

## **Executive Summary**

### **Czech Country Report on measures to combat discrimination**

#### **By Pavla Boucková, 2007**

#### **1. Introduction**

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

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

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



For the ground of age, discrimination against older people in different sectors of public life is not denied, but it is argued that this is a result of the ‘market economy’, which brings both positive and negative results, and that it would be unreasonable and unjust to require young and successful members of society to pay for the well-being of the older population. The current conservative government made a second attempt to submit the Anti-discrimination Bill in 2007. In September 2007, the bill started its journey through the two-chamber Czech Parliament. It was approved by the Chamber of Deputies in March 2008, and in spring 2008 it was pending in the Czech Senate.

## 2. Main legislation

The Czech Republic has ratified all the instruments for combating discrimination in the two main international human rights systems, the United Nations and the Council of Europe, including the UNESCO Convention against Discrimination in Education, ILO Convention No. 111 and the International Convention on the Elimination of All Forms of Racial Discrimination. The country is also a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The national legal system is framed by the Czech Constitution, which refers to the Charter of Fundamental Rights and Freedoms of the Czech Republic as a part of the constitutional provisions. One of the first pieces of post-communist Czechoslovak federal legislation, in 1993 the Charter was again decreed as a part of the constitutional order by the newly constituted Czech Republic. The provisions of the Charter cover rights identical to those covered by the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights. Comparative research of the text would show that the provisions of the Charter are more detailed than those of the international instruments (such as the provisions of Chapter Five, covering the right to fair trial), and are more imprecisely formulated (such as Economic, Social and Cultural Rights). A general anti-discrimination clause in Article 3 of the Charter expressly prohibits discrimination with respect to basic rights and freedoms on the following grounds given in an open-ended list: sex, race, colour, language, religion or belief, political or other conviction, national or social origin, membership of a national or ethnic minority, property, and birth or other status. It does not specifically protect against discrimination on grounds of sexual orientation or disability. 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 the 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 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 and indirect discrimination, harassment and victimisation);
- Certain fields completely lack anti-discrimination provisions (for example education, social security, access to health);
- Lack of a consistent system of sanctions;
- Lack of an institutional framework. (An independent body to assist victims of discrimination has not been established and there is no existing body which provides this assistance, conducts research or has the capacity to issue recommendations.)

The Czech Republic has not implemented the EU anti-discrimination directives in its national law. There are no definitions of forms of discrimination, except in the narrow area of access to employment. The Labour Code contains only general equality provisions, but also lacks definitions of discrimination and other measures of the anti-discrimination *acquis*. A specialised body has not been established in the Czech Republic. Anti-discrimination provisions are non-existent in laws governing access to health, housing, social security and social benefits, or self-employment activities. The Anti-discrimination Bill, drafted to implement the EU anti-discrimination directives, was once again submitted to the Czech Parliament in 2007.

### 3. Main principles and definitions

Definitions of direct and indirect discrimination and harassment are inserted into the Law on Employment, but definitions of discrimination are completely absent from the Labour Code, which governs labour relations. The Law on Service by Members of the Security Services contains definitions of direct and indirect discrimination and harassment. The Law on State Service does contain definitions of direct and indirect discrimination, but not a definition of harassment. The date for this law to come into effect has been postponed every year (at the cut-off date for this report, until 01 January 2009). The government is currently considering repeal of this law. The Law on Service by Members of the Armed Forces does contain a definition of harassment, but no definitions of direct and indirect discrimination. Similarly to the Law on Service by Members of the Security Services, this law also contains a provision prohibiting instruction to discriminate. Provisions on victimisation, discrimination by association and multiple discrimination are completely absent in Czech national legislation. The Law on Employment introduced new specific anti-discrimination measures. With regard to legislation governing self-employment and also certain occupations where neither labour legislation nor legislation governing state service apply, there has been no implementation of the Racial Equality Directive and Framework Directive.

Implementation in respect of this field was supposed to be incorporated in the new Anti-discrimination Law, which is pending voting in the Senate.

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



In the Labour Law and the laws governing state service there is no provision for reasonable accommodation, as disability does not represent grounds for discrimination according to the laws governing state service, service in the armed forces and in the security services. In the Law on State Service, no provision is made for reasonable accommodation. (This law has not yet entered into effect.)

#### **4. Material scope**

The Czech anti-discrimination provisions implementing the directives cover labour relations, including employment and working conditions, dismissals and pay, membership and involvement in an organisation of workers or employers, in both the public and private sectors. They also cover access to employment (job recruitment, re-qualification etc.), on all grounds included in the EU anti-discrimination directives—sex, race and ethnicity, religion, disability (state of health), age and sexual orientation. Nevertheless, there are gaps even within this area, as there are some exemptions from the Labour Law, such as for judges, state prosecutors, deputies and others, where the Labour Law does not apply. Other areas are not covered, including membership of organisations whose members carry on a particular profession, and self-employment. The exception is vocational training governed by the Law on Employment, where the anti-discrimination provisions of this law do apply. With regard to primary, secondary and higher education, no specific anti-discrimination legislation implementing the directives applies. Similarly, no specific anti-discrimination provisions are in place with regard to access to health, housing, social security or social advantages. Access to goods and services is covered only by a simple clause of the Law on Consumer Protection 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. Enumerative as well as open-ended lists of grounds can be found.

#### **5. Enforcing the law**

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

Civil actions may be brought under special anti-discrimination provisions of the Law on Employment and under the provisions of the Civil Code 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.

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, mainly financial penalties. Where the powers of other specialised inspectorates or administrative bodies do not apply, competency to investigate acts of discrimination is vested in territorial local government (through the misdemeanour commissions of municipal offices), which can investigate misdemeanours committed by natural persons only. In fact, the number of cases where sanctions have been imposed because of an act of discrimination is extremely limited. The procedures are slow and ineffective. Legal aid is provided in very limited circumstances through court advocates and the Bar Association. The 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 has in fact never been questioned by Czech courts. The same could also be said about statistical evidence. Whether a court considers statistical data as convincing evidence in an individual case is another matter. In 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 in respect of discrimination on the ground of racial or ethnic origin.

Whether the sanctions imposed for discrimination are effective and dissuasive, is very doubtful. The non material damages awarded by the courts are extremely different. The sums awarded as compensation could in practice vary between CZK 5,000 (EUR 202) and CZK 250,000 (EUR 10,120) for discrimination.

On the other hand, where the plaintiff fails, he/she will be due to compensate the respondent for costs, which amount in practice to some EUR 2,500. In theory, although administrative penalties of up to CZK 1 million could be imposed, the amounts actually enforced are much lower—approximately EUR 242. Criminal prosecutions for crimes relating to racial and religious discrimination are quite rare, and are usually for serious criminal offences such as racially motivated murder. Where discrimination occurs, the investigatory bodies usually conclude that the act committed is not so dangerous for society as to be regarded as a crime, and consequently refer these incidents to misdemeanour commissions for administrative investigation. Administrative investigation of misdemeanours is extremely ineffective.



The Law on Misdemeanours requires the investigation to be completed within one year, otherwise it must be dropped, and therefore it is quite exceptional for discriminatory acts to be punished within the misdemeanour procedure.

## **6. Equality bodies**

There is no equality body in the Czech Republic. The draft Anti-discrimination Law proposed not to establish a new body but to award the functions required by Article 13 of Directive 2000/43/EC to the Public Defender of Rights (Czech ombudsman). Within the proposed anti-discrimination legislation, the Public Defender of Rights would 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 awaits voting in the Czech Senate.