



Executive Summary

Czech Republic country report

on measures to combat discrimination

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1. Introduction

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

However, the Czech Republic's heritage is negatively underlined as a result of the forty year communist regime, and has attributed formal and vague meanings to justice and rule of law. Czech draft Anti-discrimination legislation also fall victim to these narrow and formalized perceptions in the opinion of the public and political bodies of equal treatment and protection against discrimination. It is quite common that even lawyers express their belief that formal equality before the law is enough to secure what could be justifiably required with respect to equal treatment legislation. These voices express belief that the constitutional clause declaring Czech republic to be "a democratic state build on principles of rule of law and human rights protection" should be enough to serve as a legal base to protection against discrimination and that any definitions of discrimination or rules on positive measures are not necessary prerequisite of effective anti-discrimination protection. The most significant obstacle of effective protection is not only the lack of Anti-discrimination legislation implementing the EU Directives, but the widespread conviction in society, that real equality does not mean more than everybody to be treated formally identically, without respect to any difference essentially causing inequality. In case of disability, it is still tolerable to argue that such differences do result in real inequality. However, the measures of state policy to balance these inequalities are widely resented as ineffective and the legislation to implement them got round. The introduction of special measures in education or employment to balance disadvantages encountered by the Roma minority is mostly perceived by public opinion as "unjustified advantages" on the ground of ethnic origin. For the ground of age, discrimination of elder people in different sectors of public life is not denied, but it is argued that this is a result of "market economy" which brings positive and negative results and that it would be unreasonable and unjust to require the young and successful members of the society to pay for the senior population's well-being. The Antidiscrimination Bill failed in Czech Senate in January 2006, by 39 Senators voting for its rejection and 27 against it. Subsequently, it was not approved when supported by 84 Deputies only and 45 against it in the decisive voting in the Deputy Chamber on 23.

May 2006, when a higher quorum was required in order to overturn the Senate refusal. The main topics of the discussion in the Czech Parliament were the refusal of positive measures as something known more widely as positive discrimination or doubts whether Czech Republic does really need the EU Directives implemented by one Anti-discrimination Law.

2. Main legislation

The Czech Republic has ratified all the instruments for combating discrimination in the two main international human rights system, the United Nations and the Council of Europe including the UNESCO Convention against Discrimination in Education, ILO Convention no. 111 and the International Convention on the Elimination of All Forms of Racial Discrimination. The country is also a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The national legal system is framed by the Czech Constitution, which refers to the Charter of Fundamental Rights and Freedoms of the Czech Republic as a part of the constitutional provisions. One of the first pieces of post-communist Czechoslovak federal legislation, the Charter was decreed as a part of the constitutional order again by the newly constituted Czech Republic in 1993. The provisions of the Charter do cover rights identical to those covered by the European Convention on Human Rights, International Covenant on Civil and Political Rights and International Convention on Economic, Social and Cultural rights. The comparative research of the text would show that the provisions of the Charter are more detailed than those of international instruments (such as provisions of chapter five, covering right to fair trial), and are more vaguely formulated (such as Economic, Social and Cultural Rights). A general anti-discrimination clause in Article 3 of the Charter expressly prohibits discrimination with respect to basic rights and freedoms on the following grounds given in an open-ended list: sex, race, colour, language, religion or belief, political or other conviction, national or social origin, membership of a national or ethnic minority, property, and birth or other status. It does not specifically protect against discrimination on grounds of sexual orientation or disability. In practice the Civil Code is used in litigation by the victims of discrimination, NGOs, attorneys and human rights activists. Section 11 of the Civil Code provides for the protection of personal rights of individuals, mainly their rights to life, health, civil integrity and human dignity, privacy, their name and reputation and expressions of personal character. The clause does not contain an explicit guarantee of protection against discrimination, and therefore it has some limitations. As a consequence, some actions, especially those on behalf of victims of racial harassment could be, and have been, rejected by the Czech courts. The Criminal Code sets penalties for crimes relating to racial discrimination and discrimination on the grounds of religion or belief, covering only the most serious incidents. Additionally, there are variations in how crimes are dealt with if they are racially motivated or based on religious hatred or discrimination on the grounds of belief – such cases are accompanied by stricter sanctions.

There are a number of aspects of the existing system which are not in line with the directives:

- Lack of definitions of forms of discrimination (direct, indirect discrimination, harassment and victimisation);
- Certain fields completely lacking anti-discrimination provisions (for example social security, access to health, access and conditions of self-employment);
- The lack of a consistent system of sanctions;
- The lack of an institutional framework (an independent body to assist victims of discrimination has not been established and there is no existing body providing this assistance, conducting research or with the capacity to issue recommendations.)



3. Main principles and definitions

The definitions of forms of discrimination are inserted into the Law on Employment. The laws governing state service as well as the law governing service in the armed forces do contain anti-discrimination clauses, but not definitions of discrimination, except of the Law on Members of Security Services, which does contain definitions of forms of discrimination. The Law on Employment introduced new specifically Antidiscrimination action. With regard to legislation governing self-employment and also certain occupations where neither the Labour Law, Law on Employment nor legislation governing state service apply, there has not been implementation of the "race" Directive and Framework directive. The implementation with respect to this field was supposed to be incorporated in the new Anti-discrimination Law, not passed in Czech Parliament in May 2006.

Exemption on grounds of genuine occupational requirements is provided for in the Law on Employment, the Labour Law and the laws governing state services, armed forces service and security services. A reasonable accommodation clause is similarly provided in the Law on Employment. In the laws governing state services there is no provision for reasonable accommodation, as disability does not represent grounds for discrimination according to the laws governing state services, armed forces and security services. In the law governing the state service, no provision is made for reasonable accommodation either (this law's effect was postponed again in December 2006, this time to 1. January 2009.)

4. Material scope

The Czech anti-discrimination provisions implementing the Directives cover most of labour relations, including both public and private sector and access to employment (job recruitment, re-qualification etc.). But there are gaps even within this area, as there are the definitions of discrimination missing in the Labour Law, and at the same time there are important exemptions from the Labour Law, such as for judges, state prosecutors, deputies and others, where the Labour Law does not apply. Other areas, for example vocational education, are not covered, except for vocational training governed by the Law on Employment. With regard to primary, secondary and higher education, no specific anti-discrimination legislation applies except of brief clause in the School Law prohibiting discrimination against EU citizens and Czech nationals. Similarly, no specific anti-discrimination provisions are in place with regard to access to housing, social security or social advantages. Access to goods and services is covered only by a simple clause prohibiting discrimination on any ground, with no specific definitions given.

The legislation in place mentioned above prohibits discrimination on the grounds of racial or ethnic origin, religion or belief, age, disability, sexual orientation and an additional number of other grounds, which vary from one piece of legislation to another. There can be found enumerative as well as open-ended lists of grounds. There are not any national rules, plans for adoption of such neither rules nor case law dealing with situations of multiple discrimination.

5. Enforcing the law

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

Civil actions may be brought under special anti-discrimination provisions of the Law on Employment and the Civil Code provisions on infringement of personal integrity, which are used where the Law on Employment does not apply. The Civil Procedure Code and shift of the burden of proof applies in both cases and its practical application does not cause any difficulties in concrete cases before courts.

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

Administrative enforcement consists of sanctioning misdemeanours and administrative offences. Relevant administrative procedures provide investigative powers for administrative bodies and inspectorates, as established within the scope of specific laws. These bodies, such as the Employment Offices or the Czech Trade Inspectorate, are empowered to impose sanctions, mostly financial penalties. Where powers of other specialised inspectorates or administrative bodies do not apply, the competency to investigate acts of discrimination is vested in territorial local government (the misdemeanour commissions of municipal offices), who can investigate misdemeanours committed by natural persons only. In fact, the number of cases where sanctions were imposed because of an act of discrimination is extremely restricted. The procedures are slow and ineffective. Legal aid is provided in very limited circumstances through court advocates and the bar association. Entitlement of associations with a legitimate interest to engage in judicial proceedings is regulated as a special type of representation under Section 26 of the Civil Procedure Code. In matters regarding discrimination on grounds of gender, racial or ethnic origin, religion, conviction, disability, age or sexual orientation, a party in proceedings could be represented by a legal entity established according to a special law, where protection against such discrimination is part of this legal entity's activities. Trade unions can also represent their members as parties in proceedings on any matter, with the exception of business or trade disputes. However, these entitlements are not frequently used.

The right of the plaintiff to use "situational testing" to prove discrimination was in fact never questioned by Czech courts. The same could be said also about statistical evidence. Whether a court considers statistical data as convincing evidence in an individual case is another matter. In only one case known to the author, the Constitutional Court held the petition inadmissible on procedural grounds. In practice situational testing is used by NGOs in order to prove discrimination in access to employment, services and housing. All cases of this kind were carried out with respect to discrimination on the ground of racial or ethnic origin.

6. Equality bodies

There is no equality body in the Czech Republic. The draft Anti-discrimination Bill proposed not to establish a new body but to award the functions required by Art. 13 of the Directive 2000/43/EC to the Public Defender of Rights (Czech ombudsperson). Within the proposed anti-discrimination legislation, the Public Defender of Rights should contribute to combating racism and xenophobia and the promotion of equal treatment of all persons irrespective of sex, sexual orientation, age, disability, religion or faith. However, the Anti-Discrimination Bill was rejected by the Senate (Second Chamber of Czech Parliament).