

## NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

### CZECH REPUBLIC, Situation as of 31 December 2002

#### General Overview

*Preliminary Note: this table is accompanied by an explanatory note.*

<b>COUNTRY:</b> <b>CZECH REPUBLIC</b>	<b>Constitutional provisions</b>	<b>Specific legislation</b>	<b>Criminal law</b>	<b>Civil and administrative law</b>
<b>Norms concerning discrimination in general</b>	Articles 1 and 4 (3) of the Charter of Fundamental Rights and Freedoms.	No.	No.	No.
<b>Norms concerning racism</b>	Articles 3 and 24 of the Charter of Fundamental Rights and Freedoms.	No.	Articles 196-198a and 259-263a of the Criminal Code.	Order no. 182/1991 of the Ministry for Labour and Social Affairs, implementing the Social Security Act.
<b>Relevant jurisprudence</b>	No	No.	<i>Politika</i> Case. Articles 198 and 198a applied to a Chief Editor who published articles with an anti-semitic content.	No.

## **EXPLANATORY NOTE**

### **CZECH REPUBLIC / GENERAL OVERVIEW**

#### **Introduction**

The Czech Republic, following its separation from Czechoslovakia, adopted a new Constitution on 16 December 1992. As regards the federal legislation of ex-Czechoslovakia, most laws are still in force. This is the case for the Charter of Fundamental Rights and Freedoms (which forms part of the new Constitution), the Criminal Code, the Labour Code, etc. It should also be mentioned that the Czech Republic has ratified the 1965 United Nations Convention on the Elimination of All Forms of Racial Discrimination.

The following international covenants prohibiting racial discrimination are through Article 10 of the Czech Constitution incorporated into Czech law: International Convention on Elimination of All Forms of Racial Discrimination, International Covenant on Political and Civil Rights, International Convention on the Suppression and Punishment of the Crime of Apartheid, International Covenant on Economic, Social and Cultural Rights, European Convention on Human Rights, ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, Convention on the Rights of the Child and Convention on the Elimination of All Forms of Discrimination Against Women. The Czech Republic has also signed the European Social Charter and the Revised European Social Charter.

Reinforcing these international obligations, in 1992, the Czech National Council declared the Charter of Fundamental Rights and Basic Freedoms, an instrument of the constitutional order of the Czech Republic. The Charter includes guarantees of the rights and freedoms of all persons regardless of gender, race, colour of skin, national or social origin inter alia. Further provisions of the Charter guarantee the political and cultural rights of Czech citizens belonging to national and ethnic minorities. The extent to which these guarantees provide real protection for ethnic and racial minorities is limited by the absence of implementing legislation. Some legislation has been passed: the Consumer Protection Code, for example, prohibits discrimination in providing goods and services, and the Law of Employment prohibits direct discrimination in matters relating to employment. Restricted enforcement provisions and problems with access to justice, however, have partly limited the impact of these measures. Generally, the detailed articulation of anti-discrimination provisions contemplated by the Charter is still missing.

The prohibition of discrimination on grounds of race underlies numerous general provisions of the Constitution of the Czech Republic and of the Charter. In addition, it is embodied in laws and regulations such as the Civil Code and Code of Civil Procedure, Criminal Code and Code of Criminal Procedure, Code of Administrative Procedure, Labour Code, Law on State Social Benefits, Law on the Family, etc.

#### **Constitutional law: Czech Republic**

*Preliminary Note: this table is accompanied by an explanatory note.*

Constitutional provision	Scope	Relevant jurisprudence	Remarks
Articles 1, 3 and 4 (3) of the Charter of Fundamental Rights and Freedoms.	Equality of human beings in general; Art. 3 secures fundamental rights to all, irrespective of race, etc, and guarantees free choice of nationality and equal treatment.	Decision of the Constitutional Court of 12 April 1994 in the case concerning the order of the town of Most - nullified the order aimed at controlling the influx of inhabitants, on the grounds that it had no legal basis, but also mentioned the discriminatory nature of the order in question.	Other decisions striking down similar municipal orders have been issued, but in them the Court did not refer to the discriminatory nature of these orders.
Third chapter (Articles 24 and 25) of the Charter of Fundamental Rights and Freedoms.	Protection of the rights of national and ethnic minorities (right to foster their own culture, disseminate and receive information in their first language, join together in national associations, be instructed in their language, use their language in dealings with the authorities and participate in the solution of questions concerning them).		

## EXPLANATORY NOTE

### CZECH REPUBLIC / CONSTITUTIONAL LAW

#### 1. Preliminary comments

Fundamental rights are listed in the Charter of Fundamental Rights and Freedoms, which forms part of the Czech Constitution (Article 3 thereof). These fundamental rights and freedoms are protected by the judiciary (Article 4 of the Constitution) through the Constitutional Court.

International conventions on human rights and fundamental freedoms, which have been duly ratified and promulgated, are directly applicable and take precedence over national legislation (Article 10 of the Constitution).

## **2. The Charter of Fundamental Rights and Freedoms**

### **2.1. General provisions concerning the equality of citizens**

The first article of the Charter of Fundamental Rights and Freedoms (hereinafter called "the Charter") establishes the equality of human beings in general. This general provision is consolidated by Article 3 (1) which prohibits discrimination:

"(1) Fundamental rights and freedoms shall be secured to all, irrespective of sex, race, skin colour, language, belief or religion, political or other convictions, national or social origin, membership of a national or ethnic minority, property, birth or position of any other kind"<sup>1</sup>.

Article 4 (3) establishes equality of treatment:

"Legal restrictions on fundamental rights and freedoms must apply equally to all cases which fulfil the conditions laid down."

### **2.2. The rights of national and ethnic minorities**

The third chapter of the Charter is devoted to the protection of the rights of national and ethnic minorities. Article 24 of the Charter states:

"Membership of a national or ethnic minority shall not be detrimental to anyone."

According to Article 25:

"(1) The advancement of citizens forming national or ethnic minorities shall be guaranteed in all respects, especially the right to foster their own culture together with other members of the minority, the right to disseminate and receive information in their first language and to join together in national associations. The details shall be settled by law.

(2) Subject to the conditions established by law, citizens belonging to ethnic and national minorities shall likewise be entitled to:

- a) instruction in their language,
- b) use their language in dealings with the authorities,
- c) participate in the settlement of matters concerning national and ethnic minorities."

When the Charter uses the term "citizen", this means a citizen of the Czech Republic. Aliens enjoy the human rights and fundamental freedoms guaranteed by the Charter, unless they are reserved for citizens (Article 42 of the Charter).

In 1993, following the division of Czechoslovakia by peaceful means, a law on citizenship (No. 40/1993 Sb.) went into effect in the new Czech state. The law granted

citizenship to one category of persons then resident within the territory of the Czech Republic and specified conditions under which persons not granted immediate citizenship, but who were nevertheless citizens of the abolished Czech and Slovak Federal Republic, would be eligible for citizenship in the new state. The Czech law distinguished between those Czechoslovaks who possessed the republican citizenship of the Czech Republic, and those who were administratively designated as "Slovaks". The latter were required to apply for Czech citizenship. The basis for distinguishing between denominated Czechs and Slovaks under the new Czech law was neither length of stay, nor an evaluation of legitimate ties to republic, but rather a previously meaningless designation as either Czech or Slovak under the 1969 citizenship laws, which had no practical effect prior to 1993.

The Citizenship Law has been criticised by various organisations, especially because, when the law went into effect, an estimated 100,000 Roma then residing in the Czech Republic were suddenly designated as foreigners, and were denied all of the rights they had previously enjoyed as Czechoslovak citizens. According to human rights organisations' reports, the application procedure for Czech citizenship was designed to frustrate, rather than facilitate, the granting of citizenship. In addition to a number of complicated administrative stipulations, those denominated "Slovaks" were expected to demonstrate a clean criminal record for the previous five years. According to a report of the European Roma Rights Centre (ERRC), "subsequently leaked documents and public statements by Czech officials indicated that racial motivation may have influenced the drafting of the new law, specifically that some of the drafters had seen the disintegration of the Czechoslovak state as an opportunity to remove Roma from the Czech Republic to Slovakia"<sup>2</sup>.

In April 1996, in response to international criticism, the Czech parliament amended the law to allow the Ministry of the Interior to waive the five-year criminal record requirement on a case-by-case basis. Inadequate effort has been made, however, to inform affected people of the existence of the amendment. More importantly, the inherent arbitrariness of the waiver's application has rendered it inadequate as a remedy or the law's fundamental injustice<sup>3</sup>.

According to the above mentioned report of the European Roma Rights Centre, "thousands of Roma residing in the Czech Republic are currently *de facto* stateless as a direct result of the law. This deprives them of access to a range of benefits open only to Czech citizens: those denied citizenship are unable to vote or run for office, and many non-citizens have difficulty obtaining permanent residence, which is necessary to receive social benefits from the state. Additionally, as non-citizens, Roma can be and often have been sentenced to the punishment of expulsion for committing a crime. This penalty leads to their compulsory 'return' to a country-- Slovakia-- which many do not know and to which they lack effective ties. According to the Prague-based NGO Tolerance Foundation, 663 Slovak citizens were sentenced to expulsion by the Czech courts in the period January 1, 1993 to June 30, 1996. Tolerance states that, of the first 120 cases they were able to document, the sentenced individual was a Rom in 118 cases. One expulsion, handed down as part of the sentence of a man convicted of the theft of 140 crowns' (approximately 5 US dollars) worth of sugar beet, was quashed by the Supreme Court in May of 1997.

The law on Czech Nationality has been challenged before the Constitutional Court by a group of Parliamentarians calling for the repeal of articles which they claimed to be discriminatory, including Articles 18 and 18a, known as the "Roma clause"<sup>4</sup>. Their request was turned down by the judgment of 13 September 1994<sup>5</sup>. The Constitutional Court, while admitting that Slovak citizens had become aliens in the territory of the Czech Republic because of the dissolution of the "common" State, considered that the newly-created Republic could, as a sovereign State, lay down conditions for acquisition of nationality independently of the orders made by another State. It refutes the claim that Slovak citizens cannot be regarded as foreigners and that only the subjective wishes of such individuals and their objective relationship with the territory should be considered as determining factors for the acquisition of nationality. Therefore, the Court judges that all conditions placed on the acquisition of Czech nationality by Slovak citizens are legitimate. It should be noted that the conditions laid down in these cases are less strict than for other foreigners (shorter length of stay in the territory required).

The 1999 amendments to the Law resolved the issues relating to those who had permanent residence in the Czech Republic or had been continuously present since 1992, but those who had left to seek asylum abroad or had been expelled by authorities remain without recourse or compensation<sup>6</sup>.

### 3. Case-law

The Czech Constitutional Court has not had the occasion to decide directly on any cases of racial discrimination. Nevertheless, in April 1994, it struck down several municipal orders with more or less identical contents, which had been issued by towns with a large proportion of Roma/Gypsies. These towns had tried to regulate the influx of new inhabitants and had issued orders which, among other things, made it obligatory to request a temporary residence permit for any visit longer than five days. Failure to comply was punished by a fine of up to 5,000 Crowns (at that time an average monthly wage) and a municipal jail was to be opened for persons liable on these fines (orders of Usti nad Labem, Most and Bilina). In Usti nad Labem, in December 1992, the order enabled the police to raid 120 homes in search of unregistered Slovak (i.e. Roma/Gypsy) visitors<sup>7</sup>. The texts of these orders were really aimed at the Roma/Gypsies, although they did not say so explicitly.

The Constitutional Court rescinded all these orders, as they had no legal basis. In one of its decisions, it acknowledged that the rules it had abolished might be regarded as discriminatory, but it did not examine the question in detail<sup>8</sup>.

### Criminal Law: Czech Republic

*Preliminary Note: this table is accompanied by an explanatory note.*

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Violence against a group of	Article 196 of the Czech	Punishes anyone who uses violence	Imprisonment of up to 3 years.		

inhabitants or a person	Criminal Code.	against an inhabitant or group because of their race, nationality, political conviction or religion.			
Defamation of a nation, race or belief.	Article 198 of the Czech Criminal Code.	Punishes anyone who publicly defames a nation or its language, a race or a group of inhabitants.	Imprisonment of up to 2 years (para. 1) or 3 years (para. 2).	<i>Politika</i> case. The defendant, the chief editor of the weekly newspaper <i>Politika</i> , who had published anti-semitic articles, was sentenced to 7 months' imprisonment (suspended) and was prohibited from practising his profession for 2 years.	
Incitement to ethnic and racial hatred.	Article 198a of the Czech Criminal Code.	Punishes anyone who publicly incites hatred against a nation or race, or who calls for restrictions on the rights and freedoms of their members.	Imprisonment of up to 3 years.	<i>Politika</i> case (see above)	
Genocide	Article 259 of the Czech Criminal Code.	Punishes anyone whose intention is partly or completely to destroy a national, ethnic, racial or religious group.	Imprisonment of up to 15 years or exceptional sentence (15-25 years or life imprisonment).		
Support and	Articles	These Articles	Imprisonment	"Reports of the	

enlisting support for movements, the aim of which is to abolish citizens' rights and freedoms.	260 (support and enlisting support) and 261 (public expression of sympathy) of the Czech Criminal Code.	punish anyone who spreads national, racial, social or religious hatred (Article 260) or who publicly expresses sympathy for fascism or any other similar movement (Article 261).	of up to 5 years (para. 1) or up to 8 years (para. 2).	wise men of Zion" case. The editor, indicted under Article 260, has twice been freed on the following grounds: 1) no racist movement within the meaning of this article exists in the Czech Republic, because none has a registered office, regulations or name; 2) the editor's act reflected his entrepreneurial spirit. (An appeal against this decision is pending).
Persecution of the population	Article 263a of the Czech Criminal Code.	Punishes anyone who, during a war, carries out racial segregation or commits other inhuman acts arising from racial discrimination.	Imprisonment of up to 10 years.	

## EXPLANATORY NOTE

### CZECH REPUBLIC / CRIMINAL LAW

#### 1. Introduction

Several articles of the Criminal Code lay down penalties for discrimination. Articles 196 and 198 deal specifically with violence and defamation motivated by racism, whereas the Code also penalises these acts in general. An amendment to the



Criminal Code, No. 152/1995 Coll, increased penal sanctions for the crimes of murder, infliction of bodily injury and extortion under Sections 219, 221, 222 and 235 in cases motivated by racial or national hatred.

According to the amendment to the Criminal Code No. 285/2002 Coll. § 198a of the Criminal Code includes new Paragraph 3, which determines that a person who commits an offence mentioned in Paragraph 1 (i.e. who in public incites hatred for a nation, ethnic group, race, religion, class or other group of persons or to limit rights and freedoms of their members) by press, film, radio, television, computer networks accessible to the public or in any other way, or who participates in the activities of groups, organisations or associations which profess discrimination, violence or racial, ethnic and religious intolerance, will be punished with imprisonment of up to three years.

## **2. Case-law**

Articles 198 and 198a were applied in the case of Josef Tomas, Chief Editor of the weekly newspaper *Politika*, who, during 1991-1992, published 11 articles with an anti-semitic content. Since this time the newspaper has ceased publication. Josef Tomas was sentenced by the Court of the Prague 1 district to seven months' imprisonment (suspended) and was prohibited from practising his profession for 2 years<sup>9</sup>.

Article 260 of the Criminal Code formed the basis of the accusation brought by the Attorney General against Miroslav Gabriel, the editor of "Reports of the wise men of Zion". To date, Mr Gabriel has been released twice, the second time by the Court of the Prague 5 district, because the defence proved that there is no movement in the Czech Republic aiming to suppress human rights in the sense of Article 260, because none has a registered office, name or regulations. Moreover, the Court considered that the act of publishing the work in question reflected the entrepreneurial spirit of the editor.

### ***Racially motivated crimes***

The case of Tibor Danihel, who drowned in the Otava river at Písek on 24 September 1993, after jumping into the river together with three other Romas in fear of a group of skinheads who had harassed them:

Tibor Danihel's death occurred in connection with a skinhead rally, during which skinheads marching through the town shouted racist slogans. The skinheads, together with other persons, harassed several Roma who were on an island in the Otava river, using abusive language, insulting them for their Roma origin and colour and threatening them with death. The skinheads and their sympathisers were armed with nunchakus, baseball bats and chains. Fearing the skinheads and attempting to escape, a group of Roma boys got into the river and Tibor Danihel drowned. Numerous legal aspects of this case required assessment because, along with the fear of skinheads, the death of Tibor Danihel was largely due to the effect of organic solvents which he was inhaling with his friends on the island.

The case was referred to the District Investigation Authority in Písek. On 22 July 1994, the investigator proposed bringing charges against nineteen offenders for violence against a group of inhabitants and against individuals under Section 196/1,2,3 of the Criminal Code and for promotion and support of movements aiming to suppress the rights and freedoms of citizens under Section 260/1 of the Criminal Code. The Public Prosecutor returned the charges for additional investigation. The investigation was completed on 6 March 1996 and the report accompanied by a proposal to file charges for the above crimes against four offenders; additional charges for extortion under Section 235/1,2c of the Criminal Code were brought against three of them. The criminal prosecution against the remaining fifteen persons did not proceed due to lack of evidence under Section 171/1c of the Code of Criminal Procedure. On 2 May 1996, the District Prosecutor in Písek filed charges against four offenders for the crimes listed in the proposal of 6 March 1996. The matter is now pending before the District Court in Písek.

The case of the skinheads who, on 20 November 1994, threw an incendiary bottle into a flat inhabited by a Roma family at Jablonec nad Nisou, causing a fire in which two Roma women suffered serious burns:

On 11 July 1994 at approximately 11 p.m, four men threw Molotov cocktails into a flat at Jablonec nad Nisou, setting its furnishings on fire. Two Roma women were injured during the fire, suffering second and third degree burns, and furnishings worth approximately CZK 40,000 were damaged.

The case was referred to the District Investigation Authority in Jablonec nad Nisou. The investigation was concluded on 31 January 1995 with a proposal to charge four accomplices with the crime of public menace under Section 179/1 of the Criminal Code, violence against a group of inhabitants and against individuals under Section 196/2 of the Criminal Code, damage to property under Section 257/1 of the Criminal Code and bodily harm under Section 222/1,2b of the Criminal Code. In addition, charges of incitement to violence against a group of inhabitants and against individuals were brought under Section 10/1b and Section 196/2 of the Criminal Code. Pursuant to the final judgment given by the District Court in Jablonec nad Nisou on 13 April 1995 and the judgment given by the Regional Court in Ústí nad Labem on 11 August 1995, the offenders received a prison sentence without suspension for crimes under Section 9/2 and Section 179/1, 196/2 and 222/1,2b of the Criminal Code and for incitement to violence against a group of inhabitants and against individuals under Section 10/1b and Section 196/2 of the Criminal Code. The judgment included an award of money damages (CZK 39,535); claims to additional damages may be asserted by civil action.

The case of the skinheads who broke into the private flat of Tibor Berki, a Roma, in Zdár nad Sázavou on 24 May 1995 and beat him to death in the presence of his family:

On 13 May 1995 between 9.30 and 10 p.m., four offenders, who had previously agreed to harass Roma, made a forcible entry into the house at Zdár nad Sázavou in which the family of Tibor Berki lived. They proceeded to damage the furnishings and one of them repeatedly hit Tibor Berki on the head with a baseball bat. Tibor Berki died of his injuries in hospital at Nové Mesto na Morave on 14 May 1995.

The case was referred to the Regional Investigation Authority of the South Moravia region. The investigation was concluded on 14 July 1995 with a proposal to file charges against four offenders for the crime of violence against a group of inhabitants and against individuals under Section 196/2,3 of the Criminal Code and against one offender for murder under Section 219/1,2f of the Criminal Code. The Regional Court did not find a racial motive. However, the appellate court - the High Court in Olomouc - affirmed its existence in the judgement given on 23 May 1996. The sanctions imposed ranged from a suspended sentence of two months imprisonment to a thirteen year prison sentence without suspension for crimes under Section 219/1,2b of the Criminal Code (murder), under Section 196/2 of the Criminal Code (violence against a group of inhabitants and against individuals), under Section 238/1,3 of the Criminal Code (breach of the inviolability of home) and under Section 202/1 of the Criminal Code (*rowdyism*).

In 2001 two particularly serious offences were reported. In the first case, three Roma were assaulted in Ostrava-Poruba by a group of perpetrators, who used knives and gas pistols. One of the assaulted suffered a serious, life-threatening injury. The investigator initiated the investigation of attempted injury to health under Section 8(1) in relation to Section 222(1) and (2)(b) of the Criminal Code and of rowdiness under Section 202(1) of the Criminal Code. On 3 July 2001, the investigator of the City Investigation Office of the Police of the Czech Republic in Ostrava charged the perpetrators pursuant to Section 160(1) of the Criminal Procedure Code with injury to health under Section 222(1) and (2)(b) of the Criminal Code and rowdiness under Section 202(1) of the Criminal Code, committed as accomplices. On 5 July 2001, the investigator charged other persons with injury to health under Section 222(1) and (2)(b) and of rowdiness under Section 202(1) of the Criminal Code, committed as accomplices. The charges pressed against one of the accused were later re-classified as attempted murder under Section 8(1) in connection with Section 219(1) and (2)(g) of the Criminal Code. All accused were taken into custody.

The second case concerned the assault at a member of the Roma community in Svitavy, who died from his injuries on 21 July 2001. On the evening of 20 July 2001, the accused stabbed a 29-year-old Romani man to death in the eastern Bohemian town of Svitavy, while trying to drive Romani patrons out of a disco party and insulting their ethnicity. A 23-year old man was charged on 21 July 2001 and was taken into custody on 22 July 2001. The investigator of the Regional Investigation Office in Hradec Králové ended the investigation on 19 December 2001 by proposing to file a claim. On 29 March 2002, the Regional Court in Hradec Králové found the accused person guilty under Czech Criminal Code Article 219(2)(g) of racially-motivated murder, and sentenced him to 13 years imprisonment. The sentenced person appealed the verdict immediately. The state attorney also appealed the verdict and demanded an extraordinary sentence of fifteen to twenty-five years imprisonment<sup>10</sup>.

Two cases registered in 2001 concerned offences motivated by racial intolerance, which were committed by members of the police of the Czech Republic: One police officer was accused of support and promotion of movements aimed at suppressing citizens' rights and freedoms (Section 261 of the Criminal Code) and *rowdyism* under Section 202(1) of the Criminal Code, committed as an accomplice under Section 9(2) of the Criminal Code (chanting "*Sieg Heil*" at a bar and a physical assault on a person in front of the bar with accomplices). The state attorney filed a claim against the

police officer on 3 December 2001. As to an assault on a member of the Roma community by members of the police of the Czech Republic, five police officers were charged with abuse of power of a public official under Section 9/2 in relation to Section 158(1)(a) of the Criminal Code. Four of them were further charged with violence against a group of citizens or an individual under Section 9/2 in relation to Section 196(2) of the Criminal Code.

A sporadic occurrence of criminal offences motivated by racial intolerance in the Army should be also mentioned. In all these cases, the acts of the accused were classified as suspected support and promotion of movements aimed at suppressing citizens' rights and freedoms under Section 260 and Section 261 of the Criminal Code (in one case in concurrence with the defamation of a nation, race and creed under Section 198 of the Criminal Code). The illicit acts committed by the accused consisted of one case of chanting fascist and Nazi slogans and public use of the Nazi greeting, of two cases of showing video cassettes and reproductions of tapes with racist and Nazi texts at military barracks and of one case of physical assault, murder threats and racial insults directed against a dark-skinned soldier. In two cases, the Military Police found with the perpetrators materials promoting Nazism and racism. Five soldiers in compulsory service were suspected of racially-motivated criminal offences.

### **3. Evaluation of the implementation of provisions mentioned**

The category of "racially motivated crime" includes acts in which the motive is found to be racial or ethnic hatred; the crimes enumerated above frequently come within this category (Sections 196, 197, 198, 198a, 260 and 261 of the Criminal Code).

Typically, the offender is a skinhead or a sympathiser of the skinhead movement; the victim is a Roma or a person resembling a Roma. The latter include foreigners, mostly Bulgarians or Romanians. Other groups prone to violent attacks include the Jews, Blacks, Chinese and Vietnamese, more rarely Slovaks or Czechs or foreign students in general.

With several minor exceptions, racially motivated crimes are committed by at least two offenders, predominantly by groups of 10-30 persons. Such cases are rather more demanding in terms of presentation of evidence and correct classification of individual acts.

To counter the rising trend-line for racial violence, the Ministry of the Interior and the Ministry of Justice have decided to sharpen their performance in this respect. Starting from May 1995, the following changes have been made:

#### ***- Ministry of Justice:***

- an amendment to the Criminal Code effective from 1 September 1995 increases the penalties for racially motivated crimes on average by one year of imprisonment;
- starting from 1 June 1995, public prosecutors are instructed to ensure prompt judicial action in cases of racially motivated crime. This instruction has already yielded results - 117 prosecutions and 109 charges in respect of

racially motivated crimes were recorded in June-August 1995, while the total figure for 1994 was 155 cases.

**- Ministry of the Interior:**

- starting from 1 January 1996, each district police department has an expert on combating racial violence;
- starting from 31 October 1995, all police departments use a standardised method of recording racially motivated offences;
- on 1 June 1995, a special riot police squad (170 men) was established in Prague; its tasks include handling public order violations committed by groups as well as offences motivated by racial and national intolerance. A similar squad has been functioning in Ostrava since 1 January 1993;
- a Binding Instruction of the President of Police issued on 19 May 1995 determines the procedures to be observed by the police force when protecting public order in cases of violations by groups and when investigating crimes motivated by racial intolerance;
- an Instruction of the Director of the Investigation Authority for the Czech Republic issued on 23 May 1995 lays down the procedures to be observed when investigating crimes motivated by racial intolerance;
- police officers who neglect their duties when handling cases of racially motivated violence face strict sanctions. For example, the director of the district department in Nový Jičín was removed from office after omitting to detain a group of skinheads who attacked Roma.

The development of “racially-motivated crime”, which in the Czech Republic is treated generally as a part of extremism, has been described in periodical government reports (under the title “Report on Problems of Extremism on the Territory of the Czech Republic”). Those reports also provide detailed information on the activities of the state authorities in their struggle against extremism. The report for the year 2000 was approved by Government Resolution No. 903 of 12 September 2001. Detailed information regarding those problems has also been included in the Report for the Year 2001, which has been submitted by the Minister of the Interior in accordance with Government Resolution No. 1356 of 19 December 2001 concerning the Plan of Non-legislative Tasks of the Government for the year 2002. Such reports are presented by 30 June of every year by the Minister of the Interior and the Minister of Justice<sup>11</sup>.

Although criminal activities motivated by racial intolerance overlap substantially with criminal activities with extremist implications, those two types of criminal activities are not entirely identical, as the notion of “extremism” is defined otherwise, rather in the terms of political science than in the terms of law. Therefore, extremist criminal activities also include, beside acts motivated by racial intolerance, offences committed by politically or ideologically extremist demonstrators.

**- Prosecutions and charges for crimes motivated by racial, national or other hostility**<sup>12</sup>.

	1998		1999		2000		2001	
	Prosecuted charges		Prosecuted charges		Prosecuted charges		Prosecuted charges	
§ 196	118	73	121	74	118	78	95	58
§ 198	61	37	67	39	72	36	90	40
§ 198a	15	6	12	2	10	7	10	5
§ 260	10	10	19	15	12	11	24	24
§ 261	81	66	108	92	99	82	95	86

### Civil and administrative law: Czech Republic

*Preliminary Note: this table is accompanied by an explanatory note.*

Provision	Scope	Consequence of breach	Relevant jurisprudence	Remarks
Article 1 of the Employment Act	Gives citizens the right to work, irrespective of race, etc.			
The Misdemeanours Act No. 200/1990 Coll§ 49/1e	Harm to another person because of membership of a national minority, ethnic origin, race, colour of skin, sex, sexual orientation, language, religion and political views.	Possible to impose a fine.		
Article 4 of Law n° 83/1990 on citizens' associations.	Prohibits associations whose aim is to suppress citizens' rights for reasons of nationality, sex, race, etc.			
Law on the Right	District	Organisers of		

<p>to Assembly No. 84/1990 as Subsequently Amended. Article 10</p>	<p>authorities notified of an assembly may prohibit the assembly if the notification suggests that its aim is to encourage the denial or restriction of rights of citizens on the grounds of nationality, sex, race, origin, political or other opinion, religion and social status, to incite hatred and intolerance on such grounds, to incite violence or gross indecency, or to advocate the violation of the Constitution or any other laws.</p>	<p>prohibited assemblies, or assemblies without notification, are subject to a fine.</p>
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## **EXPLANATORY NOTE**

### **CZECH REPUBLIC / CIVIL AND ADMINISTRATIVE LAW**

#### **1. Right to work**

An amendment to the Law on Employment<sup>13</sup>, which came into effect on 1 October 1999 (Law No. 167/1999 of the Coll.), explicitly provides that the guarantees are protected against racial discrimination. The amended Article 1 para 1 of the Law on Employment stipulates that

“a citizen’s right to employment cannot be denied on grounds of .race, color, sex, sexual orientation, language, faith or religion, political or other conviction, membership or activity in political parties or political movements, union organisations and other associations, nationality, ethnic or social origin, property, family, health, age, marital and family status or obligations to his/her family”.

There is an exception where the contrary is stipulated by law or where there is a factual ground consisting in the preconditions, requirements and nature of the employment, which a citizen is to perform, and these are necessary for performance of this employment. The amended para 2 prohibits advertising vacancies or making offers of employment that violate the terms of para 1.

An amendment to the Labour Code<sup>14</sup> (published as the Law No. 155/2000 of the Coll.) effective from 1 January 2001 introduced articles which read as follows:

Article 1 para 3: "Employers are obliged to secure equal treatment to all employees concerning their working conditions, including the remuneration for labour and other payments, professional preparation and opportunities to achieve functional or other promotions in employment."

Article 1 para 4: "In labour relations, any discrimination of employees is prohibited if based on race, skin color, sex, sexual orientation, language, faith or religion, political or other conviction, membership or activity in political parties or political movements, union organisations and other associations, nationality, ethnic or social origin, property, family, health, age, marital and family status or obligations to his/her family. Also prohibited is conduct by an employer which discriminates not directly but in its consequences. Exceptions should not be considered discriminatory if they are stipulated by this Code or other special law or where there is a factual ground consisting in the manner of work that employee is performing and which is necessary for performance of this work".

## **2. Law on Minorities<sup>15</sup>**

The Act on the Rights of Members of National Minorities came into effect on 2 August 2001. The Law itself does not include an anti-discrimination provision. It grants the members of national minorities, individually and collectively, the various rights set out by the Law, or by special legal provisions or international treaties on human rights and freedoms to which the Czech Republic is bound. The Law also prohibits the impeding of these rights (Article 3, para 1+2). The act defines the notion of the national minority

"as a community of Czech citizens living on the territory of the Czech Republic, who differ from the other citizens mostly by common ethnic origin, language, culture and traditions, and who constitute, as to their number, a minority of the population, and the notion of the member of the national minority, which means a Czech citizen who considers himself of other than Czech nationality and manifests his wish to be considered as a member of a national minority together with other citizens who consider themselves as members of the same minority".

The Act on the Rights of Members of National Minorities also amended the Misdemeanours Act, which newly determines measures against discrimination, including sanctions for misdemeanours against civic coexistence. According to § 14 of the Minority Act a new category of offence concerning the members of national minorities is incorporated in § 49/1e) of the Misdemeanours Act<sup>16</sup> as follows:



“a delinquent...causes harm to another person because of his membership of a national minority, ethnic origin, race, colour of skin, sex, sexual orientation, language, religion and political views”.

For this offence it is possible to impose a penalty at the level of 5,000 CZK.

### **3. Public Defender of Rights (The Ombudsman)**

A victim of racial discrimination can also turn to the office of the Public Defender of Rights (the Ombudsman). The purpose of the Ombudsman is to defend persons against official actions (or omissions) that are inconsistent with the law, in contradiction with the principles of a democratic legal state and good administration<sup>17</sup>.

The Ombudsman can proceed on the following bases<sup>18</sup>:

- a) a motion filed by a person or entity addressed to his/her person, (everyone has the right to file a motion in matters that are in his/her sphere of competence; this may be submitted in writing or may be entered verbally into a record in the ombudsman office).
- b) a motion addressed to a Member of Parliament or a Senator, who has passed the motion to the Ombudsman
- c) a motion addressed to either of the Houses of Parliament, which has passed this motion the Ombudsman or
- d) his/her own initiative.

The Public Defender of Rights started 4 investigations of complaints lodged by the Roma with respect to social security benefits and pensions provided from the system of social welfare, widow's pensions and citizenship. In three cases he initiated investigations relating to the infringement of the rights of members of the Roma community (his intervention led to the resolution of the serious social situation of inhabitants in houses whose bad construction and technical state jeopardised in many cases the health and safety of citizens. The bodies of state administration and self-administration were not able to react to this situation efficiently and the necessary reconstruction and allocation of substitute flats for inhabitants whose flats could not be reconstructed were not implemented before the intervention of the Public Protector of Rights<sup>19</sup>).

### **4. Civil proceedings**

In civil proceedings, with limited exceptions in labour law, victims of racial discrimination can only seek reparation or damages through the provisions on personal dignity in the Civil Code<sup>20</sup>. The Civil Code provides for the equality of the parties in their relationships under civil law<sup>21</sup>. Any person whose rights have been violated or are endangered may seek the protection of the court, unless the law designates another competent body to receive complaints<sup>22</sup>. Natural persons have the right to the protection of their personality, in particular life and health, civil honor and human dignity, and to the protection of their name and personal traits. Individuals have the right to claim the cessation of the unjustified interference in their rights, the removal of the consequences of such interference and just satisfaction<sup>23</sup>. These

provisions offer a certain degree of protection against breaches of privacy and defamation, without expressly mentioning racial discrimination.

Although the Czech legal order guarantees everyone the right to legal aid before courts and other state or public administrative authorities throughout the proceedings, enforcement of these rights is not easy to accomplish. As there is little legislation concerning the prohibition of discrimination, victims have few available legal remedies<sup>24</sup>.

Such difficulties are illustrated by two recent cases involving Monika Horakova, the sole Romany representative in the Czech parliament at that time. On 18 October 1998, Ms. Horakova was denied entry to a disco club in Brno. Challenging the refusal to admit her, she was told that the premises were full. Other, non-Roma patrons, however, were freely admitted. The police were called, whereupon the representative of the disco refused to disclose his reasons for refusing entry to Ms. Horakova. Ms. Horakova filed a complaint under Article 11 of the Civil Code, claiming damage to her personal dignity. The defendant failed to appear, and the court therefore, obliged to accept Ms. Horakova's allegations as true, entered a default judgment in her favour. This favourable decision, however, resulted largely from the defendant's failure to appear, rather than from the conclusive proof of discriminatory treatment, which relieved Ms. Horakova of the difficulties of establishing not only the facts of the case, but also the extent of the damage to her personal dignity and an appropriate compensatory figure<sup>25</sup>.

In a separate incident on 17 September 1999, Ms. Horakova was again denied entry to a different club in Brno. Waiting in line with a Roma friend, Ms. Horakova was told by a representative of the club that Roma were not admitted. The police were called and the person responsible for the statement disappeared; after discussions between the police and the manager of the club, Ms. Horakova was told that she would be admitted. Ms. Horakova again filed a complaint under Article 11 of the Civil Code. With only one witness to corroborate her account, and evidence as to previous discrimination against Roma ruled inadmissible, Ms. Horakova failed to meet her burden of proof. The owners of the club disclaimed any responsibility for the action of the doorman, further complicating Ms. Horakova's efforts to establish her case<sup>26</sup>.

On 28 May 2002, the High Court of Justice in Prague decided that denial of access of Mr Jan Kovác, a Romani man, to the Drago Inferno club in the western Czech city of Karlovy Vary constituted a violation of human dignity and that Mr Kovác was entitled to non-pecuniary damages. On 13 July 2001, at around 10:45 PM, when Mr. Kovac tried to enter the club with a group, the doorman denied him entrance. Three other doormen at the club proceeded to repeat to Mr Kovác that the owner of the club had given them an order that Roma should not be allowed to enter the club and thus they could not allow Mr Kovác to enter. The doormen referred to past problems with Roma who had been involved in fights in the club, but could not specify that Mr Kovác had been involved. Soon thereafter, the police were informed of the incident. The judgement is, according to the European Roma Rights Center, the first in the Czech Republic in which non-pecuniary damages were awarded in such a case<sup>27</sup>.

#### **Note**

<sup>1</sup> All translations of legislative texts in this chapter are Council of

Europe translations of the Institute's translations.

**Note**

<sup>2</sup> See the Report of the European Roma Rights Centre, <http://blisty.cz/> (10.09.1997)

**Note**

<sup>3</sup> See also the NATO Enlargement Report of the United States Congressional Commission on Security and Cooperation in Europe, <http://house.gov/csce/>.

**Note**

<sup>4</sup> "Helsinki Watch" has sent a letter concerning the provisions of the new law on Czech Nationality and its disproportionate impact on the Roma/Gypsies to the Prime Minister, Vaclav Klaus (Human Rights Watch World Report 1994: Events of 1993. New York, Washington, etc.: Human Rights Watch, 1994, p. 214).

**Note**

<sup>5</sup> Sbirka zakonu 207/1994.

**Note**

<sup>6</sup> For further details see Written Comments of the European Roma Rights Center Concerning the Czech Republic, For Consideration by the United Nations Committee on Economic, Social and Cultural Rights at its 28th Session, 29 April – 17 May, 2002, European Roma Rights Center, Budapest 2002, p. 7

**Note**

<sup>7</sup> Cf. D. Kenrick, op. cit., "On the move once more", Index on Censorship, N° 3 1994, pp. 67-75, especially p. 69.

**Note**

<sup>8</sup> Decision Sp. zn. Pl. US 8/93, typed.

**Note**

<sup>9</sup> "Séfredaktor Politiky podminecne odsouzen za antisemitismus", Lidové noviny, 23 September 1994.

**Note**

<sup>10</sup> For further information see <http://www.ecrr.org>

**Note**

<sup>11</sup> Reports for the previous years may be found online under the appropriate year number and also on the website of the Ministry of Interior: <http://www.mvcr.cz> – documents – extremism.

**Note**

<sup>12</sup> According to the information of Ministry of Justice on its homepage: [http://www.justice.cz/cgi-bin/sqw1250.cgi/zresortu/stati/st\\_vyber.sqw?s=T](http://www.justice.cz/cgi-bin/sqw1250.cgi/zresortu/stati/st_vyber.sqw?s=T)

**Note**

<sup>13</sup> Law No. 1/1991 of the Coll., the Law on Employment, as Subsequently Amended

**Note**

<sup>14</sup> Law No. 65/1965 of the Coll., the Labor Code, as Subsequently Amended.

**Note**

<sup>15</sup> Law No. 273/2001 of the Coll., Law on the Rights of Members of National Minorities and on Amendments to Certain Laws

**Note**

<sup>16</sup> The Misdemeanours Act No. 200/1990 Coll.

**Note**

<sup>17</sup> Law on the Public Defender of Rights No. 349/1999 of the Coll., Article 1.

**Note**

<sup>18</sup> See Article 9 of the Law No. 349/1999.

**Note**

<sup>19</sup> Further information on [www.ochrance.cz](http://www.ochrance.cz). For further details see also Written Comments of the European Roma Rights Center Concerning the Czech Republic, For Consideration by the United Nations Committee on Economic, Social and Cultural Rights at its 28<sup>th</sup> Session, 29 April – 17 May, 2002, European Roma Rights Center, Budapest 2002.

**Note**

<sup>20</sup> Civil Code (Law No. 40/1964 of the Coll. as subsequently amended).

**Note**

<sup>21</sup> Article 2, of the Civil Code mirrored by Article 18 of the Civil Procedure Code (Law No. 99/1963 of the Coll. as subsequently amended).

**Note**

<sup>22</sup> Article 4 of the Civil Code and Article 3 of the Civil Procedure Code

**Note**

<sup>23</sup> Article 13 para 1 of the Civil Code

**Note**

<sup>24</sup> See Bukovska B., Taylor L., Legal analysis of national and European anti-discrimination legislation, A comparison of the EU Racial Equality Directive & Protocol No 12 with anti-discrimination in Czech Republic, European Roma Rights Center, Budapest, Interights London, Migration Policy Group Brussels, September 2001.

**Note**

<sup>25</sup> Decision 24 C 88/98-31, February 16, 2000, Krajsky Soud Brno.

**Note**

<sup>26</sup> Decision 1 Co 6/2001. 90, April 18, 2001, *Vrchni Soud v Olomouci*

**Note**

<sup>27</sup> [http://www.errc.org/rr\\_nr2\\_2002/snap6.shtml](http://www.errc.org/rr_nr2_2002/snap6.shtml)