary support to pupils entering or transferred to mainstream education. In February 2016, the revised action plan for the execution of the judgment in *D. H. and Others* was issued.³⁶¹ The revised action plan describes all adopted and planned measures. In September 2016, the Czech Government submitted a complementary report containing changes following from the amendment to the Schools Act.³⁶²

³⁵⁷ Czech Republic, Decree No. 27/2016 on education of pupils with special educational needs and of talented pupils (*Vyhláška č. 27/2016 Sb., o vzdělávání žáků se speciálními vzdělávacími potřebami a žáků nadaných*), 21 January 2016.

³⁵⁸ Committee of Ministers (2016), *Complementary Report on the execution of the judgment in D. H. and Others*, 6 September 2016, p. 29;
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0>.

³⁵⁹ The Ministry of Education, Youth and Sports, 'Akční plan inkluzivního vzdělávání pro období 2016-2018' (Action Plan on inclusive education for the period 2016-2018);
http://www.vzdelavani2020.cz/images_obsah/dokumenty/apiv_2016_2018.pdf.

³⁶⁰ Council of Europe (2015), *1222 DH meeting of the Ministers' Deputies*, March 2015;
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c5200.

³⁶¹ Committee of Ministers (2016), *Revised action plan of the execution of the judgment in D. H. and Others*, 5 February 2016;
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ad0ba>.

³⁶² Committee of Ministers (2016), *Complementary Report on the execution of the judgment in D. H. and Others*, 6 September 2016;
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0>.

In conclusion, practical changes from 1 September are rather small scale, since the pupils with special needs must first be examined and then should receive new opinions from SPCs within a two-year transformation period. In the future, more transfers from former practical schools to ordinary schools should be supported. The success of the current reform might be still endangered by the lack of individual skills, unpreparedness of the SPCs or the unwillingness of ordinary schools to work with pupils with disabilities.³⁶³ No authority is tracking the impact of these measures on the Roma students.

The right to file an appeal against a decision taken by the SPC to an independent central authority³⁶⁴ according to Section 16b of the amended Schools Act as described in the previous section can also help to prevent the unnecessary placement of Roma pupils in classes designed for persons with disabilities.

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

In the Czech Republic, national legislation prohibits discrimination in the following area: access to and supply of goods and services as formulated in the Racial Equality Directive.

According to Section 1(1)(j), the Anti-discrimination Law applies to 'access to goods and services, including housing, to the extent that they are offered to the public, or in their supply'. In addition to race or ethnicity; age, disability, religion, belief and sexual orientation are also covered by the legislation.

The law does not forbid private entities from differentiating on the basis of age and disability when offering financial products to the public. Frequently, financial institutions offer different conditions for their products on the ground of age. They also exclude people with disabilities from certain types of financial products, typically life insurance, on an ongoing basis. The financial institutions usually maintain that the differential treatment is based on statistical data. In view of an increasing number of complaints made by older people about the inaccessibility of some financial products on grounds of age, in 2013 the Ombudsman conducted a survey with the aim of testing the accessibility of financial products to older clients. The Ombudsman concluded that if the provision of short-term services, such as credit cards, short-term consumer loans, overdraft accounts and so on were limited by an upper age limit, it would constitute discrimination on grounds of age. Situation testing, which examined the actual accessibility of products, showed that two of thirteen tested entities (15 %) restrict providing credit cards on the basis of the client's age without examining any other circumstances, thus allowing discrimination. One entity denied to a test person that it provided credit cards, although they are advertised on its website.³⁶⁵

According to a judgment of the Supreme Court in 2014, 'access to the restaurant can be restricted only for reasons having a legitimate aim, not for the reason that the restaurant is focused on a specific sort of client'.³⁶⁶

³⁶³ EDUin (2016), *Audit vzdělávacího systému v ČR* (Audit of the education system in the Czech Republic); http://www.eduin.cz/wp-content/uploads/2016/11/Audit_vzdelavaci_system_ANALYZA_2016.pdf.

³⁶⁴ Pedagogical and Psychological Counselling Division of the National Institute for Education.

³⁶⁵ Public Defender of Rights (Ombudsman), 'Information about activities presented by the Public Defender of Rights in accordance with the provisions of Section 24(1)(a) of Act No. 349/1999 on the Public Defender of Rights, as amended for the third quarter of 2013', Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/2013_Q3_E.pdf.

³⁶⁶ Czech Republic, Supreme Court (*Nejvyšší soud*), Brno/ 4 As 1/2014, 30 October 2014; http://www.nssoud.cz/files/SOUDNI_VYKON/2014/0001_4As_1400028_20141107085515_prevedeno.pdf.

In 2014, the Ombudsman specified in their opinion that 'any provider of financial services can focus an offer on a target group, but this group cannot be defined by any grounds protected by the Anti-discrimination Law, for example age'.³⁶⁷

In the Czech Republic, it still happens that Roma people are denied access to clubs, restaurants, etc. Discriminatory behaviour towards Roma participants was established in a case in 2015, as part of a situation testing exercise led by the Ombudsman and the civil association IQ Roma Servis, in one of three controlled clubs. As a result, the Czech Trade Inspection Authority started administrative proceedings against this club.³⁶⁸

3.2.9.1 Distinction between goods and services available publicly or privately

In the Czech Republic, national law distinguishes 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).

The Law on consumer protection contains a general clause prohibiting discrimination against consumers on any ground in the area of the provision of goods and services. In this respect discrimination means any differentiation between consumers which cannot be justified by legitimate reasons. The law applies only if supply of goods and services is related to business activities. In all other respects, the Anti-discrimination Law applies. The wording of the Anti-discrimination Law shows that the application of the prohibition of discrimination is limited to the sale of goods and provision of services carried out in public and targeted at the public. The provisions of the Anti-discrimination Law do not apply to goods and services offered or provided on a private basis (e.g. offering goods to members of a private association).

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

In the Czech Republic, national legislation prohibits discrimination in following area: housing as formulated in the Racial Equality Directive.

The Anti-discrimination Law applies to the material scope of 'housing' defined within the wider scope of services provided and offered to the public, as specified in Section 1(1)(j). In addition to race or ethnicity, age, disability, religion, belief and sexual orientation are also covered by the legislation.

Migrants are not treated differently under Anti-discrimination Law; they benefit equally with nationals from anti-discrimination law enforcement and implementation in the field of housing.

There is no major anti-discrimination case law in the field of education involving migrants.

Major policies aim to address the integration of migrants. There are no major policies specifically aimed at addressing discrimination against migrants in the field of housing.

³⁶⁷ Public Defender of Rights (Ombudsman) (2014), *Nejdůležitější případy řešené ochránkyní v oblasti rovného zacházení v roce 2014* (The most important cases resolved by Ombudsman in the field of equal treatment in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/projekt_ESF/Spolecne_proti_diskriminaci/Nejdulezitejsi_pripady_resene_ochrancem_v_oblasti_rovneho_zachazeni_a_jeho_aktivita_na_poli_legislativnim.pdf.

³⁶⁸ IQ Roma Servis, 'Diskriminace v přístupu ke službám – vstup do klubů' (Discrimination in access to services – access to clubs); <http://www.iqrs.cz/cs/priklad-z-praxe/diskriminace-v-pristupu-ke-sluzbam-vstup-do-klubu>.

Housing is governed mainly by the Civil Code³⁶⁹ and some other specific laws regulating rent³⁷⁰ and cooperative housing.³⁷¹ In 2014 the Ombudsman stated, in relation to lease of real estate, that 'if any offer of the lease of real estate excludes members of specific ethnic groups it is considered to be direct discrimination (Section 2(3) of the Anti-discrimination Law)'.³⁷² Moreover if 'any owner of real estate instructs a real estate agent not to conclude a lease contract with a person of a specific ethnic group, he commits discrimination in the form of incitement (Section 4(5) of the Anti-discrimination Law)'.³⁷³

In 2015, the Ombudsman organised a round table called 'Right to Equal Treatment in the Field of Housing', where the topic was discussed with representatives of the Czech Trade Inspectorate and the Association of Real Estate Agencies. However, no code of conduct or other public commitment to counter discrimination adopted by the Association of Real Estate Agencies is known to the expert.

3.2.10.1 Trends and patterns regarding housing segregation for Roma

In the Czech Republic, there are patterns of housing segregation and discrimination against Roma.

The law does not contain any specific prohibition of segregation in housing. Czech cases of discrimination in housing with regard to Roma have been concerned with privately rented housing of a lower standard, of a type most suited to the 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 is the case with tenancy agreements. However, Roma encounter discrimination both from other tenants and from private providers of housing. 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 very little chance of any citizen, regardless of their ethnicity, gaining access to municipal housing at any type of 'social' rent level.

In the Czech Republic, 'municipal' and 'social' housing do not mean the same thing. 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.

³⁶⁹ Czech Republic, Law. No. 89/2012, Civil Code, 3 February 2012.

³⁷⁰ For example: Czech Republic, Law No. 128/2000 on Municipalities (*Zákon č. 128/2000 Sb., o obcích*), 12 April 2000; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=128~2F2000&rpp=15#seznam>; Czech Republic, Law. No. 89/2012, Civil Code, 3 February 2012.

³⁷¹ Czech Republic, Law No. 90/2012 on business companies and cooperatives (*Zákon č. 90/2012 Sb., o obchodních společnostech a družstvech*), 12 April 2000; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=90~2F2012&rpp=15#seznam>; Czech Republic, Law. No. 89/2012, Civil Code, 3 February 2012.

³⁷² Public Defender of Rights (Ombudsman) (2014), *Nejdůležitější případy řešené ochránkyní v oblasti rovného zacházení v roce 2014* (The most important cases resolved by the Ombudsman in the field of equal treatment in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/projekt_ESF/Spolecne_proti_diskriminaci/Nejdulezitejsi_pripady_resene_ochrancem_v_oblasti_rovneho_zachazeni_a_jeho_aktivita_na_poli_legislativnim.pdf.

³⁷³ Public Defender of Rights (Ombudsman) (2014), *Nejdůležitější případy řešené ochránkyní v oblasti rovného zacházení v roce 2014* (The most important cases resolved by the Ombudsman in the field of equal treatment in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/projekt_ESF/Spolecne_proti_diskriminaci/Nejdulezitejsi_pripady_resene_ochrancem_v_oblasti_rovneho_zachazeni_a_jeho_aktivita_na_poli_legislativnim.pdf.

According to their 2014 report, the Ombudsman stated, that 'cancellation of the competitive selection procedure to conclude a lease contract with a person who had offered the highest price and at the same time satisfies a discrimination ground in the meaning of the Anti-discrimination Law, could be considered as unequal treatment'.³⁷⁴ In 2015, the Ombudsman found direct discrimination in access to housing, because a blind applicant was refused, although he offered the highest price for the proposed flat. The applicant had fulfilled all the conditions of an open competition, but the flat was offered to an applicant who proposed a lower price. Therefore, the Ombudsman concluded that the applicant was discriminated against according to Section 2(3) of the Anti-discrimination Law.³⁷⁵

There is no law requiring or promoting the availability of housing accessible for people with disabilities and older people. However, there is a bill of law on social housing (prescribing duties of municipalities as regards social housing), which should be further discussed in 2017.³⁷⁶ Furthermore, building such housing can be supported from public funds dedicated for this purpose, on the basis of individual projects, usually maintained by municipalities. In 2016, the European Committee of Social Rights issued a decision concerning the access of Roma people to housing in the Czech Republic. The committee found that Roma often suffer from lack of accessible housing, inadequate living conditions, forced evictions and residential segregation.³⁷⁷ In 2014, the UN Committee on Economic, Social and Cultural Rights expressed concern that Roma continue to experience widespread discrimination in housing matters and that the state had not put in place a comprehensive social housing system nor adopted a social housing law.³⁷⁸ It should be also mentioned that Brno, as the first city in the Czech Republic, adopted a rapid rehousing project in 2016. As a result, adequate housing was offered to some of the Roma families in Brno.³⁷⁹

³⁷⁴ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna-zprava_VOP_2014.pdf.

³⁷⁵ Public Defender of Rights (2015), *Information on activities for the second quarter of 2015 (Zpráva za 2. čtvrtletí roku 2015)*, Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/2015_2_Q_EN.pdf.

³⁷⁶ Government Office (2016), *Návrh zákon o sociálním bydlení a o příspěvku na bydlení* (Bill on social housing and contribution for housing); <https://apps.odok.cz/veklep-detail?pid=KORNAE3FETGR>.

³⁷⁷ European Committee of Social Rights (2016), *Decision no. 104/2014, ERTF v. the Czech Republic*, 17 May 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b36d9>.

³⁷⁸ UN Economic and Social Council (2014), *Concluding observations on the second periodic report on the Czech Republic*, 23 June 2014; <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWzvmPskcpMOMDDZmb1V0UOCvRjUa%2bkwOXeldwW%2fDkXuT0m2PxAKv2vgB0w0rV6BGH7z%2bdk5HqgR2KYdI0jnPgCtNxxuUIEnUkDbe8oyqt2e4>.

³⁷⁹ IQ Roma Servis (2016), *Rapid re-housing*; <http://www.iqrs.cz/cs/clanky/rapid-re-housing>.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In the Czech Republic, national legislation provides for an exception for genuine and determining occupational requirements.

Genuine and determining occupational requirements are defined in Section 6(3) of the Anti-discrimination Law, as well as in Section 16(3) of the Labour Code. The Anti-discrimination Law prescribes that differential treatment can be justified if there is a factual reason based on the nature of the work or activity.

According to the Anti-discrimination Law an exception is possible if it is based on 'substantive grounds consisting in the nature of the performed work or activities and the requirements made are appropriate to that nature'. Differential treatment does 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. No case law is available in this regard.

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 public prosecutors). Details are provided in the section below. These provisions are usually motivated by public security or requirements for a good reputation.

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

In the Czech Republic, national law provides for an exception for employers with an ethos based on religion or belief.

Section 6(4) of the Anti-discrimination Law contains an exception applicable to 'dependent work in churches or religious organisations, 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 organisation'. The law does not explicitly mention that this kind of unequal treatment cannot lead to discrimination on grounds other than religion or belief; this may depend on the circumstances of the case.

In 2015, the Constitutional Court adjudicated that an applicant, whose service as a cleric was terminated under conditions which were less favourable than those stipulated by the Labour Code, was not discriminated against since he freely gave up his protection under the Labour Code (see also section 2.3.b, above).³⁸⁰

- Religious institutions affecting employment in state funded entities

In the Czech Republic, 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.

³⁸⁰ Constitutional Court of the Czech Republic (*Ústavní soud*), no. III. ÚS 2860/14, 10 November 2014; <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=89328&pos=1&cnt=1&typ=result>.

According to Section 6(4) of the Anti-discrimination Law, difference of treatment applied in matters of the right to employment, access to employment or occupation, in the case of paid employment performed in churches or religious communities, 'shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion, belief or opinions constitute a genuine, legitimate and justified occupational requirement'.

Advertisements for the most important posts in religious institutions (such as the director of a Catholic charity or the head teacher of a private church school) usually make provision for 'knowledge of the church environment' as an additional valuable asset for applicants.

Religious teachers in state schools may be selected freely by all churches and religious organisations which enjoy a 'special right' in accordance with the Law on churches and religious organisations,³⁸¹ namely the right to teach religion in state schools. However, issues arise not so much in relation to appointing a religious teacher, but rather in assembling the minimum number of pupils required to establish a religious class on state school premises.³⁸² Religion is only taught in a very small number of state schools, in particular in the region of Bohemia. Churches and religious organisations can freely empower their ministers to gain access to prisons, hospitals and other institutions run by the state.

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

In the Czech Republic, national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78/EC).

Section 77(2) of Law no. 361/2003 on service by members of the security forces does not provide for disability as a protected ground.³⁸³ Age is provided as a ground for discrimination in this legislation. Section 2(3) of Law no. 221/1999 on service by members of the armed forces, governing service by members of the armed forces and security forces (fire fighters, customs officers, prison officers, the Security Information Service, officials of the Office for International Contacts and Information, police officers and soldiers) does not provide for age and disability as protected grounds.³⁸⁴

The laws governing service by members of the armed forces and security forces lay down large numbers of specific occupational requirements (usually called 'specific preconditions of vocational capability'), detailed in various regulations. The regulations list illnesses and disabilities which exclude applicants from recruitment (for example, see Regulation of the Ministry of Defence No. 103/2005 on assessment of fitness for active service by soldiers.³⁸⁵ The 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. 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.

³⁸¹ E. g. Roman Catholic Church, Evangelical Church of Czech Brethren, Unity of Brethren, The Baptist Unity of Baptists and 17 more. See more at the attachment to the Law No. 3/2002, on churches and religious organisations (*Zákon č. 3/2002 Sb., o církvích a náboženských společnostech*).

³⁸² In order to establish a religious class in a state school, the Schools Act prescribes a minimum number of seven pupils per school year in the whole school.

³⁸³ Protected grounds are e. g. sexual orientation, sex, language, religious belief, nationality etc.

³⁸⁴ Protected grounds are e. g. sexual orientation, sex, language, religious belief, nationality etc.

³⁸⁵ Czech Republic, Regulation of the Ministry of Defence No. 103/2005 on assessment of fitness for active service by soldiers (Collection of Laws 2005, No. 31, p. 861) (*Vyhláška Ministerstva obrany č. 103/2005 Sb., o posuzování zdravotní způsobilosti k vojenské činné službě*), 14 February 2005; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=103~2F2005&rpp=15#seznam>.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In the Czech Republic, national law includes exceptions relating to difference of treatment based on nationality.

Anti-discrimination provisions apply to every natural person, irrespective of nationality, citizenship or residence status. However, according to Section 1(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. According to the Schools Law, 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.³⁸⁶

In the Czech Republic, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

Section 2(3) of the Anti-discrimination Law provides for sex, race, ethnic origin, sexual orientation, age, disability, religion, belief or other conviction, 'nationality' (*národnost*) as protected grounds. This term 'nationality' (*národnost*) is not identical to 'citizenship' (*občanství*). According to prevailing interpretation, the term 'nationality' (*národnost*) means a person's membership of a particular nation as a historically established community of people characterised by common historical development, specific culture, common language, relation to a particular territory etc. However, no clear judicial interpretation exists. In fact, the Czech Ombudsman has previously mentioned alleged discrimination based on citizenship, e.g. against citizens of other EU Member States in access to municipal housing.³⁸⁷

The Anti-discrimination Law does not prohibit discrimination on the ground of citizenship and differential treatment on this ground is still legitimate, both in Czech law and according to the ECtHR.³⁸⁸ However, in compliance with Regulation (EU) no. 492/2011, there is a bill adding 'EU citizenship' to the discrimination grounds listed in the Anti-discrimination Law. The bill will be discussed further in the Chamber of Deputies in 2017.³⁸⁹

b) Relationship between nationality and 'race or ethnic origin'

The Anti-discrimination Law applies to discrimination on grounds of nationality (*národnost*), with the exception of the application of immigration rules. This term is not identical to 'citizenship' (in Czech: *občanství*). In cases of indirect discrimination, there could be significant overlap between the grounds of nationality and racial or ethnic origin.

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

a) Benefits for married employees

In the Czech Republic, it would not constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married.

³⁸⁶ Czech Republic, Amendment to the Schools Act No. 343/2007, Section 20.

³⁸⁷ Public Defender of Rights (Ombudsman) (2010), 'Žadatelé o obecní byty jsou posuzováni podle diskriminačních kritérií', ('Assessment criteria for applicants to municipal housing'); <http://www.ochrance.cz/aktualne/tiskove-zpravy-2010/zadatele-o-obecni-byty-jsou-posuzovani-podle-diskriminacnich-kriterii/>.

³⁸⁸ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 62.

³⁸⁹ Chamber of Deputies (2015), *Sněmovní tisk 688/0* (Press of the Chamber of Deputies No. 668/0); <http://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=688&CT1=0>.

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 they find appropriate (unless these contradict other legislation, for example, because of their humiliating and degrading character, discrimination etc.). 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.³⁹⁰

b) Benefits for employees with opposite-sex partners

In the Czech Republic, it constitutes unlawful discrimination in national law if an employer provides benefits only to those employees with opposite-sex partners.

In the view of the author, the distribution of benefits only to opposite-sex partners may be contrary to Section 2(3) of the Anti-discrimination Law, as it could constitute direct discrimination on the ground of sexual orientation. With regard to such benefits, the situation of opposite-sex couples who are not married is the same as for 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 their wife or husband. In the case of an unmarried same-sex couple raising one partner's child, the discount will only be extended to the child and the same would happen in the case of an unmarried opposite-sex couple. 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. Marriage and registered partnership are not comparable legal concepts in the Czech Republic, as both family law and other special laws do distinguish between marriage and registered partnership. However, discrimination against registered partnerships might be found in relation with the tax law, social security law, medical insurance etc. Relevant discussions about discrimination of the same-sex couples are, however, still focused on the possibility of their adopting children³⁹¹ rather than on these issues. No case law is available concerning this issue.

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

In the Czech Republic, there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78/EC).

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 work-related activities.³⁹² With regard to the health and safety of people with disabilities, Section 103(5) of the Labour Code requires the employer to secure at their 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 their knowledge. Employers also have a duty to prevent employees from carrying out tasks which do not correspond to their abilities and occupational health.³⁹³

³⁹⁰ It is difficult to say whether a recent judgement of the Constitutional Court (no. Pl. ÚS 8807/15, 14 June 2016) can influence this situation.

³⁹¹ Discrimination regarding adoption of children was found by the Constitutional Court in its judgment in June 2016, by which the Constitutional Court repealed provisions of the law prohibiting registered same-sex couples from adopting. Constitutional Court of the Czech Republic, no. Pl. ÚS 7/15, 28 June 2016.

³⁹² See Part 5, Sections 101-108 of Czech Republic, Law No. 262/2006, Labour Code, 21 April 2006.

³⁹³ See Section 103(1) of Czech Republic, Law No. 262/2006, Labour Code, 21 April 2006.

4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.7.1 Direct discrimination

In the Czech Republic, national law provides an exception for direct discrimination on age.

The exceptions related to the ground of age in regard to access to employment and occupation, are identified in Section 6(1) and 6(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, a period of vocational training or previous employment, provided that this is necessary for the proper performance of or access to specific rights and duties to perform this employment or occupation. 'Necessity' of a minimum age must be interpreted in the sense of Article 6(1) of the Directive 2000/78.

The second exception allows for differential treatment where the requirement for vocational training necessary for the proper performance of occupational duties is disproportionate in comparison to the date at which the person applying for the job reaches pensionable age. The aim of this provision is to prevent unreasonable costs of measures that an employer must provide in order to enable the performance of a job (for example specialised training that takes longer than the period of retirement). An additional exception is related to age and sex and allows for differential treatment in regard to different pensionable ages for men and women. This exception does not apply to social security provisions for workers.

Apart from the specific exceptions provided for in Section 6 of the Anti-discrimination Law, general justification for differences of treatment on the ground of age is applicable on the basis of Section 7(1), if the difference of treatment is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. This provision goes beyond Directive 2000/78 and applies to less favourable as well as more favourable treatment (positive measures).

a) Justification of direct discrimination on the ground of age

In the Czech Republic, it is possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age.

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, established by specific laws. The general test for 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 precondition that this occurs in the public interest and for public benefit ...'³⁹⁴ The test of the Czech Constitutional Court corresponds more closely to the position taken by the CJEU in C-411/05, *Félix Palacios de la Villa v Cortefiel Servicios SA*,³⁹⁵ than to the test applied by the CJEU in C-144/04, *Mangold v. Helm*.³⁹⁶ The Anti-discrimination Law provides for a

³⁹⁴ Constitutional Court of the Czech Republic, No. Pl. ÚS 9/95, decision of 28 February 1996. 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 regard to the right to fair remuneration for work in accordance with to Article 28 of the Charter. The Constitutional Court upheld the law and rejected the complaint.

³⁹⁵ European Court of Justice, *Félix Palacios de la Villa v. Cortefiel Servicios SA*, C-411/05, 16 October 2007; <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70359&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=299971>.

³⁹⁶ European Court of Justice, *Mangold v. Helm*, C-144/04, 22 November 2005; <http://curia.europa.eu/juris/document/document.jsf?text=&docid=56134&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=299971>.

justification test which is along the lines of Article 6 of the Employment Equality Directive 2000/78/EC.³⁹⁷

b) Permitted differences of treatment based on age

In the Czech Republic, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78/EC.

Section 6 of the Anti-discrimination Law allows differences of treatment based on age for the proper performance of or access to specific rights and duties in employment or occupation and to the difference in pensionable age for men and women.

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In the Czech Republic, national law allows 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).

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.

First, there is the possibility of challenging their conformity with the Constitution. 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 judgments, 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 precondition of non-arbitrariness, that is, that the inequality is based on reasonable and objective criteria'.³⁹⁸ 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

³⁹⁷ See, for example, Constitutional Court of the Czech Republic, No. Pl. ÚS 31/13 (162/2014), decision of 10 July 2014; http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-31-13_1.

³⁹⁸ Constitutional Court of the Czech Republic (*Ústavní soud*), No. Pl. ÚS 33/96, decision of 4 June 1997; <http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-33-96>.

benefit to one group and at the same time place disproportionate duties on others with reference to public values.³⁹⁹

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.⁴⁰⁰

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

In the Czech Republic, there are 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.

Special conditions for younger workers are discussed below (see Section 4.7.3). However, it is difficult to decide whether their purpose is to promote vocational integration. Instead, they seem to be in place to protect the healthy development of children and young people under 15 years of age.

Special protection is provided for parents of children under 10 years of age, in order to enable them to organise their caring responsibilities around their economic activity (support when caring for a family member). The law also makes provision for caring for another family member whose state of health means it is necessary for somebody to care for them. 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.⁴⁰¹ There are no special conditions for protection of older workers.

4.7.3 Minimum and maximum age requirements

In the Czech Republic, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training.

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 contracts of employment.⁴⁰² 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 their education, school attendance or presence in educational programmes and must not be harmful to their healthy physical, psychological

³⁹⁹ Constitutional Court of the Czech Republic (*Ústavní soud*), No. Pl. ÚS 33/96, 4 June 1997. As a result of an amendment to the Law on higher education, permanent employment contracts of teachers in higher education institutions were changed to contracts terminating on 30 September 1994. A group of MPs called for the amendment to be revoked, on the basis of 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.

⁴⁰⁰ Decisions of the Constitutional Court of the Czech Republic (*Ústavní soud*), No. II.ÚS 1174/09, 13 January 2010, <http://nalus.usoud.cz/Search/GetText.aspx?sz=2-1174-09>; No. Pl. ÚS 53/04, 16 October 2007; http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-53-04_1; No. Pl. ÚS 42/04, 6 June 2006; <http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-42-04>.

⁴⁰¹ Czech Republic, Law No. 54/1956 on sickness insurance for employees.

⁴⁰² In the Czech Republic, compulsory education is for nine years, but the maximum age by which this requirement must be complied with is 17 years.

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 in accordance with special requirements for various types of self-employment, for example, the training or qualifications necessary for certain activities to be carried out properly. Since 2014, according to the new Civil Code, it is possible to become self-employed from the age of 16. Minors might be recognised as having legal capacity if their ability to make their living is proved and they have the assent of their legal representatives.⁴⁰³

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 under the age of 18 years and in certain circumstances requires employers to secure medical examination of employees under 18 years of age.

In some cases, there are minimum age requirements to guarantee some experience necessary to perform certain jobs or functions. The minimum age for judges is 30 years. The minimum age for the functions of the Czech Ombudsman and his or her deputy and for judges of the Constitutional Court is 40 years. The same minimum age applies for members of the Senate. The minimum age for eligibility to be elected as a member of the Chamber of Deputies is 21 years.

In 2016, the Ombudsman found that the Czech Post Office discriminated against certain consumers on the ground of age, since minors younger than 15 years could not acquire a customer card, which gives its owner certain discounts. As a result, the Czech Post Office changed its practice and nowadays, even minors younger than 15 can ask for a customer card with the consent of his/her legal representative.⁴⁰⁴

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. A judge's function terminates ex lege at the end of the year when they reach this age.

Similarly, public prosecutors' contracts are terminated on 31 December of the year in which they reach the age of 70 years. The public service of a member of the security forces (for example the Police of the Czech Republic, Fire Rescue Brigade, Prison Service) ceases on 31 December of the year in which the member reaches the age of 65 years.⁴⁰⁵ According to the Law on professional soldiers, a soldier must be dismissed if he reaches his retirement age.⁴⁰⁶

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

Indirectly fixed conditions of age

⁴⁰³ See Czech Republic, Law No. 89/2012, Civil Code, 3 February 2012, Section 37.

⁴⁰⁴ Public Defender of Rights (2016), *Zpráva o šetření sp. Zn. 4218/2014/VOP* (Report of inquiry No. 4218/2014/VOP), Brno; <http://eso.ochrance.cz/Nalezene/Edit/4210>.

⁴⁰⁵ Czech Republic, Law No. 361/2003 on service of members of security forces, 23 September 2003.

⁴⁰⁶ Czech Republic, Law No. 221/1999 on professional soldiers (*Zákon č. 221/1999 Sb., o vojácích z povolání*), 14 September 1999; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=221~2F1999&rpp=15#seznam>.

Conditions of pay dependent on years of experience

The Labour Code 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 in accordance with 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, lawyers, 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 Section 2.1 above).

4.7.4 Retirement

a) State pension age

In the Czech Republic, there is no state pension age at which individuals must begin to collect their state pensions. If an individual wishes to work longer, the pension can be deferred (but there are exemptions in cases of the state-imposed mandatory retirement age as described below). An individual can collect a pension and still work.

There is a pensionable age at which the state pension is payable (minimum pensionable age), but in general, there is no compulsory retirement age, and if people wish to work for longer, they may choose to defer retirement and to receive a pension while continuing to work. There is also an option for a person who has reached retirement age to continue to work and not yet receive a pension. In this case, the pension of such a person will be higher depending when the person decides to retire.

Following the Law on pension insurance, the pensionable age was set at 60 years for men born before 1936,⁴⁰⁷ for women it depends on the number of children they have brought up. There is also an option for a person who has reached retirement age to continue to work and not yet receive a pension. In this case, the pension of such a person will be higher depending when the person decides to retire.

The ability to lower the retirement age based on the number of children a person has brought up does not apply to men, even if the man has brought up a child or children as a single parent. In October 2007, the Constitutional Court held that the distinction between men and women in this regard is legitimate and not discriminatory. This conclusion was finally confirmed by the ECtHR.⁴⁰⁸ Since 31 December 2012, the pensionable age has been 63 years for men and is reduced for women depending on the number of children that they

⁴⁰⁷ Czech Republic, Law no. 155/1995 on pension insurance, 17 December 1991.

⁴⁰⁸ Constitutional Court of the Czech Republic (*Ústavní soud*), No. Pl. ÚS 53/04, 16 October 2007; http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-53-04_1;ECtHR, *Andrie v. Czech Republic*, No. 6268/08, 17 February 2011; <http://hudoc.echr.coe.int/eng?i=001-103548>.

have brought up. It is exclusively up to employees to decide whether they choose to retire on reaching pensionable age. There is an on-going political discussion regarding pension reform and a further rise in the retirement age, but without any clear outcome at present. Nowadays pensionable age extends in step with the birthdate of an employee. In 2016, the Government proposed a bill setting at 65 years a maximum age limit when people will retire. The bill should be further discussed in the Parliament in 2017.

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 Section 4.7.3.1 above).

b) Occupational pension schemes

In the Czech Republic, there is no normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. If an individual wishes to work longer, payments from such occupational pension schemes cannot be deferred. An individual can collect a pension and still work.

In the Czech Republic, there are no mandatory 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. Resulting from a reform of pension system, there now exists a supplementary pension scheme system through which an individual (without any minimum age requirements) can save some extra money for retirement. Supplementary pension schemes require an amount of money to be paid monthly, which will be increased by state support and the person might also seek for tax advantages.⁴⁰⁹ This can be paid by the employer as an employee benefit, although it is not a widespread practice. There is also no regulation as to the age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

c) State imposed mandatory retirement ages

In the Czech Republic, there are state-imposed mandatory retirement ages.

However, a state-imposed mandatory retirement age does not apply in general. The only state-imposed mandatory retirement ages are those for judges and public prosecutors, whose office is terminated *ex lege* at the end of the year in which they reach 70 years of age. The service of state employees ceases on 31 December of the year in which the member reaches the age of 70 years.⁴¹⁰ Similarly, the service of a member of security forces (for example the Police of the Czech Republic, Fire Rescue Brigade, Prison Service) ceases on 31 December of the year in which the member reaches the age of 65 years⁴¹¹ (see Section 4.7.3 above). There are no changes planned in this respect in the near future.

d) Retirement ages imposed by employers

In the Czech Republic, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

⁴⁰⁹ Czech Republic, Law No. 427/2011 on supplementary pension insurance (*Zákon č. 427/2011 Sb., o doplňkovém penzijním spoření*), 6 November 2011; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=427~2F2011&rpp=15#seznam>.

⁴¹⁰ Czech Republic, Law No. 234/2014 on state service (*Zákon č. 234/2014 Sb., o státní službě*), 1 October 2014; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=234~2F2014&rpp=15#seznam>.

⁴¹¹ Czech Republic, Law No. 361/2003 on service of members of security forces, 23 September 2003; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=361~2F2003&rpp=15#seznam>.

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.

e) Employment rights applicable to all workers irrespective of age

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). However, in practice, older employees often face dismissals that are in reality based on their age. As a result, a lot of people older than 50 are actually unemployed and have difficulties in finding a job. According to the statistics of the Ministry of Labour and Social Affairs from the first term of 2015, job applicants aged 50 and older account for 30.7 % of all unemployed people.⁴¹² By the end of 2016, people aged 55-59 represented the largest group (more than 28 000 persons) among the unemployed.⁴¹³

In a case in 2015, the Ombudsman declared that discrimination might be found if an employer reduces an amount of personal benefit, arguing that an employee receives their pension at the same time.⁴¹⁴

f) Compliance of national law with CJEU case law

In the Czech Republic, national legislation is in line with the CJEU case law on age in regard to compulsory retirement.

In the Czech Republic, there is no compulsory retirement age and the national legislation is generally compliant with the CJEU case law.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In the Czech Republic, national law does not 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 if the employer is encountering economic difficulties. Furthermore, it happens that in selecting employees for redundancy, older employees may be considered to be less flexible or unable to learn new technologies. The Constitutional Court has declared discrimination on the ground of age, based on the statistical evidence, in a case where older employees on a masse scale were dismissed. As a result, the Constitutional Court has stated that organisational changes in the composition of an office must be based on the real needs of the office not on age criteria.⁴¹⁵

⁴¹² Ministry of Labour and Social Affairs (2015), 'Analýza vývoje zaměstnanosti a nezaměstnanosti v 1. pololetí 2015' (Analysis of employment and unemployment in the first term of 2015), December 2015, p. 33; http://portal.mpsv.cz/sz/politikazamest/trh_prace/rok2015p1/anal2015p1.pdf.

⁴¹³ Ministry of Labour and Social Affairs (2016), *Struktura uchazečů o zaměstnání* (Structure of the job seekers), December 2016; <http://portal.mpsv.cz/sz/stat/nz/qrt>.

⁴¹⁴ Public Defender of Rights (2015), *Zpráva za 1. čtvrtletí roku 2015* (Report from the 1st quarter of 2015), Brno, Veřejný ochránce práv, p. 8; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Ctvrtletky/2015_1_Q.pdf.

⁴¹⁵ Constitutional Court of the Czech Republic (*Ústavní soud*), no. II. ÚS 1609/08, 30 April 2009; http://nalus.usoud.cz/Search/GetText.aspx?sz=2-1609-08_1.

In 2015, the Ombudsman found differential treatment in a case of an employee older than 50 whose employment contract was held to have been extended for an unreasonably short period. Although the employer argued that it was a result of decreasing the number of employees, the Ombudsman ascertained discrimination of the applicant on the ground of age.⁴¹⁶

The Ombudsman also ascertained discrimination in a case where two court employees were dismissed for redundancy. The employer decided to dismiss employees who were receiving a retirement pension. The employer also justified the selection of employees to be dismissed by preferring the mothers of minors because, according to the employer, these would have a lesser chance of finding another job. The Ombudsman declared that an employer cannot justify dismissals of older employees on the ground of a preference for mothers of minors while selecting workers for redundancy.⁴¹⁷

b) Age taken into account for redundancy compensation

In the Czech Republic, national law provides for compensation for redundancy. Such compensation is not 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.⁴¹⁸ The applicable collective agreement may contain more favourable conditions. Compensation for older 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)

In the Czech Republic, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

4.9 Any other exceptions

In the Czech Republic, there are no other exceptions to the prohibition of discrimination (on any ground) provided in national law.

⁴¹⁶ Public Defender of Rights (2014), *Zpráva o šetření, sp. zn. 134/2013/DIS* (Report on inquiry No. 134/2013/DIS), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/3576>.

⁴¹⁷ Public Defender of Rights (2016), *Zpráva o šetření, sp. zn. 8024/2014/VOP* (Report on inquiry No. 8024/2014/VOP), Brno, Veřejný ochránce práv; <http://eso.ochrance.cz/Nalezene/Edit/3710>

⁴¹⁸ See Czech Republic, Law No. 262/2006, the Labour Code, 21 April 2006, Section 67; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=262~2F2006&rpp=15#seznam>.

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

a) Scope for positive action measures

In the Czech Republic, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is permitted in national law.

Sections 7(2) and 7(3) of the 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(1)(j) and (k). 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 'nationality' (*národnost*), 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.

It is worth highlighting that positive action is employed less in the Czech Republic than in other European countries and in comparison with the international community.⁴¹⁹

b) Main positive action measures in place on national level

State Integration Programme – SIP 2016

Through Resolution No. 954 of 20 November 2015, the Czech Government responded to the situation in Europe and created a new version of the programme for asylum seekers (people with the international protection status). A major change is the creation of the so-called General Integration Services Provider, which has the task of providing integration services to authorised persons in cooperation with subcontractors, non-governmental organisations, churches or municipalities. In 2016, Caritas Czech Republic played the role of General Integration Services Provider. Integration services are provided for six to 12 months, particularly in the areas of housing, employment, education and health care.

Mandatory quota system for people with disabilities

The duty of employers to compensate for disadvantages linked to disability according to Section 67(2) of the Law on Employment is governed by a type of quota system. Companies with more than 25 employees must apply one or a combination of three measures:⁴²⁰

- employ a certain percentage of employees with disability (4 % of all employees);

⁴¹⁹ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 323.

⁴²⁰ See Section 81(2) of Czech Republic, Law No. 435/2004 on Employment, 13 May 2004.

- commission goods or working programmes from employers who employ more than 50 % employees with disability working in specially established protected workplaces or from people with disability who are self-employed;
- provide payments to the state budget for an employee with disability who should have been employed, but was not. The amount of the payment for one person with disability who should have been employed is calculated as 2.5 multiple of an average month salary and is paid on a yearly basis.⁴²¹ This payment becomes a part of general state income and is not earmarked for any specific purpose. For example, there is no requirement to 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 Ministry of Labour and Social Services has issued a statement⁴²² explaining specifically the three measures related to the employment of a compulsory percentage of people with disabilities. The statement specifies how an average annual number of employees with disability is counted, for instance every employee with a serious health disability is multiplied three times. Furthermore, it explains how the amount of purchased goods and services is counted or how the payments to the state budget must be provided. The information relates to the way in which the compulsory percentage of people with disabilities participating in employment derives from Decree No. 518/2004.⁴²³

In failing to meet the requirements for the compulsory employment of a percentage of people with disabilities, an employer would commit an administrative offence according to Sections 138 and 140 of the Law on Employment. The controlling bodies in such cases are the labour inspectorates.

The state pays allowances to employers whose staff comprise more than 50 % employees with disability.⁴²⁴ The allowances provided constitute 75 % of the average wage in the Czech Republic in the preceding year for a person classified as having a full disability. For a person classified as having a partial disability or being disadvantaged on health grounds, the allowances constitute a 0.33 multiple of the average wage. Moreover, the state contributes to the establishment of protected workplaces for people with disability, which serves to arrange the necessary equipment. There is a condition that this protected workplace must be occupied for at least three years.

The quota system has been criticised for its lack of effectiveness by organisations for people with disabilities. Criticism has focused on employers' preference for making payments to the Government rather than employing people with 'altered working ability' (the term used for 'disability' by the previous Law on Employment). According to the inquiry led by the National Council for People with Disabilities in 2014 it was ascertained that the payments by several ministries, as distinct from hiring people with disabilities, were gradually increasing. For instance, the total amount of the payments by the Ministry of Environment was EUR 8 522 (CZK 269 302) in 2003, EUR 18 334 (CZK 504 744) in 2007 and EUR 25 133 (CZK 690 647) in 2014 (similar growth was discovered concerning payments by the Ministry of Finance and Ministry of Transportation).⁴²⁵

⁴²¹ See Section 82(1) of Czech Republic, Law No. 435/2004 on Employment, 13 May 2004.

⁴²² Ministry of Labour and Social Affairs, (2016), 'Plnění povinného podílu zaměstnávání osob se zdravotním postižením' (Performance of compulsory part of employment of people with disabilities), 21 January 2016; https://portal.mpsv.cz/sz/obecne/prav_predpisy/vyklady/plneni_povinného_podílu_ozp.

⁴²³ Czech Republic, Decree No. 518/2004 executing the law on employment (*Vyhláška č. 518/2004 Sb., kterou se provádí zákon o zaměstnanosti*), 1 October 2004, Sections 15 to 20; <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=518~2F2004&rpp=15#seznam>.

⁴²⁴ Czech Republic, Law No. 435/2004 on Employment, 13 May 2004, Section 78.

⁴²⁵ National Council for People with Disabilities (*Národní rada osob se zdravotním postižením ČR*), (2014), *Inquiry of Employment Rate of People with Disabilities in Ministry Offices*; <http://www.nrzp.cz/dokumenty-odkazy/pruzkumy-v-oblasti-ozp.html>.

Other positive action for people with disabilities

People recognised by the state social security service as having a disability have the right to employment rehabilitation, provided by employment offices.⁴²⁶ 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. This measure can be classified as preferential treatment narrowly tailored.

Social policy measures in regard to Roma

In regard to Roma, there are no measures that can be labelled as 'positive action' in the strict sense. Nevertheless, there is a small programme, which could perhaps be described as a positive measure, providing support to Roma students in higher education through special state financial subsidies. In practice, declaration by an individual of membership of a national minority is a satisfactory qualification to be included in these specific programmes to support the education of Roma. These programmes usually consist of subsidies in the form of social benefits to help students to maintain themselves during studies. Government Regulation No. 98/2002 Coll. sets forth conditions and means of providing subsidies to national minorities and support of integration of Roma people.

The most notable achievement, which was also considerably developed during the caretaker government's brief period of activity (2009–2010), was the effective establishment of the Agency for Social Inclusion (ASI).⁴²⁷ The Office of the Government was tasked with securing the financial basis for the Agency for Social Inclusion in 2009 and 2010.

The ASI invites interested municipalities to set up local partnerships, bringing together the municipality and other local administrative bodies, local NGO representatives, the Czech police and other bodies. The aim is to contribute to the inclusion of socially excluded communities in society, to reduce and revitalise excluded localities and to secure equal opportunities in access to education, housing, social services, health, employment and security for their residents. Currently, the ASI has established cooperative partnerships in 40 selected localities.

The ASI was involved in preparing a conceptual outline for work in 2014 and beyond, with a focus on obtaining funding from EU resources. There have been instances of the Agency for Social Inclusion withdrawing from some municipalities because of their segregation policies, as well as the development of immediate field assistance in places where interethnic tensions have been triggered by the economic crisis.⁴²⁸

In March 2014, the ASI launched a project entitled 'Reduction of Inequalities and Promoting Social Inclusion'. The campaign prepared by the ASI under this project targets children and young people with the aim of reducing social tensions. A communication campaign using social media is the most important tool. The campaign aims to counter myths and provide arguments and facts on the situation of vulnerable groups, and create space in the media for victims and vulnerable groups to tell their stories. In addition, the campaign aims to support representatives from schools, towns and municipalities, police and local initiatives in their work in preventing conflicts as well as in providing professional support to victims.

⁴²⁶ Czech Republic, Law No. 435/2004 on Employment, 13 May 2004, Section 69.

⁴²⁷ The formal basis for the establishment of the ASI was provided by Government Decree No. 85 (dated 23 January 2008) and Decree No. 731 (9 June 2008).

⁴²⁸ Agency for Social Inclusion (2011), *Agentura pro sociální začleňování v romských lokalitách: Zpráva o činnosti v roce 2011* (Agency for social inclusion in Roma localities: 2011 Annual report); <http://www.socialni-zaclenovani.cz/dokumenty/o-agenture?limitstart=10>.

The manual published by the ASI is a notable example of outstanding good practice. It contains practical, step-by-step explanations for commissioners of public contracts on how to implement in practice the option available in accordance with Section 44(8) of Law No. 137/2006 on public tenders, which forms the basis of the requirement that a proportion of at least 10 % of employees employed on public contracts should be previously long-term unemployed persons. The ASI's monitoring committee brings together representatives of the NGOs active in the area of providing assistance to the victims of social exclusion and racial discrimination. These measures can be classified as preferential treatment narrowly tailored.

In 2015 the ASI updated the 'Methods of Coordinated Attitude to Socially Excluded Localities', which regulates the roles of various bodies (e. g. municipalities, regions, ASI), sets out their cooperation schedule and different procedures of negotiation about social inclusion.⁴²⁹ In October 2015 the ASI also issued 'Instruments of Municipalities in the Fight against Social Exclusion', which present possibilities for financial support for municipalities or information on strategic documents.⁴³⁰ To inspire good governance the ASI published *Social Inclusion, Employment Development and the Fight against Poverty in Small Municipalities*, which provides examples of specific social inclusion projects.⁴³¹

The ASI also evaluated the effectiveness of its interventions in social inclusion from its formation in 2008 until the present.⁴³² It concluded that the ASI operates as a unique and effective instrument of the state, with necessary professionalism. Up to 2015, the ASI has issued 311 method documents, research studies, manuals and other materials. Among the major achievements of the ASI is the success in social services, debt counselling, and the establishment of social businesses. However, it was also found that the ASI operates successfully if there is the support of both political leaders and the local self-government.

⁴²⁹ Agency for Social Inclusion (2015), 'Metodika koordinovaného přístupu k sociálně vyloučeným lokalitám-aktualizovaná' (Methods of Coordinated Attitude to Socially Excluded Localities - update), October 2015; <http://www.socialni-zaclenovani.cz/dokumenty/metodika-kpsvl-aktualizovana-2-10-2015>.

⁴³⁰ Agency for Social Inclusion (2015), 'Nástroje pro obce v boji proti sociálnímu vyloučení' (Instruments of Municipalities in the Fight against Social Exclusion), October 2015; <http://www.socialni-zaclenovani.cz/dokumenty/o-agenture>.

⁴³¹ Agency for Social Inclusion (2015), *Sociální začleňování, rozvoj zaměstnanosti a boj s chudobou na malých obcích ČR* (Social Inclusion, Development of Employment and Fight against Poverty in Small Municipalities); <http://www.socialni-zaclenovani.cz/dokumenty/o-agenture>.

⁴³² Agency for Social Inclusion (2015), *Vyhodnocení účinnosti intervencí Agentury od vzniku do současnosti* (Evaluation of Effectiveness of Interventions of ASI from its formation until the present); <http://www.socialni-zaclenovani.cz/dokumenty/o-agenture>.

6 REMEDIES AND ENFORCEMENT

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

- a) Available procedures for enforcing the principle of equal treatment

In the Czech Republic, the following procedures exist for enforcing the principle of equal treatment.

Civil judicial procedures (tort claim)

Section 10 of the Anti-discrimination Law introduced the possibility of a 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'.⁴³³ In addition, victims of discrimination can bring an action in accordance with special provisions of the Law on Employment.⁴³⁴ The Section 133a of the Civil Procedure Code⁴³⁵ and the shift of the burden of proof apply in both cases. The procedure is binding for the parties. There are no different procedures for employment in the private and public sectors.

The exceptional character of monetary compensation as it is embodied in the law corresponds to the traditional concept of Section 11 of the previous Civil Code of 1964 (Law no. 64/1961, Civil Code), which provided for protection of the personal rights of individuals.⁴³⁶ The new Civil Code brought in Sections 82 and 93, which regulate protection and injury of personal rights.⁴³⁷ However, Section 10 of the Anti-discrimination Law is 'lex specialis' to the provisions of the Civil Code. Therefore, a victim of discrimination should proceed according to the Anti-discrimination Law. Nevertheless, if certain differential treatment does not fall only under the scope of Anti-discrimination Law (for example mutual racist insults of employees), then Sections 82 and 93 of the Civil Code apply.

Personal rights extend mainly to life, health, civic honour and human dignity, privacy, name and expressions of a personal character. The idea that monetary compensation for non-material damage represents an exceptional redress in civil disputes also hampered application of 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. Nevertheless, the courts rarely award the full amount claimed and sometimes reduce it considerably.

Criminal judicial procedures

The Criminal Code sets penalties for crimes relating to racial discrimination and discrimination on the grounds of religion or belief.⁴³⁸

The Criminal Code covers only the most serious incidents, such as those involving racial hatred or violence, and acts motivated by hatred, violence on grounds of religion or belief

⁴³³ This is the exact formulation of the law, but in court practice, monetary compensation for discrimination is rarely awarded.

⁴³⁴ See Czech Republic, Law No. 435/2004 on Employment, 13 May 2004, Section 4 (10).

⁴³⁵ Czech Republic, Law No. 99/1963, Civil Procedure Code, 4 December 1963.

⁴³⁶ Czech Republic, Law No. 40/1964, Civil Code (*Zákon č. 40/1964 Sb., Občanský zákoník*), 26 February 1964.

⁴³⁷ Czech Republic, Law No. 89/2012, Civil Code, 3 February 2012.

⁴³⁸ Czech Republic, the Criminal Code (*Trestní zákoník*), 1 January 2010.

or propagation of neo-Nazism. 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. The procedure is binding. There are no different procedures for employment in the private and public sectors.

Administrative judicial procedures

The Code of Administrative Court Procedure regulates judicial review of administrative decisions.⁴³⁹ Besides other things the court reviews the decisions of administrative bodies, which have identified as discriminatory certain practices of petitioners. The procedure is binding for the parties. There are no different procedures for employment in the private and public sectors.

Administrative procedures

According to the Ombudsman's research of the period 2010-2014, victims of discrimination turned to administrative bodies more frequently than to courts, a situation that is probably caused by a number of barriers to access to the courts such as court fees, length of judicial proceedings etc. 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. However, they may not award compensation for damage to a victim of discrimination who has turned to a court with their particular claim pursuant to Section 10 of the Anti-discrimination Law.

The administrative bodies generally act *ex officio* and usually require no fee associated with accepting the complaint. Every administrative body has a duty to inform the complainant on its action regarding the claim and therefore, the complainant has free access to exclusive and needed information.⁴⁴⁰

The duty to protect people from discrimination has been placed upon several administrative bodies in the Czech Republic – the National Labour Inspectorate, local labour inspectorates, the Czech Trade Inspectorate, the Czech School Inspectorate, supervising bodies in advertising and TV and radio broadcast, the Czech Telecommunications Office, the Energy Regulatory Office and the Czech National Bank. Those administrative bodies may impose sanctions, but they may also lead preventive actions. However, the Ombudsman stated that only a limited number of officers have sufficient legal qualification to deal with discrimination cases submitted to administrative bodies.

Those administrative bodies are generally competent to investigate misdemeanours and administrative offences involving discrimination and to impose sanctions. However, administrative bodies and inspectorates established in fields other than employment and trade inspection, which fall within the scope of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC), do not have administrative procedures to protect against discrimination in most cases. This is mainly due to the lack

⁴³⁹ Czech Republic, Law No. 150/2002, Code of Administrative Court Procedure (*Soudní řád správní*), 1 January 2003.

⁴⁴⁰ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p.109; <http://www.ochrance.cz/en/discrimination/research/>.

of material provisions in specific laws (see for example the Law on the Czech agriculture and food inspection).⁴⁴¹

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

The same situation exists in 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).

National Labour Inspectorate and Local Labour Inspectorates

In theory, 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 EUR 36 363 (CZK 1 million).⁴⁴² In practice, however, the sanctions imposed are much lower. The procedure is binding for the parties.

The Law on Employment defines the duties of employment offices⁴⁴³ and the Administrative Code⁴⁴⁴ 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 imposed by labour inspectorate bodies become income for the state budget. As part of the inspection, inspectorate authorities may enter the workplace, interview the employees and impose measures to remove the deficiencies identified through the inspection.

Czech School Inspectorate

The Czech School Inspectorate is the national body responsible for ensuring schools comply with national legislation. It also monitors discrimination in the education system. The Education Act contains an open list of discrimination grounds because of a term 'other status', which was the discrimination ground most frequently contested in 2010-2014 by the Czech School Inspectorate.⁴⁴⁵ A 2013 survey by the Czech School Inspectorate exposed the disproportionately high number of Roma children in schools for pupils with 'mild mental disabilities'. Every year, the Czech School Inspectorate issues an annual report, which includes discrimination cases. For example, in the 2014-2015 report, the Czech School Inspectorate found that 23 primary schools had not respected their duties in respect of the education of people with disabilities (e.g. the parents paid for part of the salary of a teaching assistant, an individual study plan was not issued, etc.).⁴⁴⁶

Czech Trade Inspectorate

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)', which is subordinate to the Ministry of Industry and Trade. Under the Law on the Czech Trade Inspectorate, the CTI is authorised to inspect legal and natural

⁴⁴¹ Czech Republic, Law No. 188/2002 on Czech agriculture and food inspection (*Zákon č. 188/2002 Sb., o Státní zemědělské a potravinářské inspekci*), 20 March 2002.

⁴⁴² See Czech Republic, Law No. 435/2004 on Employment, 13 May 2004, Sections 139 and 140.

⁴⁴³ See Czech Republic, Law No. 435/2004 on Employment, 13 May 2004, Section 7.

⁴⁴⁴ Czech Republic, Law No. 500/2004, Administrative Code (*Správní řád*), 1 January 2006.

⁴⁴⁵ Polák, P. (2015), 'Monitoring činnosti správních orgánů' (Monitoring the work of administrative bodies), paper given at a conference organised by the Public Defender of Rights (*Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti*), 1st July 2015; http://spolecne.ochrance.cz/fileadmin/user_upload/projekt_ESF/Konference_diskriminace/Monitoring_cinnosti_spravnich_organu_1_07_2015.pdf. It is not clear what is included in 'other status' in 2010-2014.

⁴⁴⁶ Czech School Inspectorate (2015), *Výroční zpráva za školní rok 2014/2015* (Annual Report for 2014-2015), p. 48; <http://www.csicr.cz/html/VZ2014-15v2/flipviewerxpress.html>.

persons which sell or supply goods and services. The Czech Trade Inspectorates carry out supervisory activity in the sphere of goods and services in a situation where no special supervisory body exists. 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 or natural persons. Although the CTI is required to collaborate with civil 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 consumers can only serve as a reason to carry out an inspection. The procedure is binding for the parties. The Czech Trade Inspectorate may impose a fine up to EUR 111 111 (CZK 3 million) for violating the prohibition of discrimination.⁴⁴⁷ According to the Ombudsman's research, the Czech Trade Inspectorate receives on average 74 submissions a year concerning consumer discrimination.⁴⁴⁸ In 2015, the Czech Trade Inspectorate received 23 491 complaints from consumers, of which 96 were related to discrimination, mainly double pricing. The most referred discriminatory reason was nationality, especially in connection with double pricing for foreign consumers in Czech restaurants.⁴⁴⁹ The Czech Trade Inspectorate also carried out 2 138 blind checks focused on discrimination against consumers. Although discrimination was found in only 0.9 % of the checks, the Czech Trade Inspectorate intends to continue such checks in following years.⁴⁵⁰

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 Misdemeanours Law. Acts of discrimination can be sanctioned in accordance with the provisions on misdemeanours against community relations.⁴⁵¹ 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 a person because of their membership of a national minority, their 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 to their property was caused by the misdemeanour). The procedure is binding for the parties.

Free legal assistance

Legal assistance is provided through court-appointed lawyers and the Czech Bar Association. In fact, free legal assistance is provided predominantly to appoint a representative for court disputes. Therefore, access to other legal assistance free of charge is difficult. According to the findings of the Czech Ombudsman, difficulties in finding qualified legal assistance are among the most common reasons why victims of discrimination, even in cases where the Ombudsman finds discrimination, do not want to file a discrimination complaint with the civil courts. To challenge this state of affairs, the Ombudsman initiated collaboration with an NGO, Pro Bono Alliance, and securing pro bono representation in some cases. In 2015, other three law firms started to participate in the NGO Pro Bono Alliance. Those law firms cooperate with the Ombudsman on selected cases, which require bringing proceedings to court. The Ombudsman organises training and

⁴⁴⁷ Czech Republic, Law No. 634/1992 on the protection of consumers (*Zákon č. 634/1992 Sb., o ochraně spotřebitele*), 16 December 1992, Section 24(14)(c).

⁴⁴⁸ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p. 136; <http://www.ochrance.cz/en/discrimination/research/>.

⁴⁴⁹ Czech Trade Inspectorate (2015), *Výroční zpráva ČOI za rok 2015* (Annual report for 2015), p. 25; <http://www.coi.cz/userdata/files/dokumenty-ke-stazeni/vyrocní-zprava-2015.pdf>.

⁴⁵⁰ Czech Trade Inspectorate (2015), *Výroční zpráva ČOI za rok 2015* (Annual report for 2015), p. 46; <http://www.coi.cz/userdata/files/dokumenty-ke-stazeni/vyrocní-zprava-2015.pdf>.

⁴⁵¹ See Czech Republic, Law No. 200/1990, on misdemeanours (*Zákon o přestupcích*), 17 May 1990, Section 49.

seminars on the topic of anti-discrimination law for lawyers of the law firms that have been engaged.⁴⁵² According to the 2015 research of the Ombudsman, the lack of free legal aid is considered to be one of the main barriers to the enforcement of the Anti-discrimination Law (93 % of administrative bodies and 67 % of courts agreed on the possible benefits of such a measure).⁴⁵³ Since 2012, the Pro Bono Alliance secured legal assistance in more than 15 discrimination cases from the Ombudsman. In 2016 alone, one of the law firms assumed five cases from the Ombudsman.⁴⁵⁴

b) Barriers and other deterrents faced by litigants seeking redress

The Czech Ombudsman has criticised the barriers that remain in enforcing anti-discrimination law, such as difficulties in establishing elements of proof, inaccessibility of good legal advice, length of proceedings and the amount of the judicial fee for filing an anti-discrimination action.⁴⁵⁵ However, the societal problems in the Czech Republic cannot be solved solely by means of an effectively working equality body, through definitions of discrimination in the form prescribed by the directives or by securing effective access to the courts. In 2015, the Czech Ombudsman issued recommendations to help effective protection from discrimination in relation to awareness campaigns for underprivileged groups, the education of lawyers, equal protection in the court, free legal aid, incorporation of *actio popularis*, and an increase in the frequency of inspections, etc.⁴⁵⁶

Court proceedings are financially onerous and very long. This can be demonstrated by the case involving 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'. With the support of an NGO, in 2001 a Roma victim submitted a claim to the civil courts for an apology and financial compensation. The final decision of the Prague High Court was delivered in 2014, awarding compensation to the claimant.⁴⁵⁷

According to the Czech Ombudsman, the current amount of court fees for filing discrimination complaints is one of the reasons victims seldom turn to civil courts. The court fee for an application to initiate proceedings seeking monetary compensation for non-material damage amounts to EUR 73 (CZK 2 000). If victims of discrimination claim monetary compensation in excess of EUR 7 273 (CZK 200 000), the fee amounts to 1 % of the amount claimed. If victims include other claims, e.g. cessation of discriminatory conduct, they will also be required to pay a further amount of EUR 73 (CZK 2 000). The Czech Ombudsman suggested that the amount of the court fee for filing a discrimination claim with the courts be modified so that it no longer includes a percentage amount of the monetary compensation claimed for non-material damage, and the flat court fee be reduced to EUR 37 (CZK 1 000).⁴⁵⁸ However, no change has been adopted in this regard.

⁴⁵² Public Defender of Rights (Ombudsman), (2015), 'Pro bono síť advokátů proti diskriminaci se rozrůstá o další tři kanceláře' (Pro Bono Alliance of lawyers against discrimination is expanding by three law firms); <http://www.ochrance.cz/diskriminace/aktualita-z-diskriminace/aktualita-z-diskriminace-2015/pro-bono-sit-advokatu-proti-diskriminaci-se-rozrusta-o-dalsi-tri-kancelare/>.

⁴⁵³ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p. 129; <http://www.ochrance.cz/en/discrimination/research/>.

⁴⁵⁴ Public Defender of Rights (Ombudsman), (2016), *Advokátní kancelář zapojená do sítě pro bono převzala již pátý případ* (Law firm assumed the fifth case within pro bono assistance); <http://www.ochrance.cz/diskriminace/aktualita-z-diskriminace/aktualita-z-diskriminace-2016/advokatni-kancelar-zapojena-do-site-pro-bono-prevzala-jiz-paty-pripad-v-tomto-roce/>.

⁴⁵⁵ Public Defender of Rights (Ombudsman), (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv, p. 79; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna-zprava_VOP_2014.pdf.

⁴⁵⁶ Public Defender of Rights (Ombudsman), (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: Victims of discrimination and obstacles to the access to justice), pp. 138-140.

⁴⁵⁷ For further information see section 2.2.1.

⁴⁵⁸ Office of the Public Defender of Rights (2012), *Annual Report on the Activities of the Public Defender of Rights in 2012*, p. 18, available at:

In certain limited circumstances, court fees can be waived upon application and a lawyer can be provided free of charge by the court to litigants who cannot afford to pay for one. However, this does not apply to the duty to compensate for the costs of the other party, if the claimant loses. The Czech Civil Procedure Code is based on the principle of 'loser pays'. Processing of cases can last three years and a period of up to six years or longer is also not particularly exceptional.

Such protracted cases raise costs to insupportably risky levels, which means that it is difficult for a victim (who is not supported by an NGO or trade union) to bear these difficulties alone for longer periods.

In 2015, the Ombudsman produced a report identifying the main obstacles for victims of discrimination in accessing justice – psychological barriers, lack of information, prioritising other solutions (e.g. the Ombudsman, in-house counsel), fear of failure and the consequences, difficulty of a court proceedings, and unwillingness to invest the energy in filing a complaint. Furthermore, the Ombudsman has recommendations to:

- organise targeted awareness campaigns in the areas where attempts at discrimination can be predicted
- spread information about the most available places that someone can contact if they face discrimination
- create beneficial conditions for the operation of NGOs that provide free consulting
- deepen the education of judges, lawyers, inspectors, officers, teachers, social workers and police officers
- refine the wording of Section 10 of the Anti-discrimination Law in order to easily award monetary compensation
- provide equal protection in court to all victims of discrimination
- modify the court fee for filing anti-discrimination lawsuits so that it does not contain the percentage share of the sum of the claimed monetary compensation for non-pecuniary damage and decrease the court fee to EUR 37 (CZK 1 000)
- incorporate actio popularis into Czech law
- refine and enhance the database of court decisions by the Ministry of Justice of the Czech Republic, etc.⁴⁵⁹

The Ombudsman also stressed that the costs of litigation dissuade victims from filing anti-discrimination cases, because courts often do not award costs of the proceedings to either party. An average cost of proceedings is EUR 1 363 (CZK 36 794) and the highest awarded costs reached EUR 5 292 (CZK 142 877).⁴⁶⁰ According to the Ombudsman's research, underreporting of discrimination mainly concerns woman, senior citizens, Roma people, third-country nationals and members of sexual minorities.⁴⁶¹

It is possible to bring a case whether or not the employment relationship concerned has been terminated. Procedural time limits for litigation are only rarely set. One exception relevant in this context is that of an action for unlawful dismissal, which must be submitted within two months of the date of dismissal.

c) Number of discrimination cases brought to justice

http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2012.pdf.

⁴⁵⁹ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p. 50-58; <http://www.ochrance.cz/en/discrimination/research/>.

⁴⁶⁰ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p.135; <http://www.ochrance.cz/en/discrimination/research/>.

⁴⁶¹ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p.80; <http://www.ochrance.cz/en/discrimination/research/>.

In the Czech Republic, there are no available statistics on the number of cases related to discrimination brought to justice, however, there are statistics on cases decided by Czech courts.

According to the statistical data provided by the Ministry of Justice, civil courts decided 18 discrimination cases in 2016.⁴⁶² Most of these cases (11) were related to employment.⁴⁶³ In 2015, Czech civil courts reached final and conclusive decisions in 13 discriminatory cases.⁴⁶⁴ In 2014, Czech civil courts reached final and conclusive decisions in 17 discrimination cases.⁴⁶⁵ Decisions of the Supreme Court or the Constitutional Courts are not included in these data.

d) Registration of discrimination cases by national courts

In the Czech Republic, discrimination decisions are registered as such by national courts.

Decisions on discrimination cases are registered by national courts as a special type of proceedings. They are not differentiated by ground; only labour disputes where discrimination based on sex is claimed and disputes concerning termination of labour relations where discrimination based on sex is claimed are monitored separately. The data are gathered by the Ministry of Justice and published on their website.⁴⁶⁶

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

a) Engaging on behalf of victims of discrimination (representing them)

In the Czech Republic, associations/organisations/trade unions are entitled to act on behalf of victims of discrimination.

According to Section 11 of the Anti-discrimination Law, associations can provide legal assistance to victims of discrimination, and submit motions to administrative bodies responsible for monitoring lawful conduct of natural and legal persons in different areas. However, this provision does not constitute any special right of these associations to represent victims of discrimination. The associations can also seek payment from clients for providing the legal assistance. According to Section 26(3) 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 to proceedings can be represented by a legal entity that according to its articles of incorporation focuses on protection against discrimination within its activities. In this respect, the term legal entity should be understood, in compliance with the directives, in a broad sense. Therefore, any non-profit organisation with a legitimate aim to promote equal treatment, can represent the victims.⁴⁶⁷ The organisation can only represent the victim as a chosen representative,

⁴⁶² Czech Republic, Ministry of Justice (2016), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistics on legally effective decisions of courts in civil cases according to categories of disputes), available at: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

⁴⁶³ Czech Republic, Ministry of Justice (2016), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistics on legally effective decisions of courts in civil cases according to categories of disputes), available at: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

⁴⁶⁴ Czech Republic, Ministry of Justice (2015), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistics on legally effective decisions of courts in civil cases according to categories of disputes), available at: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

⁴⁶⁵ Czech Republic, Ministry of Justice (2014), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistics on legally effective decisions of courts in civil cases according to categories of disputes), available at: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

⁴⁶⁶ Czech Republic, Ministry of Justice (2014), *Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů* (Statistics on legally effective decisions of courts in civil cases according to categories of disputes), available at: <http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html>.

⁴⁶⁷ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. (2016), *Antidiskriminační zákon Komentář* (Commentary on the Anti-discrimination Law), Praha, C. H. Beck, p. 411.

based on the power of representation. These associations or other organisations have no legal duty to act on behalf of victims. Similar legislation also applies to other types of procedures. According to the Ombudsman, better cooperation between NGOs and state institutions should be developed in order to improve victims' access to justice.⁴⁶⁸

b) Engaging in support of victims of discrimination

In the Czech Republic, associations/organisations/trade unions are entitled to act in support of victims of discrimination.

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

c) Actio popularis

In the Czech Republic, national law does not allow associations / organisations / trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (actio popularis).

Actio popularis is not permitted in respect to discrimination claims in the Czech Republic. However, in their 2013 annual report, the Czech Ombudsman recommended that the legislation be amended so that in discrimination cases NGOs could bring actio popularis complaints with courts. National legislation permits actio popularis in the consumer and environmental fields. According to the 2015 research, the majority of administrative bodies (87 %) and two thirds of the courts (65 %) would consider it worthwhile if the Ombudsman could file actio popularis. On the other hand, the attitude of public bodies towards the possibility of NGOs bringing actio popularis is rather reserved.⁴⁶⁹

Nevertheless, in 2016 an important bill introducing the power for the Ombudsman to bring actio popularis in discrimination cases was discussed in the legislature. The bill should be further considered by the Chamber of Deputies in 2017.⁴⁷⁰

d) Class action

In the Czech Republic, national law does not allow associations / organisations / trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

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

In the Czech Republic, national law requires a shift of the burden of proof from the complainant to the respondent.

A shift of the burden of proof in discrimination cases is required by Section 133a of the Civil Procedure Code. According to this provision, if the claimant states before the court facts from which it may be inferred that there has been direct or indirect discrimination.

- on grounds of sex, racial or ethnic origin, religion, faith, belief, disability, age or sexual orientation in employment or access to employment, profession, business or

⁴⁶⁸ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p.84; <http://www.ochrance.cz/en/discrimination/research/>.

⁴⁶⁹ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p.129; <http://www.ochrance.cz/en/discrimination/research/>.

⁴⁷⁰ Chamber of Deputies (2016), *Sněmovní tisk 379/0* (Press of the Chamber of Deputies No. 379/0); <http://www.psp.cz/sqw/historie.sqw?o=7&t=379>.

- self-employment, including access to these, membership of clubs and other organisations of workers or employers, membership and activities in professional chambers;
- on the basis of racial or ethnic origin in the provision of health and social care, access to education and training, access to public procurement, access to housing, membership of associations and interest in the sale of goods in a shop or service; or
- based on sex in access to goods and services; the defendant must prove that there was no breach of the principle of equal treatment.

Nevertheless, according to the Section 133a of the Civil Procedure Code, the shifted burden of proof does not apply in all situations (for example, it does not apply where a person with disability complains about access to services or education). Therefore, the Ombudsman recommended the amendment of Section 133a in order to apply shifted burden of proof in all discrimination cases.⁴⁷¹ However, the Government did not accept the recommendation.

In 2006, the Constitutional Court declared the Czech provisions on burden of proof compatible with the guarantees of fair trial provided by the Charter.⁴⁷² The application of provisions on the burden of proof were later also specified by the Supreme Court.⁴⁷³

The shift of the burden of proof is only applicable to civil procedures. In a case from 2015, the Constitutional Court criticised lower courts for not applying the shift in the burden of proof, although the complainant had claimed discrimination on the ground of sex regarding his dismissal from employment. This is evidence of a more general problem with the application of the shift of the burden of proof before the Czech courts. Moreover, the Ombudsman reproached the lower courts because documents presented by the complainant were not sufficiently evaluated and the statement of the Ombudsman (which had made the criticism that the Labour Inspectorate had not ascertained the alleged discrimination well) was ignored.⁴⁷⁴

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

In the Czech Republic, there are legal measures of protection against victimisation.

Section 4(3) 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. Victimisation also concerns people other than those who were victims of discrimination. Section 4(3) provides broader protection than the directive, since it covers all the grounds stipulated in the Anti-discrimination Law.

In a 2010 case, the Ombudsman confirmed that victimisation is unfavourable treatment, disadvantage or abuse of legal position, which has been provoked as a consequence of a person's exercising of their rights. The Ombudsman specified that 'exercising of rights' can be understood as filing an action for protection of personality, where a Roma person makes their claim regardless of their Roma origin.⁴⁷⁵

⁴⁷¹ Public Defender of Rights (Ombudsman), (2015), *Výroční zpráva o ochraně před diskriminací* (Annual report on protection against discrimination), p. 23; http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocní_zpravy/2015-DIS-vyrocní-zprava.pdf.

⁴⁷² Constitutional Court of the Czech Republic, No. Pl. ÚS 37/04, 419/2006, 26 April 2006; <http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-37-04>.

⁴⁷³ Supreme Court of the Czech Republic, No. 21 Cdo 246/2008, 11 November 2009; http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/0A33D83B7E3D04D2C1257A4E0064BF0E?openDocument&Highlight=0.

⁴⁷⁴ Constitutional Court of the Czech Republic, No. III. ÚS 880/15, 8 October 2015; http://nalus.usoud.cz/Search/GetText.aspx?sz=3-880-15_1.

⁴⁷⁵ Public Defender of Rights (Ombudsman), *Zpráva o šetření sp. zn. 96/2010/DIS* (Report on inquiry No. 96/2010/DIS), 6 December 2010; <http://eso.ochrance.cz/Nalezene/Edit/1946>.

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

a) Applicable sanctions in cases of discrimination – in law and in practice

Administrative sanctions according to specific laws and the Law on misdemeanours

In theory, administrative sanctions of up to EUR 36 363 (CZK 1 million) can be imposed in the area of access to employment and labour law. The Czech Trade Inspectorate may impose a fine up to EUR 111 111 (CZK 3 million).

However, the amounts actually imposed are much lower and the number of cases concerning discrimination where a sanction is imposed is very limited. In some cases, administrative sanctions cannot be considered as dissuasive, effective and proportionate. However, in recent years, in cases involving discriminatory job advertisements, the Czech Employment Inspectorate imposed an average fine of EUR 883 (CZK 23 850) and the highest sum reached EUR 9 259 (CZK 250 000). The Czech Trade Inspectorate mostly deals with double pricing, where an average fine reaches EUR 1 620 (CZK 43 750). According to the Ombudsman's research, the administrative bodies particularly penalised discriminatory activities that were sufficiently supported by documentary evidence or personal testimony.⁴⁷⁶

In 2016, the Ombudsman found direct discrimination of Roma persons who used situation testing and were refused a flat by two real estate agents. The applicant turned to the Czech Trade Inspectorate, which imposed on both agencies a fine of EUR 925 (25 000 CZK). The Ombudsman declared the procedure of the Czech Trade Inspectorate correct and said that the applicants could be also entitled to just satisfaction through judicial proceedings.⁴⁷⁷

The administrative investigation of misdemeanours has been extremely ineffective because previously the Law on misdemeanours required an investigation to be completed within one year of the alleged misdemeanour, otherwise it had to be dropped. Since October 2015 the statutory limitation can be extended to two years. This may change the situation in which it has been quite exceptional for discriminatory acts to be punished through the misdemeanour procedure.

Criminal sanctions according to the Criminal Code

In criminal proceedings, 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, forfeiture of items, expulsion from the Czech Republic for a determinate or indeterminate period (which would result in deportation) and a ban on residence.⁴⁷⁸

In cases concerning criminal acts related to ethnic or religious violence and hatred, punishments primarily consist of imprisonment. In less severe cases, the courts will impose community work. In practice, 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 or propagation of neo-Nazism. Where discrimination occurs, the investigative bodies usually conclude that the act committed is not so dangerous to society

⁴⁷⁶ Public Defender of Rights (Ombudsman) (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti); <http://www.ochrance.cz/en/discrimination/research/>, p. 137.

⁴⁷⁷ Public Defender of Rights (Ombudsman) (2016), *Zpráva o šetření č. 6780/2014/VOP* (Report on inquiry no. 6780/2014/VOP), 19 January 2016; <http://eso.ochrance.cz/Nalezene/Edit/3922>.

⁴⁷⁸ See Czech Republic, Law No. 40/2009, Criminal Code, 8 January 2009, Section 27.

as to be regarded as a crime and consequently refer these incidents to misdemeanour commissions for administrative investigation.⁴⁷⁹

In criminal proceedings, compensation can be awarded by the court to the victims of a criminal act. In recent years, the jurisprudence of the criminal courts tends to award somewhat higher compensation, especially where the harm suffered by the victim involves the death of a close relative, serious damage to health or mutilation.⁴⁸⁰

Civil sanctions (claims for pecuniary damages and non-pecuniary damages)

While pecuniary damages can generally be claimed by individuals who suffer material loss 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, the Civil Code (in provisions concerning protection of personal rights) and the Anti-discrimination Law allow for non-pecuniary damages to be claimed. Reinstatement, *restitutio in integrum*, apologies and injunctive relief can all be claimed under certain circumstances. 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.⁴⁸¹

The court can award non-pecuniary damages up to the amount requested by the claimant, but can also award a lower amount. The amounts vary considerably – courts have awarded claimants in discrimination cases amounts ranging from EUR 200 (CZK 5 000) (as awarded in 2004 by the Olomouc High Court in a case of racial discrimination in housing) to EUR 10 000 (CZK 250 000) in cases relating to racial discrimination in employment, services or housing.

According to the Ombudsman's research on discrimination cases in 2010-2014, the highest litigated monetary compensation claimed for non-pecuniary damage was EUR 55 556 (CZK 1 500 000), and the highest litigated sum awarded was EUR 37 037 (CZK 1 000 000) for discrimination in employment. The average amount of claimed monetary compensation for non-pecuniary damage was EUR 9 702 (CZK 261 944). However, the vast majority of claims to award monetary compensation for non-pecuniary damage were dismissed (21 cases); the court actually awarded monetary compensation for non-pecuniary damage in only one case, for the sum of EUR 1 889 (CZK 51 000). As a result, the Ombudsman repeatedly criticised the provision of Section 10 of the Anti-discrimination Law, which indicates that compensation for non-pecuniary damage has a supportive character.⁴⁸²

b) Ceiling and amount of compensation

Amounts of compensation awarded by the courts to compensate private individuals are not, as a principle, limited by a ceiling.

There is no official information concerning amounts of compensation to refer to.

⁴⁷⁹ Office of the Public Defender of Rights (2014), *Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: victims of discrimination and barriers in access to justice), pp. 40. Available at:

http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/CZ_Diskriminace_v_CR_studie.pdf.

⁴⁸⁰ For example, in the case of a racially motivated arson attack, the Ostrava Regional Court ordered the four convicted perpetrators to pay jointly EUR 345 455 (CZK 9.5 million) to the child victim, who was seriously burned during the attack, as non-material compensation.

⁴⁸¹ See Czech Republic, Law No. 89/2012, Civil Code, 3 February 2012, Section 13(3), and Czech Republic, Law No. 435/2004 on Employment, 13 May 2004, Section 4(11).

⁴⁸² Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p. 135; <http://www.ochrance.cz/en/discrimination/research/>.

c) Assessment of the sanctions

It is true that some compensation amounts awarded by the courts have been extremely low. However, the number of cases where compensation was awarded is still limited and it is thus difficult to evaluate whether the sanctions awarded by the civil courts are effective, proportionate and dissuasive.

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 Roma woman who enquired about housing available for rent. While her application was refused, with an explanation that there were no flats available for rent in the building, a Czech couple making the same enquiry several minutes later were shown a flat in the same building and told that they could move in immediately.

The Regional Court in Ostrava awarded the claimant EUR 400 (CZK 10 000), the defendant appealed and the court of second instance lowered the amount to half the original award (EUR 200 / CZK 5 000).⁴⁸³ However, in the case 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 Prague High Court in the repeated proceedings awarded the claimant compensation of EUR 926 (CZK 25 000).⁴⁸⁴

On the other hand, amounts paid as compensation to victims of discrimination are rising. In 2013, an employer who refused to accept a 60-year-old man for a position as a driver on the grounds that the work was physically very demanding and unsuitable for the elderly, agreed an out-of-court settlement of EUR 3 200 (CZK 80 000).⁴⁸⁵ With the adoption of the new Civil Code, in force from 1 January 2014, it is also expected that compensation for violations of fundamental rights and the dignity of the person will rise. According to the Ombudsman's research of 2010-2014, courts held in favour of the claimant in only six of 56 submitted cases, but awarded monetary damages (of EUR 1 889 (CZK 51 000)) in a single case.⁴⁸⁶

According to the *Academic Commentary on the Anti-discrimination Law*, situation testing should not detract from the importance of discriminatory behaviour. In general, it should be borne in mind that financial compensation in discrimination cases has both a satisfactory function and a preventive function, since it should sanction the discriminator and dissuade others from discriminatory behaviour.

⁴⁸³ Regional Court Ostrava (*Krajský soud v Ostravě*), No. 23 C 110/2003; High Court in Olomouc (*Vrchní soud v Olomouci*), No. 1 Co 99/2004.

⁴⁸⁴ Prague High Court (*Vrchní soud v Praze*), no. 1 Co 203/2013-136, 17 February 2014.

⁴⁸⁵ Public Defender of Rights (Ombudsman) (2013), 'Finanční odškodnění obětí diskriminace' (Financial compensation for victims of discrimination), Press release 3 June 2013; <http://www.ochrance.cz/aktualne/tiskove-zpravy-2013/financni-odskodneni-obeti-diskriminace/>.

⁴⁸⁶ Public Defender of Rights (Ombudsman) (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti), p. 89; <http://www.ochrance.cz/en/discrimination/research/>.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The Anti-discrimination law assigns the role of anti-discrimination body to the Public Defender of Rights (the Czech Ombudsman). The Czech Ombudsman has responsibility for all grounds covered by the Equality directives to provide support to individuals when filing discrimination complaints, to conduct research and to publish reports and recommendations. Until 1 December 2009, the remit of the Czech Ombudsman encompassed protection against all unlawful acts by the state administration (public ombudsman). From this date, the Czech Ombudsman also has the remit of equality body competent in regard to the full scope of the Anti-discrimination Law. The budget allocated only allowed the Czech Ombudsman to employ five new persons to deal with discrimination issues and from the very beginning there have been concerns about how the Ombudsman will be able to perform all the duties required of an equality body.⁴⁸⁷ In 2016, nine lawyers were employed in the equal treatment division of the Office of the Ombudsman.⁴⁸⁸

In 2016, the Ombudsman published the "Strategy on the Development of the Office of Public Defender of Rights 2016-2020". The major goals include creating an effective system of human resources management, effective quality management and economic use of resources with respect to the environment. The strategy underlines principles of professionalism, openness and dignity of the work of the employees in the Ombudsman's office.⁴⁸⁹

Research concerning access to the justice for victims of discrimination was carried out in 2015. As a result, the Public Defender of Rights issued a report about victims of discrimination and suggested measures to enable the victims to demand their rights in a less complicated way.⁴⁹⁰ In 2015, the Ombudsman launched the website ESO, which contains a database of the Ombudsman's reports and statements that everyone can search, thus making it easier to access information about discrimination.⁴⁹¹

In 2015, three law firms started to participate within a network created by the NGO Pro Bono Alliance, which now includes more than 60 law firms. Those law firms cooperate with the Ombudsman on selected cases that require the bringing of proceedings to court. The Ombudsman organises training and seminars on the topic of anti-discrimination law for lawyers of such law firms.⁴⁹² The Ombudsman focused on the project 'Together for Good Governance' in 2015. The project has been running since 2014 and is partly financed from the European Social Fund. The main objective of the project is to identify opportunities for

⁴⁸⁷ Otevřená společnost (2010), *Ženy a česká společnost – hodnocení implementace Pekingské akční platformy na národní a mezinárodní úrovni* (Peking + 15 (Women and Czech Society – evaluation of implementation of Peking action platform on the national and international level (Peking + 15)), Prague, Otevřená společnost o.p.s., p. 82, available at: <http://www.otevrenaspolecnost.cz/knihovna/otevrenka/prosazovani-genderove-rovnosti/zeny-a-ceska-spolecnost.pdf>.

⁴⁸⁸ The question of the budget of Ombudsman is decided by the Government because the Ombudsman is financed by the central state budget. See more at *Draft final account 2016* (Návrh závěrečného účtu za rok 2016); https://www.ochrance.cz/fileadmin/user_upload/Kancelar/SZU_309_KVOP_2016.pdf.

⁴⁸⁹ Public Defender of Rights (Ombudsman), (2016), *Strategie rozvoje kanceláře VOP na roky 2016-2020* (Strategy on development of the Office of Public Defender of Rights for the period 2016-2020); http://www.ochrance.cz/fileadmin/user_upload/Kancelar/strategie_KVOP_2016-2021.pdf.

⁴⁹⁰ Public Defender of Rights (Ombudsman), (2015), *Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice* (Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti); <http://www.ochrance.cz/en/discrimination/research/>.

⁴⁹¹ Database available at: <http://eso.ochrance.cz/Vyhledavani/Search>.

⁴⁹² Public Defender of Rights (Ombudsman), (2015), *'Pro bono síť advokátů proti diskriminaci se rozrůstá o další tři kanceláře'* (Pro bono alliance of lawyers against discrimination is expanding by three law firms); <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2015/pro-bono-sit-advokatu-proti-diskriminaci-se-rozrusta-o-dalsi-tri-kancelare/>.

increasing the effectiveness of the work of the Office of the Ombudsman through international co-operation.

In 2015, the Ombudsman organised seven international visits, including to Spain, Hungary and Georgia, in order to exchange experience and share good practice.⁴⁹³ The Ombudsman has also organised 13 roundtable discussions, with topics including equal access to employment and the cooperation of central, supervision and inspection bodies in combating discrimination in 2015.⁴⁹⁴ In 2015, many workshops, discussions and awareness-raising meetings were organised by the Ombudsman, focusing on a range of topics, including discrimination in access to employment, housing, access to services and diversity in education.⁴⁹⁵

b) Status of the designated body/bodies – general independence

The Public Defender of Rights (Ombudsman) is elected by the Chamber of Deputies of the Czech Parliament for a period of six years and is responsible to the Chamber. Candidates are proposed by the President and the Senate of the Czech Republic. The law provides that the body is funded from the state budget, with its own independent budget allocation. The total budget of the institution in 2015 was over EUR 4 million (CZK 111 million). The average number of staff members in 2015 was 132.⁴⁹⁶ In 2016, the total budget was around EUR 4.3 million (CZK 112 million).⁴⁹⁷ The average number of staff members in 2016 has not changed since 2015.⁴⁹⁸

According to Section 5 of the Law on the Public Defender of Rights, the Czech Ombudsman 'shall carry out his/her duties independently and impartially'.⁴⁹⁹ To ensure its independence, the office of the Czech Ombudsman is incompatible with the office of President of the Republic, member of Parliament, senator and judge, as well as any activities in public administration. The discharge of the office of Czech Ombudsman is incompatible with other profit-making activities, with the exception of the management of his/her private property and activities of a scientific, educational, publishing, literary or artistic nature, as long as this is not to the detriment of the discharge of his/her office and its dignity, and does not threaten trust in independence and impartiality in the discharge thereof. The Czech Ombudsman may not be a member of a political party or a political movement. The oath of the Czech Ombudsman shall have the following wording: 'I promise on my honour and conscience that I will discharge my office independently and impartially, in accordance with the Constitution and other laws, and that I will protect the inviolability of rights.'

c) Grounds covered by the designated body/bodies

According to the law, the competences of the Czech Ombudsman cover the grounds of sex, race, ethnic origin, sexual orientation, age, disability, religion, belief or other conviction, 'nationality' (in Czech: *národnost*). All grounds of discrimination as specified in the directives are therefore covered.

⁴⁹³ Public Defender of Rights (Ombudsman) (2015), *Reports for the Chamber of Deputies of Parliament* (Zprávy o činnosti pro Poslaneckou sněmovnu); <http://www.ochrance.cz/en/reports/reports/>.

⁴⁹⁴ Public Defender of Rights (Ombudsman) (2015), *Reports for the Chamber of Deputies of Parliament* (Zprávy o činnosti pro Poslaneckou sněmovnu); <http://www.ochrance.cz/en/reports/reports/>.

⁴⁹⁵ Public Defender of Rights (Ombudsman) (2015), *Reports for the Chamber of Deputies of Parliament* (Zprávy o činnosti pro Poslaneckou sněmovnu); <http://www.ochrance.cz/en/reports/reports/>.

⁴⁹⁶ Public Defender of Rights (Ombudsman), (2015), *Závěrečný účet 2015* (Closing account 2015); http://www.ochrance.cz/fileadmin/user_upload/Kancelar/SZU_309_KVOP_2015.pdf.

⁴⁹⁷ Information about the budget specifically allocated to deal with anti-discrimination issues is not available.

⁴⁹⁸ Public Defender of Rights (Ombudsman), *Závěrečný účet 2016* (Closing account 2016); https://www.ochrance.cz/fileadmin/user_upload/Kancelar/SZU_309_KVOP_2016.pdf.

⁴⁹⁹ Public Defender of Rights (Ombudsman), *Law on Public Defender of Rights 2014*, Brno, Veřejný ochránce práv. <http://www.ochrance.cz/en/law-on-the-public-defender-of-rights/>.

The equality body also deals with discrimination against migrants. It cannot be said that this is treated as a priority issue over other grounds.

d) Competences of the designated body/bodies – and their independent exercise

According to the Anti-discrimination Law, the responsibilities of the Czech Ombudsman include:

- conducting independent investigations of cases of alleged discrimination,
- providing assistance to victims of discrimination,
- undertaking surveys,
- publishing independent reports or recommendations,
- exchanging information with anti-discrimination bodies in other EU Member States,
- intervening in civil proceedings that involve discrimination.

Despite limited financial and personnel capacities, the Czech Ombudsman is active in this regard and exercises all these competences effectively and independently.

Current personnel and financial capacities only allow the Czech Ombudsman to provide limited assistance to victims. The Czech Ombudsman is not empowered to provide victims with representation before the courts. The Czech Ombudsman can only evaluate whether a case involves discrimination or not, and provide the victim with an opinion as to whether a case might be successful before the Czech courts.

However, in 2012 the Czech Ombudsman established a very interesting collaboration with the NGO Pro Bono Alliance, which arranges free legal assistance to certain victims of discrimination, who have been very probably discriminated against according to the Czech Ombudsman. Special legal assistance is provided on the basis of a contract between a complainant (client) and a cooperating law firm or lawyer involved in a pro bono clearing-house served by the Pro Bono Alliance. Since 2012, more than 15 victims of discrimination have accepted this legal assistance.⁵⁰⁰

In 2016, one of the law firms took on five cases from the Ombudsman in order to provide free legal assistance.⁵⁰¹ One of the cases concerned sexual identification as a discriminatory ground in the case of obligatory sterilisation in order for one's official gender to be changed. Another case concerned an unjust procedure in assigning public flats on the ground of health disability. Another case concerned harassment on the ground of ethnic origin. The other two cases concerned no discrimination but the unlawful practice of the Ministry of Labour and Social Affairs in providing a housing supplement to a victim. The final case concerned excessive jail inspections.

In 2015, the Ombudsman continued research focused on obstacles in access to justice for victims of discrimination. It focused on marginal discriminated groups in the Czech Republic, obstacles in protection against discrimination in connection with activities of the courts, administrative bodies and non-governmental organisations.⁵⁰²

⁵⁰⁰ Public Defender of Rights (Ombudsman), (2015), 'Pro bono síť advokátů proti diskriminaci se rozrůstá o další tři kanceláře' ('Pro Bono Alliance of lawyers against discrimination is expanding by three law firms'). <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2015/pro-bono-sit-advokatu-proti-diskriminaci-se-rozrusta-o-dalsi-tri-kancelare/>, accessed 28 January 2017.

⁵⁰¹ Public Defender of Rights (Ombudsman), (2016), *Advokátní kancelář zapojená do sítě pro bono převzala již pátý případ* (Law firm assumed the fifth case within pro bono assistance); <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2016/advokatni-kancelar-zapojena-do-site-pro-bono-prevzala-jiz-paty-pripad-v-tomto-roce/>.

⁵⁰² Public Defender of Rights (Ombudsman) (2015), *Reports for the Chamber of Deputies of Parliament* (Zprávy o činnosti pro Poslaneckou sněmovnu); <http://www.ochrance.cz/en/reports/reports/>.

Within the Equinet network (the European Network of Equality Bodies), employees of the Czech Ombudsman shared their experiences in three working groups and during several seminars and conferences.

e) Legal standing of the designated body/bodies

In the Czech Republic, the designated body has no legal standing to bring discrimination complaints.

The Anti-discrimination Law makes no provision for these duties. The body (the Ombudsman) can provide mediation or legal analysis for individual cases or systemic legal problems. Even in providing this form of assistance there might be problems finding adequate funding in the budget of the Ombudsman for more than a few victims per year. As early as the 2013 annual report, the Czech Ombudsman recommended that legislation be amended so that the Ombudsman can bring *actio popularis* complaints before the courts in cases of discrimination. In 2014 this issue was discussed at several conferences and workshops organised by the Ombudsman.⁵⁰³ On 3 September 2014 a law amendment was prepared by the Government and sent to the Chamber of Deputies. The legislative process had not been completed by the end of 2016, but the Constitutional Committee of the Chamber of Deputies disagreed with the proposition of *actio popularis*. The bill should be considered further by the Chamber of Deputies in 2017.⁵⁰⁴

In addition, the Ombudsman has the power to file a motion for the annulment of regulatory acts with the Constitutional Court.⁵⁰⁵ Furthermore, on the invitation of the Constitutional Court, the Ombudsman can be an intervener in proceedings regarding constitutional complaints.⁵⁰⁶ The Ombudsman also has a role of *amicus curiae* in cases that he examined prior to the court proceedings. The Ombudsman can be a guardian, usually of children, in the proceedings before the Constitutional Court.⁵⁰⁷ Furthermore, the Ombudsman can file an action to a court against an administrative body if he proves serious public interest.⁵⁰⁸

Another amendment, soon to be discussed in the Chamber of Deputies, should provide better protection against discrimination for foreign employees.

f) Quasi-judicial competences

The Czech Ombudsman is not a quasi-judicial institution. It does not have competence to issue judgments and therefore no appeals are possible.

g) Registration by the body/bodies of complaints and decisions

In the Czech Republic, the designated equality body (Ombudsman) registers the number of complaints and decisions (by ground, field, type of discrimination, etc.). These data are available to the public.

⁵⁰³ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna-zprava_VOP_2014.pdf.

⁵⁰⁴ Chamber of Deputies (2016), *Sněmovní tisk 379/0* (Press of the Chamber of Deputies No. 379/0); <http://www.psp.cz/sqw/historie.sqw?o=7&t=379>.

⁵⁰⁵ Czech Republic, Law No. 182/1993 on the Constitutional Court (*Zákon č. 182/1993 Sb., o Ústavním soudu*), 16 June 1993. This power is stipulated by the Section 64(2).

⁵⁰⁶ Czech Republic, Law No. 182/1993 on the Constitutional Court, 16 June 1993. This power is stipulated by the Section 69(3).

⁵⁰⁷ Public Defender of Rights (2016), *Ochránce a Ústavní soud* (The Ombudsman and the Constitutional Court), Brno, Veřejný ochránce práv; <http://www.ochrance.cz/zvlastni-opravneni/ustavni-soud/>.

⁵⁰⁸ Czech Republic, Law No. 150/2002, Code of Administrative Court Procedure (*Soudní řád správní*), 1 January 2003.

The Czech Ombudsman registers the number of complaints received in the area of discrimination. These data are differentiated by areas such as housing, health care etc. and by discrimination ground. These data are available to the public on the website of the Czech Ombudsman. In 2016 the total number of complaints received was 8 398 and 66 % of those fell within the Ombudsman's scope of activities. The total number of cases handled in 2016 was 8 291, including complaints from the previous year.⁵⁰⁹ In 2015 the total number of complaints received was 7 541 and 64 % of those complaints fell within the Ombudsman's scope of activities. The total number of cases handled in 2015 was 7 679, including complaints from the previous year.

In 2016, the Office of the Public Defender of Rights (Ombudsman) registered 451 new complaints of discrimination; discrimination was found in only nine of these cases (less than 2 % of cases). In 2016, complaints referred most frequently to discrimination in the areas of labour law (23 % of cases), provision of goods and services (19 % of cases), housing (11 % of cases), education (11 % of cases) and public administration (11 % of cases). The most referred discriminatory grounds in 2016 were 'other reason' (39 % of cases), disability (23 % of cases), race and ethnic origin (15 % of cases), sex (10 % of cases), age (10 % of cases) and nationality (5 % of cases). Sexual orientation and religion were referred to in 2 % of complaints.⁵¹⁰

In 2015, the Office of the Public Defender of Rights (Ombudsman) registered 379 new complaints of discrimination;⁵¹¹ discrimination was found in only eight of these cases (2 % of cases).⁵¹² In 2015, complaints referred most frequently to discrimination in the areas of labour law (28 % of cases), provision of goods and services (15 % of cases), housing (14 % of cases), education (13 % of cases) and public administration (12 % of cases).⁵¹³ The most referred discriminatory grounds in 2015 were 'other reason' (37 % of cases), disability (23 % of cases), race and ethnic origin (17 % of cases), sex (12 % of cases), age (11 % of cases) and nationality (6 % of cases). Sexual orientation and religion were referred to in 2 % of complaints. In 2014, the Czech Ombudsman registered only 332 new discrimination complaints and 398 complaints were processed; discrimination was identified by the Ombudsman in 17 of these complaints (4 % of cases).⁵¹⁴

The Ombudsman also publishes recommendations, carries out research and answers queries from various entities or persons who ask for opinions in the field of discrimination.

h) Roma and Travellers

⁵⁰⁹ Public Defender of Rights (2016), *Souhrnná zpráva o činnosti veřejného ochránce práv 2016* (Summarising report on Ombudsman's activities in 2016), brno, Veřejný ochránce práv; https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Vyrocní-zpráva-2016_web.pdf.

⁵¹⁰ Public Defender of Rights (2016), *Souhrnná zpráva o činnosti veřejného ochránce práv 2016* (Summarising report on Ombudsman's activities in 2016), brno, Veřejný ochránce práv; https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Vyrocní-zpráva-2016_web.pdf.

⁵¹¹ Public Defender of Rights (2015), *Souhrnná zpráva o činnosti veřejného ochránce práv 2015* (Summarising report on Ombudsman's activities in 2015), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnná-zpráva_VOP_2015.pdf.

⁵¹² Public Defender of Rights (2015), *Evidence stanovisek ombudsmána – ESO* (Evidence of the statements of the Ombudsman); <http://eso.ochrance.cz/Nalezene>.

⁵¹³ Public Defender of Rights (2015), *Souhrnná zpráva o činnosti veřejného ochránce práv 2015* (Summarising report on Ombudsman's activities in 2015), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnná-zpráva_VOP_2015.pdf.

⁵¹⁴ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnná-zpráva_VOP_2014.pdf.

The Czech Ombudsman is not required to treat any vulnerable group as a priority issue, nor does the Anti-discrimination Law require this. Therefore, it cannot be said that the Ombudsman treats the Roma as a priority issue. The mandate allows important social problems affecting one vulnerable group only to be reflected, such as segregation in housing and education, which affects mainly Roma. For example, the first recommendation made by the Czech Ombudsman in its capacity as the equality body was on the issue of housing segregation, where the Czech Ombudsman established non-discrimination rules for the rental of municipal flats.⁵¹⁵

⁵¹⁵ Public Defender of Rights (Ombudsman), '*Doporučení veřejného ochránce práv k naplňování práva na rovné zacházení s žadateli o pronájem bytu*' (Recommendation of the Public Defender of Rights on fulfilment of rights to equal treatment for applicants for rental of municipal flats), available at: www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Doporuceni/Obecni_byty.pdf.

8 IMPLEMENTATION ISSUES

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

At the end of 2014 the Czech Ombudsman launched an information awareness campaign on its activities. The aim of this campaign is to raise people's awareness of the Ombudsman's activities,⁵¹⁶ including protection against discrimination. In 2015-2016 many informative and awareness-raising meetings for municipalities, teachers, students, people from socially excluded areas and the wider public were organised.⁵¹⁷ In addition, the Ombudsman provides clear information, advice and various documents concerning protection against discrimination on its websites.⁵¹⁸

Otherwise, in recent years there have been no notable activities by the Government with respect to dissemination of information about legal protection against discrimination.

- b) Measures 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)

There has been no notable action in recent years to encourage dialogue with NGOs with a view to promoting the principle of equal treatment.

- c) Measures 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 which comes under the competence of the tripartite agreement (bringing together key actors in the labour market: employers, trade unions and the Government) and the Ministry of Labour. However, there have been no further significant developments or opportunities in this respect.

- d) Addressing the situation of Roma and Travellers

The Government Council for Roma Minority Affairs is a permanent advisory body of the Government of the Czech Republic on issues related to Roma integration. The Agency for Social Inclusion is a body established by the Government to address Roma issues in socially excluded communities. Specific tasks are performed by the Government Council for Human Rights, the Governmental Council for Equality of Women and Men or the Governmental Council for National Minorities.

The main actions of the Government include educational activities targeting young people and professional groups such as the police, members of the armed forces, judges and state prosecutors. Educational activities for professional groups typically include training and seminars on racially motivated crimes.

There are no Travellers in the Czech Republic.

⁵¹⁶ Public Defender of Rights (2014), *Summarising report on Ombudsman's activities in 2014* (Souhrnná zpráva o činnosti veřejného ochránce práv 2014), p. 107, available at: www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2014.pdf.

⁵¹⁷ Public Defender of Rights (Ombudsman), (2015), *Reports for the Chamber of Deputies of Parliament* (Zprávy o činnosti pro Poslaneckou sněmovnu); <http://www.ochrance.cz/en/reports/reports/>.

⁵¹⁸ Public Defender of Rights (Ombudsman), (2016), *How to defend against discrimination*; <http://www.ochrance.cz/en/discrimination/assistance-to-victims-of-discrimination/how-to-prevent/>.

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

a) Mechanisms

Apart from general principles of the Czech legal system, such as *lex specialis derogat legi generali* and *lex posterior derogat legi priori*, there are no mechanisms explicitly created 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.

There are no instruments other than individual court petition for changing the internal rules of enterprises and the rules of independent professions and associations. Provisions exist 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 professional bodies or trade unions, to change their rules.

b) Rules contrary to the principle of equality

The Czech Ombudsman concluded in their survey of the ethnic composition of pupils in former special schools that there is only one explanation for the notably high proportion of Roma pupils, and that is indirect discriminatory practice on the part of bodies involved in deciding on the placement of pupils in special education.⁵¹⁹ An important improvement came with Law No. 82/2015, amending the Schools Act,⁵²⁰ which made fundamental changes concerning inclusive education effective from 1 September 2016. Although, positive changes can be seen in practice (see section 3.2.8 above), several months after the adopted changes, it cannot yet be assessed whether it has brought adequate safeguards against on-going discrimination against Roma children and children with disabilities in access to education. The situation should be observed for a longer period in order to examine whether the application of the inclusive system has brought any significant improvement. At the moment, the implementation of these changes is monitored by NGOs in particular.

⁵¹⁹ Public Defender of Rights (2012), *Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools Final Report (Výzkum etnického složení žáků bývalých zvláštních škol)*, Brno, Public Defender of Rights, p. 12, available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Survey_Ethnic_Special-schools.pdf.

⁵²⁰ Czech Republic, Law No. 82/2015, amending Law No. 561/2004, the Schools Act, 17 April 2015.

9 COORDINATION AT NATIONAL LEVEL

Coordination of issues regarding anti-discrimination on all the grounds covered by this report is divided mainly between:

- The Public Defender of Rights (Ombudsman)⁵²¹ - anti-discrimination law in general.
- The Government Council for National Minorities⁵²² - advisory, initiative and co-ordinating body of the Government

The Government Council for National Minorities is concerned with matters of policy towards national minorities and their members. The Council consists of the members of ministries, the Office of the President of the Czech Republic, the Office of Public Defender of Rights, the Government Commissioner for Human Rights and one or two representatives of fourteen national minorities in the Czech Republic.

- The Government Council for Roma Minority Affairs⁵²³ – initiative and advisory body of the Government

The Government Council for Roma Minority Affairs assists on a systematic basis in the integration of Roma community. The Council supports cooperation of ministries, provides groundwork documents for creation and application of the Government policy in the area of Roma communities.

- The Ministry of Labour and Social Affairs⁵²⁴ - employment and labour relations, social benefits

The Ministry of Labour and Social Affairs is an authority of the state administration for social and labour relations, safety of labour, employment and retraining, collective bargaining, wages and other remuneration for work, pension security, health insurance, sickness benefits, social care, working conditions of women and young people, legal protection in maternity, family and child care, care for citizens with special assistance requirements and other wage and social policies.

- The Ministry of the Interior⁵²⁵ - service by members of the security forces

The Ministry of the Interior is a central authority of the state administration for internal affairs, in particular for public order and other matters relating to internal security within its defined scope of competence, including: supervision of road traffic protection; first names and surnames; registers of births, marriages and deaths; nationality; identity cards; residence reporting; register of inhabitants and personal identification numbers; the right of association and the right of assembly; registration of organisations with international links; public collections; maintaining archives; firearms and ammunition; fire protection; travel documents; granting residence to foreign nationals and refugee status; the territorial structure of the state, national borders, their surveying, maintenance and documentation; state symbols; state, economic and service secrets.

- The Ministry of Defence⁵²⁶ - service by members of the armed forces

⁵²¹ For further information see: www.ochrance.cz/.

⁵²² For further information see: <http://www.vlada.cz/en/pracovni-a-poradni-organy-vlady/rnm/historie-a-soucasnost-rady-en-16666/>.

⁵²³ For further information see: <http://www.vlada.cz/en/ppov/zalezitosti-romske-komunity/the-council-for-roma-community-affairs--50634/>.

⁵²⁴ For further information see: <http://www.mpsv.cz/en/>.

⁵²⁵ For further information see: <http://www.mvcr.cz/mvcren/>.

⁵²⁶ For further information see: <http://www.army.cz/en/>.

The Ministry of Defence is a central authority of the state administration for ensuring the defence of the Czech Republic; it controls the armed forces of the Czech Republic and administers military training areas. As an authority for ensuring the nation's defence, it contributes to the formation of a strategy for the military defence policy of the country, prepares concepts for operations planning of the state territory's defence, and suggests necessary defence arrangements to the Government, to the Defence Council of the Czech Republic, and to the President of the Czech Republic. In addition to other duties related to the defence of the country it calls up citizens of the Czech Republic for military service. It organises co-ordination with the armed forces of other countries within the framework of European security structures.

- The Ministry of Health – Health services⁵²⁷

The Ministry of Health is a central authority of the state administration for: healthcare; public health protection; health research activities; directly controlled health facilities; handling drugs, preparations, and other agents; search, protection and use of natural health resources, natural spas and mineral water resources, medicaments and technical equipment for prevention, diagnostics and treatment of people; health insurance; and the health information system. The Czech Spa Inspectorate is also part of the Ministry of Health. The Inspectorate of Narcotic Drugs and Psychotropic Substances is also an organisational part of the Ministry of Health.

- The Ministry of Justice⁵²⁸ – state administration of courts and public prosecutor's offices

The Ministry of Justice is a central authority of the state administration for courts and public prosecutors' offices. The Ministry of Justice issues legal judgments concerning credit and guarantee agreements to which the Czech Republic is a party. The Ministry of Justice is the central authority of the state administration for the prison system; the Prison Service of the Czech Republic is subordinated to the ministry. The Ministry of Justice acts for the Czech Republic in the course of complaints settlement concerning breaches of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. The ministry fulfils tasks connected with the legislative activities of the Government.

- The Ministry for Regional Development - housing⁵²⁹

The ministry was established and started its activities on 1 November 1996. Its activities are focused on the following areas: regional policy including regional business support; housing policy; housing and business accommodation development; territorial planning; housing-related legislation; investment policy; tourism.

- The Ministry of Education – education⁵³⁰

The Ministry of Education, Youth and Sports is a central authority of the state administration for pre-school facilities, school facilities, elementary schools, secondary schools and universities, for science policy, research and development including international cooperation in this sphere, for science degrees, for state policy related to children, youth, sports, tourism and sport representation.

- The Minister for Human Rights, Equal Opportunities and Legislation – social inclusion, equal opportunities, human rights⁵³¹

⁵²⁷ For further information see: <http://www.mzcr.cz/En/>.

⁵²⁸ For further information see: <http://portal.justice.cz/>.

⁵²⁹ For further information see: <http://www.mmr.cz/ministerstvo>.

⁵³⁰ For further information see: <http://www.msmt.cz/index.php?lang=2>.

⁵³¹ For further information see: <http://www.vlada.cz/cz/clenove-vlady/pri-uradu-vlady/jiri-dienstbier/>.

The Minister for Human Rights is responsible for human rights and chairs the Government Legislative Council. The minister is also responsible for the Government Agency for Social Inclusion.

There is no general anti-racism or anti-discrimination national action plan. Coordination between the above-mentioned departments with respect to anti-discrimination policy is governed by the Minister for Human Rights, Equal Opportunities and Legislation.

There are, however, initiatives and action plans for different groups or areas:

In 2012 the Ministry of Labour and Social Affairs prepared the National Action Plan Supporting Positive Ageing for 2013–2017. At the end of 2012 the Ministry of Education, Youth and Sports prepared the Consolidated Action Plan for Execution of the Judgment of the European Court of Human Rights in the Case of *D. H. and Others v. the Czech Republic*.⁵³² In February 2016, the revised action plan for the execution of the judgment in *D. H. and Others* was issued.⁵³³ The revised action plan describes all adopted and planned measures. In September 2016, the Czech Government submitted a complementary report containing changes following from the amendment to the Schools Act.⁵³⁴ In May 2014, the Government adopted the Strategy for Roma Integration until 2020.⁵³⁵ In 2015 a new Strategy to combat social exclusion was created for the period 2016-2020⁵³⁶ as well as a new National Plan for the Creation of Equal Opportunities for People with Disabilities 2015-2020.⁵³⁷

In 2011, the Strategy to Combat Social Exclusion was approved by Government Decree No. 699.⁵³⁸ This strategy develops the programme of Roma integration for the period 2011–2015. It represents a very good attempt to provide for multifaceted solutions to the housing segregation of people, mainly Roma, living in excluded settlements. The strategy was prepared by the Government's Agency for Social Inclusion⁵³⁹ and imposed a duty to implement the planned measures in accordance with the respective timetable and according to distinct competences. Government Decree No. 699 imposed on ministers the duty to secure the budgetary means for this purpose from the respective sections of their budgets. The same decree assigned to the Deputy for Human Rights the duty to monitor, in cooperation with the Agency for Social Inclusion, the implementation of individual measures contained in the strategy.

⁵³² European Court of Human Rights (ECtHR) *D.H. and Others v. Czech Republic*, no. 57325/00, 13 November 2007; <http://hudoc.echr.coe.int/eng?i=001-83256>.

⁵³³ Committee of Ministers (2016), *Revised action plan of the execution of the judgment in D. H. and Others*, 5 February 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ad0ba>.

⁵³⁴ Committee of Ministers (2016), *Complementary report on the execution of the judgment in D. H. and Others*, 6 September 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0>.

⁵³⁵ Czech Republic (2014), *Strategy for Roma Integration until 2020 (Strategie romské integrace do roku 2020)*, May 2014.

⁵³⁶ Agency for Social Inclusion (2016), *Strategie boje proti sociálnímu vyloučení na období 2016-2020* (Strategy to Combat Social Exclusion for the Period 2016-2020), 17 February 2016; <http://www.vlada.cz/cz/clenove-vlady/pri-uradu-vlady/jiri-dienstbier/aktualne/vlada-schvalila-strategii-boje-proti-socialnimu-vyloucení-na-období-2016-az-2020-140311/>.

⁵³⁷ Czech Government, *Národní plan podpory rovných příležitostí pro osoby se zdravotním postižením pro období 2015-2020* (National Plan for the Creation of Equal Opportunities for Persons with Disabilities 2015-2020); <http://www.vlada.cz/cz/ppov/vvzpo/dokumenty/narodni-plan-podpory-rovných-prilezitosti-pro-osoby-se-zdravotnim-postizenim-na-období-2015-2020-130992/>.

⁵³⁸ Czech Republic, Government Decree No. 699, on the strategy to combat social exclusion 2011-2015, 21 September 2011; http://dataplan.info/img_upload/7bdb1584e3b8a53d337518d988763f8d/strategie-boje-proti-soc.-vyloucení.usnesení.pdf.

⁵³⁹ Agency for Social Inclusion, (2011), *Strategy to Combat Social Exclusion*; <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vyloucení/strategy-for-combating-social-exclusion-for-the-period-2011-2015/details>.

The success of the strategy was evaluated in 2015 with regard to all the fields covered. Specifically, the criticism was made that the organisation of social services on a regional and municipal level is not well planned and financially secure, and therefore it is inaccessible for socially excluded people.⁵⁴⁰

In 2015 a new strategy to combat social exclusion for the period 2016-2020 was created,⁵⁴¹ in which the Government considered the increasing number of socially excluded people and declared aims to be reached in 2020. The strategy was adopted in February 2016 and includes for the first time the problems of debts and health, which are rather neglected topics. The strategy also focuses on supporting measures that need to be taken in relation to pupils with disabilities (according to the amendment to the Schools Act No. 82/2013).

In 2015, the Strategy of Roma Integration until 2020, with the goal of ensuring positive changes in the access of Roma to education, housing and social affairs, was introduced. In 2016, the Government adopted the methodology for the monitoring and evaluation of the Strategy of Roma Integration.⁵⁴²

⁵⁴⁰ Agency for Social Inclusion, *Zpráva o naplňování Strategie boje proti sociálnímu začleňování* (Report on performing the Strategy to Combat Social Exclusion for the Period 2016-2020), January 2015; <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vyloucení>.

⁵⁴¹ Agency for Social Inclusion, (2016), *Strategie boje proti sociálnímu vyloučení na období 2016-2020* (Strategy to Combat Social Exclusion for the Period 2016-2020), 17 February 2016; <http://www.vlada.cz/cz/clenove-vlady/pri-uradu-vlady/jiri-dienstbier/aktualne/vlada-schvalila-strategii-boje-proti-socialnimu-vyloucení-na-období-2016-az-2020-140311/>.

⁵⁴² National Council for the Affairs of Roma Minority (Rada vlády pro záležitosti romské menšiny), (2016), *Metodika pro sledování a vyhodnocování Strategie romské integrace do roku 2020*; <https://www.vlada.cz/cz/ppov/zalezitosti-romske-komunity/dokumenty/metodika-pro-sledovani-a-vyhodnocovani-naplňování-strategie-romske-integrace-do-roku-2020-151719/>.

10 CURRENT BEST PRACTICES

- Free legal help to victims of discrimination

In 2012 the Czech Ombudsman established cooperation with the NGO Pro Bono Alliance (a pro bono alliance), which arranges free legal assistance to certain victims of discrimination, who have been very probably discriminated according to the Czech Ombudsman. Special assistance is provided on the basis of a contract between a complainant (client) and a cooperating law firm or lawyer involved in a pro bono clearing-house served by the Pro Bono Alliance. Two victims of discrimination accepted this legal assistance in 2014.⁵⁴³ In 2015, three other law firms started to participate in the Pro Bono Alliance, which nowadays includes more than 60 law firms. Since 2012, the Pro Bono Alliance has arranged legal representation in more than 15 discrimination cases from the Ombudsman. In 2016, one of the law firms took charge of legal representation in five cases.⁵⁴⁴ Those law firms cooperate with the Ombudsman on selected cases, which require the bringing of proceedings to court. The Ombudsman organises training and seminars on the topic of anti-discrimination law for lawyers of those law firms.⁵⁴⁵ According to section 21b of Law No. 349/1999 on the Public Defender of Rights, the Ombudsman only has the authority to help victims of discrimination and their legal representatives in the phase of filing the law suit against discrimination and therefore, after the lawsuit has already been filed with the court, the Ombudsman should not have direct contact with or influence over it. However, it is quite common for the Ombudsman to file third-party interventions where possible, such as at the proceedings before the Constitutional Court.

- Situation testing

The Czech equality body (Ombudsman) is not allowed to use situation testing. However, in 2012 the Ombudsman initiated collaboration with NGOs who might conduct situation testing in cases identified by the Ombudsman. In the 2014 annual report, the Ombudsman mentions that situation testing performed by the NGO 'Poradna pro občanství, občanská a lidská práva' proved discrimination against members of the Roma minority by real estate agents.⁵⁴⁶

In 2016, the Ombudsman found discrimination against Roma people who used situation testing and were refused a flat by two real estate agents. The applicant turned to the Czech Trade Inspectorate, which imposed on both agencies a fine of EUR 925 (25 000 CZK). The Ombudsman declared that procedure of the Czech Trade Inspectorate was correct and that the applicant might be also entitled to just satisfaction though judicial proceedings.⁵⁴⁷

In 2015, situation testing, led by the Ombudsman and the civil association IQ Roma Servis, proved discriminatory behaviour towards Roma participants in refusing access to one of

⁵⁴³ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna-zprava_VOP_2014.pdf.

⁵⁴⁴ Public Defender of Rights (Ombudsman), (2016), *Advokátní kancelář zapojená do sítě pro bono převzala již pátý případ* (Law firm assumed the fifth case within pro bono assistance); <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2016/advokatni-kancelar-zapojena-do-site-pro-bono-prevzala-jiz-paty-pripad-v-tomto-roce/>.

⁵⁴⁵ Public Defender of Rights (Ombudsman), (2015), *Pro bono síť advokátů proti diskriminaci se rozrůstá o další tři kanceláře* (Pro bono alliance of lawyers against discrimination is expanding by three law firms). <http://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2015/pro-bono-sit-advokatu-proti-diskriminaci-se-rozrusta-o-dalsi-tri-kancelare/>.

⁵⁴⁶ Public Defender of Rights (2014), *Souhrnná zpráva o činnosti veřejného ochránce práv 2014* (Summarising report on Ombudsman's activities in 2014), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna-zprava_VOP_2014.pdf.

⁵⁴⁷ Public Defender of Rights (Ombudsman), (2016), *Zpráva o šetření č. 6780/2014/VOP* (Report on inquiry no. 6780/2014/VOP), 19 January 2016; <http://eso.ochrance.cz/Nalezene/Edit/3922>.

three controlled clubs. As a result, the Czech Trade Inspection Authority started administrative proceedings against the club.⁵⁴⁸ In 2015, the district court stated that a real estate agent committed direct discrimination because the claimant was excluded from a group of applicants because of her Roma origin. Although the district court ordered the defendant to send the claimant a written apology, the claim for compensation for non-pecuniary loss was rejected, because of the nature of situation testing.⁵⁴⁹

- Projects of social inclusion

In March 2014, the Agency for Social Inclusion launched an extensive campaign targeting children, youth and young adults with the aim of reducing social tensions. A communication campaign using social media was the most important tool. The campaign countered myths and provided arguments and facts on the situation of vulnerable groups, and created space in the media for victims and vulnerable groups to tell their stories. In addition, the campaign aimed to support representatives from schools, towns and municipalities, police and local initiatives in their work to prevent conflict as well as to provide professional support to victims. In 2015, the ASI updated the 'Methods of Coordinated Attitude to Socially Excluded Localities'⁵⁵⁰ and issued the guidance 'Instruments of Municipalities in the Fight against Social Exclusion'.⁵⁵¹ For inspiration for good governance the ASI published *Social Inclusion, Employment Development and the Fight against Poverty in Small Municipalities*.⁵⁵²

⁵⁴⁸ IQ Roma Servis, *Diskriminace v přístupu ke službám – vstup do klubů* (Discrimination in the accesss to services – access to clubs); <http://www.iqrs.cz/cs/priklad-z-praxe/diskriminace-v-pristupu-ke-sluzbam-vstup-do-klubu>.

⁵⁴⁹ District Court in Litoměřice (*Okresní soud v Litoměřicích*), Litoměřice/14 C 46/2013/ 14 August 2015.

⁵⁵⁰ Agency for Social Inclusion (2015), *Metodika koordinovaného přístupu k sociálně vyloučeným lokalitám-aktualizovaná* (Methods of Coordinated Attitudes to Socially Excluded Localities - update), October 2015; <http://www.socialni-zaclenovani.cz/dokumenty/metodika-kpsvi-aktualizovana-2-10-2015>.

⁵⁵¹ Agency for Social Inclusion (2015), *Nástroje pro obce v boji proti sociálnímu vyloučení* (Instruments of Municipalities in the Fight against Social Exclusion), October 2015; <http://www.socialni-zaclenovani.cz/dokumenty/o-agenture>.

⁵⁵² Agency for Social Inclusion (2015), *Sociální začleňování, rozvoj zaměstnanosti a boj s chudobou na malých obcích ČR* (Social Inclusion, Employment Development and the Fight against Poverty in Small Municipalities), 2015; <http://www.socialni-zaclenovani.cz/dokumenty/o-agenture>. This document is still in force as regards to 2016.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

The main issue regarding transposition of the Racial Equality Directive 2000/43/EC is securing equal access in practice to education for Roma children.⁵⁵³ This is highlighted by criticism of various international bodies, especially in relation to the execution of the judgment in *D. H. and Others*, which was issued nine years ago and the situation has not significantly changed so far. Roma children still constitute about a third of pupils educated according to the revised curriculum for pupils with mild mental disabilities, while the proportion of Roma population is estimated at only 1.4 to 2.8 %.⁵⁵⁴ In 2014 the Ombudsman also published a critical opinion concerning the state of implementation by the Czech Republic of the *D.H. and Others v. the Czech Republic* judgment.⁵⁵⁵ In February 2016, the revised action plan for the execution of the judgment in *D. H. and Others*, containing all the adopted and planned measures, was issued.⁵⁵⁶ In September 2016, the Czech Government submitted a complementary report containing changes following from the amendment to the Schools Act.⁵⁵⁷

The Committee of Ministers of the Council of Europe has appreciated the amendment of the Schools Act No. 82/2015, which establishes a preference for the integration of pupils with special education needs in the mainstream system. However, it is not certain that those measures would impede segregation in the education system. Segregation of Roma children does not only happen in the 'practical schools' (which were shut down from September 2016), but also in mainstream basic schools that are located in areas where Roma communities are concentrated. Coordinated action between the schools and the municipality on a local level is needed to target this type of segregation.

Implementation of the new amendment will also not prevent segregation in costly private schools or secondary (selection) grammar schools, which will probably still remain inaccessible for Roma pupils or pupils with special needs. This could lead to a situation where more students will avoid the inclusive mainstream system by attending selective schools, and therefore, more stratification in the school system.

Another potential point of non-compliance with EU law might be found in relation to the wording of Section 10 of the Anti-discrimination Law, which states that victims of discrimination can be awarded monetary compensation for non-pecuniary damage as a subsidiary remedy. Specifically, Section 10 of the Anti-discrimination Law provides that should none of the forms of redress appear adequate, the victim of discrimination also has the right to monetary compensation for non-pecuniary damage. Although the monetary compensation for non-pecuniary damage should be awarded alongside another form of

⁵⁵³ The Ombudsman uses the term 'segregation'; however, this term is not defined by Czech legislation or by the Ombudsman.

⁵⁵⁴ Public Defender of Rights (Ombudsman) (2014), 'Sedm let od rozsudku proti České republice a nic se nezměnilo' (Seven years after the judgment against the Czech Republic, and nothing has changed); <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2014/sedm-let-od-rozsudku-proti-ceske-republice-a-nic-se-nezmenilo/>.

⁵⁵⁵ Public Defender of Rights (Ombudsman) (2014), 'Stanovisko veřejné ochránkyně práv k plnění Plánu opatření pro výkon rozsudku Evropského soudu pro lidská práva v případě D. H. a ostatní proti České republice „Rovné příležitosti“', 28 March 2014; http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Judikatura/Stanovisko-VOP-k-DH.pdf.

⁵⁵⁶ Committee of Ministers (2016), *Revised action plan of the execution of the judgment in D. H. and Others*, 5 February 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ad0ba>.

⁵⁵⁷ Committee of Ministers (2016), *Complementary report on the execution of the judgment in D. H. and Others*, 6 September 2016; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a89f0>.

redress, in the Czech Republic, it inherently represents a subsidiary remedy.⁵⁵⁸ As a result, this provision might be in violation of Article 15 of Directive 2000/43/EC – stating that payment of compensation to the victim must be effective, proportionate and dissuasive – as well as of Article 17 of Directive 2000/73/EC and Article 8d of Directive 1002/73/EC.

There is no legislation expressly prohibiting discrimination based on association with persons with particular characteristics. Judicial interpretation is needed to reach a clear conclusion as to whether discrimination based on association is prohibited by Czech legislation.

There are almost no existing activities to disseminate information about legal protection against discrimination (Article 10 of Directive 2000/43/EC and Article 12 of Directive 2000/78/EC). However, in 2015 the Czech Ombudsman has led a research study on victims of discrimination and recommended ways to improve their access to justice.⁵⁵⁹

There are almost no existing activities to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 of Directive 2000/43/EC and Article 14 of Directive 2000/78/EC).

There are almost no existing activities 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 of Directive 2000/43/EC and Article 13 of Directive 2000/78/EC).

11.2 Other issues of concern

There is still only a limited number of discrimination cases brought before Czech courts. According to the findings of the Czech Ombudsman in its 2015 research, the current amount of court fees for filing a discrimination complaint with the courts, together with persisting problems with finding qualified (and free) legal assistance, the length of proceedings, uncertainty of the parties as to the outcome of proceedings, low probability of being awarded monetary compensation for non-pecuniary damage and frequent difficulties in establishing evidence are contrary to Article 7(1) of Directive 2000/43/EC, and Article 9(1) of Directive 2000/78/EC.

On the other hand, bringing a case to court is widely considered by the public as the last resort. People prefer to solve their problems by alternative means, partly because they do not expect the courts to provide them with just and useful solutions – and this is often true. This general opinion in society is one of the reasons for low levels of litigation, not only in the area of discrimination. Low levels of litigation mean that the courts do not have a great deal of experience of discrimination cases and this can in turn lead to a higher probability of mistakes in the decision-making processes of the courts.

In addition, in most cases NGOs prefer to resolve issues of alleged discrimination through negotiation, mediation and settlement, as they believe the interests of the victims in these cases can be best served in this way.

The resolution of structural issues does not reside primarily in the area of enforcement and sanctions, rather it is primarily an issue for the political agenda – a matter for political parties in government to treat as a priority. The root of the problem is not in the area of the implementation of legislation, but rather in the lack of systematic government policy.

⁵⁵⁸ Public Defender of Rights (Ombudsman), (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: Victims of discrimination and obstacles to the access to justice), pp. 99-100.

⁵⁵⁹ Public Defender of Rights (Ombudsman), (2015), *Diskriminace v ČR: Oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: Victims of discrimination and obstacles to the access to justice).

Recent governments have not paid much attention to issues of human rights in general, including the discrimination agenda. Effective government policies to combat the structural roots of discrimination have not been developed.

12 LATEST DEVELOPMENTS IN 2016

12.1 Legislative amendments

- Amendment to Law No. 561/2004, the Schools Act⁵⁶⁰

Amendment No. 82/2015 brought into full effect the 'inclusive system' of education from 1 September 2016.⁵⁶¹ Pupils with disabilities are no longer characterised by type of diagnosis, but by the degree of support required in their education, determined by a medical approach. Section 16(2) provides a list of supporting measures, which are necessary adjustments in education corresponding to the state of health, cultural environment or other life conditions of a person. Section 16(9) allows for the possibility of subsidiary placement in a special school, class department or study group, of a person with a mental, physical, visual, or hearing disability, with a serious speech defect, serious learning or behaviour development disorders, with multiple disabilities or autism, but only if the supporting measures in mainstream education would not be sufficient. The amendment introduces further control mechanisms against the placement of pupils in special schools, classes or groups. The amendment introduces another important control mechanism against concerns about arbitrary conflicts of interest and decisions taken by Special Pedagogical Centres – SPCs. The overview of supporting measures is contained in Decree No. 27/2016.⁵⁶²

12.2 Case law

Name of the court: Constitutional Court

Date of decision: 14 June 2016

Name of the parties: Prague City Court (proceeding on annulment of provision)

Reference number: Pl. ÚS 7/15

Address of the webpage:

[http://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/Decisions/pdf/Pl. US 7-15.pdf](http://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/Decisions/pdf/Pl._US_7-15.pdf)

Brief summary: The Constitutional Court examined a case concerning child adoption by homosexuals who had entered into a registered partnership. It was found that a provision of the Law on registered partnerships⁵⁶³ was discriminatory since it prohibited the registered partners or one of them to adopt a child (while adoption by a single homosexual person was lawful). The Constitutional Court stated that if certain group of persons is excluded from a certain right solely because they have decided to enter into a registered partnership, it turns them into de facto 'second-rank' individuals and stigmatises them groundlessly, evoking the idea of their inferiority and fundamental differences from others. Therefore, the Constitutional Court annulled the contested provision holding that it infringed registered partners' rights to private life and dignity.

Name of the court: Constitutional Court

Date of decision: 3 January 2017

Name of the parties: Public Defender of Rights (proceeding on annulment of the decree)

Reference number: Pl. ÚS 6/16

Address of the webpage:

<http://nalus.usoud.cz/Search/ResultDetail.aspx?id=95629&pos=1&cnt=716&typ=result>

⁵⁶⁰ Czech Republic, Law No. 561/2004 on pre-school, primary, secondary and higher vocational and other education (Schools Act) (*Zákon č. 561/2004 Sb., o předškolním, základním středním, vyšším odborném a jiném vzdělávání*), 24 September 2004.

⁵⁶¹ For more details, see Section 3.2.8.

⁵⁶² Czech Republic, Decree No. 27/2016, on the education of pupils with special educational needs and talented pupils, 28 January 2016; <https://www.zakonyprolidi.cz/cs/2016-27>.

⁵⁶³ Czech Republic, Law No. 115/2006 Coll., on registered partnerships (*Zákon č. 115/2006 Sb., o registrovaném partnerství*), 26 January 2006; <https://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=62343&nr=115~2F2006&rpp=15#local-content>.

Brief summary: The case was related to discrimination against disabled persons in the field of employment. The Ombudsman objected to the provision of Government Regulation No. 567/2006 on minimum wage, which prescribed a lower minimum wage for beneficiaries of invalidity pension. This led to discrimination, since persons performing the same job gained different remuneration due only to the fact that one of them received invalidity pension.⁵⁶⁴ However, the proceeding before the Constitutional Court was discontinued since the contested discriminatory provision was annulled with effect from 1 January 2017.

Name of the court: Supreme Court

Date of decision: 24 March 2016

Name of the parties: J. S.

Reference number: 21 Cdo 230/2015

Address of the webpage:

http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/A18EA2659D293180C1257FC0003BFA5A?openDocument&Highlight=0

Brief summary: In 2016, the Supreme Court examined a case concerning alleged discrimination on the ground of ethnic origin in access to employment. The applicant claimed that the recruitment conditions were discriminatory in his case and he did not get a job because of his Roma origin. According to the legal shift in the burden of proof, the applicant had to prove to the court that he had been treated differently than other persons in the same position, while the defendant had to prove that he had not treated the applicant differently on any of the discriminatory grounds. The Supreme Court ascertained that the applicant was not successful in the recruitment process among tens of other candidates and the defendant proved that he did not treat the applicant differently on the ground of the applicant's Roma origin. The Supreme Court found no discrimination and dismissed the applicant's claim for just satisfaction

Name of the court: Supreme Court

Date of decision: 28 January 2016

Name of the parties: M. H.

Reference number: 21 Cdo 2754/2014

Address of the webpage:

http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/F2920E361E6DF0F6C1257F950030ECEE?openDocument&Highlight=0

Brief summary: The applicant claimed he was discriminated against as he was dismissed from his job at the Ministry of Labour and Social Affairs because of his age. The Supreme Court examined the statistics that showed that the employer (the ministry) dismissed 37 employees in total, 14 of whom were younger than the applicant. Although the applicant claimed that only the dismissals in his division should have been taken into account (which showed that the average age of the division's employees decreased from 49 to 44 after the dismissals), the Supreme Court assessed that the dismissals were a result of a decision by the minister and its consequences should be considered as a whole. It was found that there was no discrimination on the ground of age.

Name of the court: Plzen Regional Court

Date of decision: 23 September 2016

Name of the parties: M. D.

Reference number: 30A 98/2015

Address of the webpage:

http://www.nssoud.cz/files/EVIDENCNI_LIST/2015/30_A_98_20161208154701.2015_ro_zsudek_anonymizovany_prevedeno.pdf

Brief summary: The case concerned discrimination on the ground of belief, particularly the right to education of a child who was not vaccinated. The parents decided not to

⁵⁶⁴ Public Defender of Rights (2016), *Zpráva pro Poslaneckou sněmovnu za 1. čtvrtletí* (Report from the 1st Quarter of 2016), Brno, Veřejný ochránce práv; http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Ctvrtletky/2016/2016_1_Q.pdf, p. 8.

vaccinate their child due to their belief that vaccination is harmful. The regional court examined whether the maternity school had erred in its refusal to accept a child without vaccination. The court referred to a previous decision of the Supreme Administrative Court and did not find discrimination since the vaccination is obligatory according to the Law on public health.

Name of the court: Legal opinion of the Public Defender of Rights (Ombudsman) – this is not comparable to a decision by a court

Date of decision: 14 December 2015

Name of the parties: Ing. A. B. Ph.D.

Reference number: 134/2013/DIS

Address of the webpage: <http://eso.ochrance.cz/Nalezene/Edit/3576>

Brief summary: The Ombudsman found differential treatment of the applicant who was an elderly employee whose employment contract was extended for unreasonably short periods. The employer always extended the employment contract by a year although employment contracts of other employees in similar position were extended by more than a year. After the State Labour inspection led an inquiry at the employer, which was a university, it was discovered that the applicant was treated less favourably in various ways, such as in the monitoring of her absence and repeated insulting behaviour on the ground of her age.

Name of the court: Legal opinion of the Public Defender of Rights (Ombudsman) – this is not comparable to a decision by a court

Date of decision: 27 May 2016

Name of the parties: SONS

Reference number: 44/2015/DIS

Address of the webpage: <http://eso.ochrance.cz/Nalezene/Edit/4532>

Brief summary: The Ombudsman examined a case on access of visually impaired people to audio information in the main TV reporting of Czech television. The Ombudsman found the procedure discriminatory for people with disabilities and recommended that the Director of the Czech television change the practice.

Name of the court: Legal opinion of the Public Defender of Rights (Ombudsman) – this is not comparable to a decision by a court

Date of decision: 25 February 2016

Name of the parties: F.M.

Reference number: 1307/2014/VOP

Address of the webpage: <http://eso.ochrance.cz/Nalezene/Edit/3702>

Brief summary: The Ombudsman examined a case in which a person with disability who asked the municipality⁵⁶⁵ to change his municipal flat because he had difficulties in accessing the flat, which was on the first floor. The Ombudsman ascertained that the municipality failed to provide reasonable accommodation since the applicant was not offered any alternative, for example a barrier-free flat.

Name of the court: Legal opinion of the Public Defender of Rights (Ombudsman) – this is not comparable to a decision by a court

Date of decision: 7 September 2016

Name of the parties: A. B.

Reference number: 2695/2014/VOP

Address of the webpage: <http://eso.ochrance.cz/Nalezene/Edit/4370>

Brief summary: The Ombudsman found discrimination in the case of a student who had to pay a fee for the period of parental leave. The Ombudsman reproached the university for not offering the applicant adequate measures for her studies. Furthermore, the Ombudsman recommended that the Ministry of Education, Youth and Sports unify the practice as regards students who are mothers.

⁵⁶⁵ The Ombudsman does not provide information on the name of the municipality.

Name of the court: Legal opinion of the Public Defender of Rights (Ombudsman) – this is not comparable to a decision by a court

Date of decision: unknown

Name of the parties: unknown

Reference number: 35/2013/DIS

Address of the webpage:

https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Ctvrtletky/2016/2016_2-Q.pdf⁵⁶⁶

Brief summary: The Ombudsman found that a rehabilitation institute failed to provide reasonable accommodation by allowing the applicant to be accompanied by a guide dog when staying at the rehabilitation centre. As a result of Ombudsman's inquiry, the institute changed its operating regulations so as to enable access by people with guide dogs. The Ombudsman recommended that the Government adopt a law regulating access to public premises for people with disabilities who use guide dogs. The Government has not yet discussed the recommendation.⁵⁶⁷

⁵⁶⁶ This case is not available in the database of opinions by the Public Defender of Rights. As all the information is provided only by the quarterly report by the Ombudsman, more detailed information is not available.

⁵⁶⁷ Public Defender of Rights (Ombudsman) (2016), *Doporučení vládě k vydání zákona, který by upravil některá práva osob se zdravotním postižením, které využívají doprovodu psa se speciálním výcvikem, sp. zn. 23/2015/SZD* (Recommendation to adopt a law, which would regulate rights of disabled persons using a guide dog, no. 23/2015/SZD); http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Ctvrtletky/2016/2016_2-Q_doporuceni.pdf.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Czech Republic
Date: 1 January 2017

Title of legislation (including amending legislation)	Title of the law: Law No. 2/1993 Coll., Charter of fundamental rights and freedoms Abbreviation: Charter Date of adoption: 16 December 1992 Latest amendments: Law No. 162/1998 Sb. Entry into force: 1 January 1993 Web link: http://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/Pravni_uprava/AJ/Listina_English_version.pdf Grounds covered: sex, race, colour, language, religion or belief, political or other orientation, national or social origin, adherence to national or ethnic minority, property, birth or other status.
	Constitutional law
	Material scope: Fundamental rights declared by the Charter
	Principal content: Fundamental rights declared by the Charter
Title of legislation (including amending legislation)	Title of the law: Law No. 198/2009 Coll., Anti-discrimination Law Abbreviation: Anti-discrimination Law Date of adoption: 23 April 2009 Entry into force: 1 September 2009/1 December 2009 Latest amendments: Law No. 332/2014 Web link: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Antidiskrimination_Act.pdf Grounds covered: race, colour, ethnic origin, 'nationality' (<i>národnost</i>), sex, sexual orientation, age, disability, religion or belief.
	Civil, administrative law
	Material scope: Public employment, private employment, access to goods or services (including housing), social protection, social advantages, education.
	Principal content: Prohibition of direct and indirect discrimination, reasonable accommodation, harassment, instruction to discriminate, creation of a specialised body.
Title of legislation (including amending legislation)	Title of the Law: Law No. 361/2003 on service by members of the security forces Date of adoption: 23 September 2003 Latest amendments: Law no. 303/2013 Entry into force: 1 January 2007 Web link: https://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=55966&nr=361~2F2003&rpp=15#local-content Grounds covered: age, race, colour, sex, sexual orientation, religion and belief, political orientation, national origin, 'nationality' (<i>národnost</i>), ethnic or social origin, property, birth, marital and family status or family duties, membership of trade unions and other organisations.
	Labour law
	Material scope: Public employment.
	Principal content: Prohibition of direct and indirect discrimination

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Czech Republic
Date: 1 January 2017

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	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 February 1991	18 March 1992	No	Yes	Yes
Protocol 12, ECHR	4 November 2000	No	No	No	No
Revised European Social Charter	4 November 2000	No	No	Ratified collective complaints protocol? No	No
International Covenant on Civil and Political Rights	7 October 1968	23 December 1975	No	Yes	Yes
Framework Convention for the Protection of National Minorities	28 April 1995	18 December 1997	No	No	Theoretically, yes, but it contains obligations of result which, in the author's opinion, are formulated in such a way as to exclude direct applicability.
International Covenant on Economic, Social and Cultural Rights	7 October 1968	23 December 1975	No	No	Theoretically, yes, but it contains obligations of result which, in the author's opinion, are formulated in such a way as to exclude direct applicability.

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	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 Elimination of All Forms of Racial Discrimination	7 March 1966	29 December 1966	No	Yes	Yes
Convention on the Elimination of Discrimination Against Women	17 July 1980	16 February 1982	No	Yes	Yes
ILO Convention No. 111 on Discrimination	25 June 1958	21 January 1964	No	No	Yes
Convention on the Rights of the Child	30 September 1990	7 January 1991	No	No	Theoretically, yes, but it contains obligations of result which, in the author's opinion, are formulated in such a way as to exclude direct applicability.
Convention on the Rights of Persons with Disabilities	30 March 2007	28 September 2009	No	No	Yes

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- one copy:
via EU Bookshop (<http://bookshop.europa.eu>);
- more than one copy or posters/maps:
from the European Union's representations (http://ec.europa.eu/represent_en.htm);
from the delegations in non-EU countries
(http://eeas.europa.eu/delegations/index_en.htm);
by contacting the Europe Direct service (http://europa.eu/europedirect/index_en.htm)
or calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (*).

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Priced publications:

- via EU Bookshop (<http://bookshop.europa.eu>)