# REPORT ON MEASURES TO COMBAT DISCRIMINATION
## Directives 2000/43/EC and 2000/78/EC

## COUNTRY REPORT 2012

## Czech Republic

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**State of affairs up to 1st January 2013**

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

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# 0 INTRODUCTION

## 0.1 The national legal system

*Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.*

The Czech legal system is shaped by a hierarchy of legal provisions, by virtue of which the Charter of Fundamental Rights and Freedoms[1] occupies a superior position to ordinary laws. The Constitution[2] invests the Charter with a place at the top level of the legislative hierarchy.[3] Constitutional laws and international treaties are not on the same level of the hierarchy as the Charter and Constitution, but these are both superior to ordinary laws, and must prevail in the event of a conflict with ordinary laws. The Constitutional Court has the power to quash laws if they are in conflict with the Charter, Constitution or constitutional laws. All ordinary laws are on a lower level of the hierarchy and are equal to each other. In cases of conflict between the provisions of two different laws, neither of them may be quashed as the result of such a conflict. One of the conflicting provisions must be applied according to the general rules of interpretation: *lex posterior derogat legi priori* or *lex specialis derogat legi generali.* Ordinary laws are superior to decrees, which can only regulate issues if ordinary laws expressly allow this.

A general anti-discrimination clause can be found in the Charter of Fundamental Rights and Freedoms. The Charter is divided into five chapters, including a chapter on general provisions, which establishes the 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. It does not specifically provide

[1] *2/1993 Sb., usnesení předsednictva České národní rady o vyhlášení Listiny základních práv a svobod* [2/1993 Coll., Resolution of the Czech National Council on the Declaration of the Charter of Basic Rights and Freedoms (Collection of Laws 1993, no. 1 p. 017)]. For an English translation of the Constitution see: www.psp.cz/cgi-bin/eng/docs/laws/1993/1.html.

[2] *1/1993 Sb., Ústava České republiky* [1/1993 Coll., Constitution of the Czech Republic (Collection of Laws 1993, no. 1 p. 001)].

[3] Any newly approved constitutional laws must be in accordance with the Constitution and the Charter. The Constitutional Court is allowed to quash constitutional law if it is considered contrary to the material core of the Czech constitutional order or if it was not adopted through prescribed procedure. See Pl.ÚS 27/09, 318/2009 Sb., Sbírka nálezů a usnesení ústavního soudu [Law no. 318/2009 Coll. (Collection of Rulings and Resolutions of the Constitutional Court no. 54, 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 that case they should turn to the Constitutional Court.

protection against discrimination on grounds of sexual orientation, age or disability. All grounds not explicitly included are, according to case-law, contained implicitly in the term 'other status'.

The only body competent to interpret the Charter with binding effect is the Constitutional Court.[4] The Constitutional Court can only deliver such interpretation through a judicial decision. The Constitutional Court has already adjudicated on discrimination on the grounds included in the Equality Directives, with respect to sex, age and racial or ethnic origin ground.

Enumerated anti-discrimination clauses can be found in special laws governing specific employment and labour relations (for concrete lists of grounds related to different pieces of national legislation, see Section 2.1 Grounds of unlawful discrimination). The definitions of discrimination required by the Racial Equality and Employment Equality Directives were included in the Law on Service by Members of the Security Services.[5] The Labour Law does not itself expressly implement the Directives. It extends the prohibition of discrimination in labour relations to any ground not covered by the Anti-discrimination Law.

The Anti-discrimination Law No. 198/2009 Coll. came into effect on 1 September 2009, with the provisions governing the Czech equality body, veřejný ochránce práv [Public Defender of Rights], coming into force on 1 December 2009. It sets out definitions of discrimination, including harassment, indirect discrimination and victimisation, on seven grounds: racial/ethnic origin, sex, disability, sexual orientation, age and religion or belief. The ground of 'colour' is included within racial / ethnic origin. The Anti-discrimination Law also covers 'nationality' (in Czech: *národnost)* as a separate ground. In the Czech 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. It establishes the Public Defender of Rights (Czech ombudsman) as the Czech Republic's anti-discrimination body.

The Anti-discrimination Law was drafted to implement fully the EU secondary anti-discrimination legislation, including Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. This means that the law has quite broad scope, covering work and employment relations, access to employment, self-employment and occupation, healthcare and education, social security and social

[4] Article 89, para. 2 of the 1/1993 Coll., Constitution of the Czech Republic: 'Enforceable rulings of the Constitutional Court shall be binding for all agencies and individuals.'
[5] *Zákon č. 361/2003 Sb., o služebním poměru příslušníků bezpečnostních sborů* [Law no. 361/2003 Coll., on Service by Members of the Security Services (Collection of Laws 2003, no. 121 p. 5850)].

protection, social advantages and services including housing for all grounds to the same extent, and the law therefore goes beyond the requirements of the Directives.

## 0.2 Overview/State of implementation

*List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.*

*This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.*
*This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.*

*Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.*

*Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.*

Considering findings of this report Czech legislation and practice may not be in conformity with the directives on the following points:

- A potential breach of Directive 2000/78 was created by amendment no. 367/2011 Coll. to the law no. 435/2004 Coll. on Employment. With effect from 1 January 2012, employment agencies may not temporarily assign an employee with disabilities to work for a client. Although this legislative measure was presented as being protective in character, with the aim of preventing exploitation of labour by people with disabilities and supporting their regular employment, the absolute ban on one type of employment for people with disabilities is very probably discriminatory and in breach of Directive 2000/78.
- There are almost no existing positive actions to prevent or compensate for disadvantages linked to racial or ethnic origin or to any of the other protected grounds except disability.
- According to the findings of the Czech Ombudsman in their 2012 annual report, the present amount of court fee for filing a discrimination complaint with courts together with persisting problems with finding qualified (and free) legal aid, uncertainty of the parties as to the outcome of the proceedings, their length, and often difficult establishment of evidence is contrary to Art. 7 (1) of Directive 2000/43, and Art. 9 (1) of Directive 2000/78. The fact that Czech civil courts

reached final and conclusive decision only in 4 cases regarding discrimination in 2012 supports this conclusion.

- There are in fact no existing practical standards regarding conditions for waiving the court fees and granting free legal aid. In any case only people with the lowest income are granted these.
- Administrative sanctions used in practice cannot be considered as dissuasive, effective and proportionate. Also whether the sanctions imposed for discrimination in civil proceedings are effective and dissuasive is very doubtful. In 2004, the Olomouc High Court awarded in a case of proven racial discrimination in housing compensation of only CZK 5,000 (€185). In addition, in criminal proceedings only the most serious incidents, such as those involving racial hatred or violence, and acts motivated by hatred, or violence on grounds of religion or belief or propagation of neo-Nazism are punishable in practice. Where discrimination occurs, the investigative bodies usually conclude that the act committed is not dangerous to society enough as to be regarded as a crime and consequently refer these incidents to misdemeanour commissions for administrative investigation.
- Despite their active approach, financial and personal capacities allow the Ombudsman to perform only limited activities and do not allow them to fully fulfil their role as the Czech equality body according to Article 13 of Directive 2000/43.
- There are almost no existing activities to disseminate information about legal protection against discrimination (Article 10 of Directive 2000/43 and Article 12 of Directive 2000/78).
- 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 and Article 14 of Directive 2000/78).
- 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 and Article 13 of Directive 2000/78).
- As the Czech Ombudsman concluded in their survey of ethnic composition of pupils in former special schools performed in 2012, there is only one explanation for the notably high proportion of Roma pupils in former special schools, and that is indirect discriminatory practice on the part of bodies involved in deciding on the placement of pupils into special education. Additionally, the current legislation in force does not provide adequate safeguards to prevent continuing discrimination of Roma children in access to education.

Of course it is true that the implementation of the Directives into national legislation cannot be regarded as an omnipotent remedy which will solve or fully remove the problems in Czech society in the area of discrimination. These issues are mainly structural ones 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.

The Directives formulate minimum requirements. Resolving these structural problems within society requires the investment of consistent political will and political focus. Such societal problems cannot be solved solely by means of an effectively working equality body, definitions of discrimination in the form prescribed by the Directives or by securing effective access to the courts.

The Czech equality body (established within the competencies of ombudsman) only has the minimum competences required by the Directives: it is entitled to provide independent assistance to victims of discrimination, to conduct independent surveys and to publish independent reports concerning discrimination. It has a fairly loosely formulated mandate, which has been flexibly and effectively developed and used by the equality body. The Czech Ombudsman has a very active approach to the anti-discrimination agenda. The equality body plays a very important role in coordinating legal assistance and has mediated successfully for solutions in individual cases of structural discrimination where the interests of a large group of people are concerned. It has developed functional cooperation with NGOs involved in anti-discrimination issues and hosts conferences and provides educational and training support to governmental agencies.

The activities of the equality body contribute to raising issues of discrimination against disadvantaged groups, such as older people or Roma, as issues of public interest. Currently, the equality body has a very good reputation in the area of equal treatment. The positive results achieved by the equality body within its first few years of existence demonstrate that the model of a very loose mandate for an equality body can be very effective, if there is really an intention to fulfil it.

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 that the courts can provide them with just and useful solutions - and this is often true. This general position in society is one of the reasons for low levels of litigation activity, not only in the area of discrimination. Low levels of litigation activity means the courts do not have a great deal of experience of cases of discrimination and this in turn can 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 concerned in these cases can be best respected in this way.

The resolution of structural issues does not reside primarily in the area of enforcement and sanctions, rather it is in the first place a political agenda – a matter to be treated as a priority for political parties in government. The root of the problem is not in the area of the implementation of legislation, but rather in non-existent,

systematic governmental policy. The last two conservative governments have not paid any real attention to the issues of human rights generally, including the discrimination agenda. Effective governmental policies to combat the structural roots of discrimination have not been developed. Advisory panels and boards have been set up by government to propose policy measures, but their recommendations for concrete policies are not acted on. In the case of structural societal problems, such as Roma segregation in education and housing or the problems of the integration of people with disabilities in the labour market, the minimum legislative requirements established by the Directives must be accompanied by concrete measures in the form of government policies. These sorts of problems cannot be solved within the competencies of the courts or the equality body and, if there are no effective governmental policies to remedy them, such problems tend to be exacerbated.

**Labour relations**

- The Anti-discrimination Law contains definitions of discrimination applicable to labour relations.[6] The Labour Code states that employers are obliged to ensure the equal treatment of any employee, and that any discrimination in labour relations is forbidden. The Labour Code does not implement the Directives; their implementation is contained in the Anti-discrimination Law.
- The Anti-discrimination Law is in a position of *lex specialis* in relation to the Labour Code with respect to anti-discrimination protection implementing EU law. The Anti-discrimination Law prohibits discrimination with respect to the membership of employers' and employees' organisations.[7]

**Access to employment and occupation**

- The provisions of the Anti-discrimination Law apply to labour relations with respect to judges,[8] public prosecutors,[9] members of parliament,[10] members of local government,[11] volunteers[12] and prisoners, as well as to recruitment and vocational training for these occupations.

[6] *Zákon č. 262/2006 Sb., zákoník práce* [Law no. 262/2006 Coll., Labour Code (Collection of Laws 2006, no. 84/2006, p. 3146)] (also referred to as Labour Code 2007).
[7] *Zákon č. 83/1990 Sb., o sdružování občanů* [Law no 83/1990 Coll., on Associations (Collection of laws 1990, no. 19, p. 0366)].
[8] *Zákon č. 6/2002 Sb., o soudech, soudcích, přísedících a státní správě soudů* [Law no. 6/2002 Coll., on Judges, Assistant Judges and State Administration of the Courts (Collection of Laws 2002 no. 82, p. 4835)].
[9] *Zákon č. 283/1993 Sb., o státním zastupitelství* [Law no. 283/1993 Coll., on the Public Prosecutor's Office (Collection of Laws 1993, no. 71 p. 1522)].
[10] *Zákon č. 247/1995 Sb., o volbách do Parlamentu České republiky* [Law no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic (Collection of Laws 1995, no. 65 p.3529)].
[11] For example, *Zákon č. 152/1994 Sb, o volbách do zastupitelstev v obcích* [Law no. 152/1994 Coll., on Elections to Local Government (Collection of Laws no. 48 p. 1577)].
[12] *Zákon č. 198/2002 Sb., o dobrovolnické službě* [Law no. 198/2002 Coll., on Voluntary Service (Collection of Laws 2002 no. 82 p. 4835)].

- Where an occupation is conducted in a self-employed capacity (not in the form of employment) the Anti-discrimination Law applies.
- Through the amendment to the Law on Employment no. 367/2011, effective from 1 January 2012, the provisions containing definitions of direct and indirect discrimination, as well as the enumerated equality clause, were replaced by a general, open-ended equality clause. With respect to anti-discrimination protection, the law contains reference to the Anti-discrimination Law. However, the Anti-discrimination Law also secures full implementation of the Directives for the ground of disability, in respect of the definition of both reasonable accommodation and indirect discrimination.

**Self-employment**

The Anti-discrimination Law applies to self-employed activity. The material scope of the laws in the area of self-employment[13] includes all types of self-employment and occupations carried out in a self-employed capacity.

**Vocational training and education**

The Anti-discrimination Law transposes the Directives with respect to vocational training, education and every aspect of access to education.[14] The material scope of different laws governing this area includes all agencies involved in the vocational training and education systems, and private, state or self-governing professional bodies, such as the professional bodies for the medical and legal professions.

**Social protection, including social security**

The Anti-discrimination Law transposes the Directives with respect to social protection, including social security. The material scope of existing laws covers all agencies involved in the social protection system – state and self-governed agencies as well as private agencies empowered by law or contracted to provide services in the field of social protection.

**Healthcare**

The Anti-discrimination Law transposes Directive 2000/43/EC with respect to healthcare and access to healthcare.[15] The material scope of existing laws covers all agencies involved in the healthcare system – state and self-governed agencies as

[13] For example *Zákon č. 455/1991 Sb., o živnostenském podnikání* [Law no. 455/1991 Coll., on Self-employment (Collection of Laws 1991, no. 87 p. 2122)].
[14] For example *Zákon č. 561/2004 Sb., o předškolním, základním středním, vyšším odborném a jiném vzdělávání* [Law no. 561/2004 Coll., on Pre-school, Primary, Secondary and Higher Vocational and other Education (Collection of Laws 2004, no. 190 p. 10 324)].
[15] For example, *Zákon č. 20/1966 Sb., o péči o zdraví lidu* [Law no. 20/1966 Coll., on Public Welfare (Collection of Laws 1966, no. 7, p. 0074)].

well as private agencies empowered by law or contracted to provide services in the fields of healthcare, preventative healthcare or public health protection.

**Education**

The Anti-discrimination Law transposes the Directives with respect to education and access to education.[16] The material scope of existing laws covers all agencies involved in the education system – primary, secondary and tertiary, private, state or self-governed entities (only public universities have a self-governing capacity, all other educational establishments are state-run or privately run).

**Social advantages**

The Anti-discrimination Law transposes the Directives with respect to social advantages. The granting of benefits generally falling within the scope of social advantages is basically governed by the Civil Code (*law of contracts*).

**Access to goods and services**

The Anti-discrimination Law transposes the Directives with respect to access to goods and services and consumer protection.[17] The material scope of existing laws covers all agencies involved in the system of public services provision, as well as private providers.

**Housing**

The Anti-discrimination Law transposes the Directives with respect to the laws on access to housing. The material scope includes laws governing both privately owned and rented housing (the Czech Republic does not have special laws covering social housing). The material scope of existing laws covers private and public owners (the largest public owners being municipalities).

**Anti-discrimination body/bodies**

The Anti-discrimination Law establishes the Public Defender of Rights as the national body providing assistance to victims of discrimination.

The relevant provisions of the Anti-discrimination Law came into force on 1 September 2009.

[16] For example, *Zákon č. 561/2004 Sb., o předškolním, základním středním, vyšším odborném a jiném vzdělávání* [Law no. 561/2004 Coll., on Pre-school, Primary, Secondary and Higher Vocational and other Education; effective from 1 January 2005 (Collection of Laws 2004, no. 190, p. 10 324)].
[17] For example, *Zákon č.634/1992 Sb., o ochraně spotřebitele* [Law no. 634/1992 Coll., on Consumer Protection (Collection of Laws 1992, no. 130, p. 3811)].

### 0.3 Case-law

*Provide a list of any important case-law in **2012** within the national legal system relating to the application and interpretation of the Directives. (The **older case-law mentioned in the previous report should be moved to Annex 3)**. This should take the following format:*

**Name of the court**
**Date of decision**
**Name of the parties**
**Reference number** (or place where the case is reported).
**Address of the webpage** (if the decision is available electronically)
**Brief summary** of the key points of law and of the actual facts (no more than several sentences).
➔Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law falling under both anti-discrimination Directives (Please note that you may include case-law going beyond discrimination in the employment field for grounds other than racial and ethnic origin)

There were two important decisions of the Supreme Court in 2012 concerning indirect discrimination. Provided below is also information about non-binding legal opinions issued by the Czech Public Defender of Rights (Ombudsman) in 2012. The Ombudsman is not a quasi-judicial body and is only empowered to provide legal assistance in the area of non-discrimination; therefore the legal opinions of the Ombudsman cannot be regarded as quasi-judicial decisions.

**Name of the court:** the Supreme Court
**Date of decision:** 27 March 2012
**Name of the parties:** H. P. v. the Czech Republic – the Ministry of Culture
**Reference number:** 21 Cdo 4586/2010
**Address of the webpage:**
http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/4ED3DA547D85D55BC1257A4E00687866?openDocument&Highlight=0,
**Brief summary:** The case is important because the Supreme Court was considering issues relevant to proving indirect discrimination. The applicant sought the payment of 200.000,- CZK (7,407 Euro) by the defendant, as a compensation of immaterial loss[18] caused by the discrimination committed by the defendant towards the applicant during the selection process for the position of general director of the National Heritage Institute, when the defendant sent the invitation for the personal interview to the candidates by email less than 24 hours prior to the date of the interview, whereby the defendant has allegedly discriminated the applicant due to the reason of property (section 4 (2) of the Law on Employment), since the applicant as a person in poor

[18] The proceedings were initiated before the Anti-Discrimination Law was passed.

economic condition does not possess any computer and has no money to pay any permanent internet connection services and therefore could not afford the daylong access to email.

The Supreme Court was considering the issue whether the defendant can be responsible for discrimination, if they were not informed about special circumstances concerning the applicant that might in fact constitute indirect discriminatory impact of their actions, as a matter of significant legal importance. The Supreme Court confirmed conclusions of the lower courts that in the case where the applicant did not state in her application or other correspondence that she does not possess any personal computer and does not have any daylong access to email service, the defendant had no way to be aware of these facts, therefore this matter of fact could not serve as grounds for any actions of the defendant and it is also impossible to deduce that the defendant has, by sending the invitation for personal interview by email, pursued any disadvantageous treatment towards the applicant compared to the other applicants for the job position. Therefore, it is not possible to consider as discriminatory any such actions of employer, whose motive is not any circumstance in which the candidate sees the reason of discrimination, even if – while known by the employer – it could otherwise be a fact, which is objectively able to be a reason for discrimination.

The court made no clear distinction whether the case was considered under provisions of direct or indirect discrimination. However, the court indicated that discriminatory intent is necessary to be present in both cases of direct and indirect discrimination. It seems clear that the court did not examine whether or not the action (sending out invitation via e-mail 24 hours before interview) was objectively neutral but has disproportionate effects on persons in an economics situation such as that of the applicant.

**Name of the court:** the Supreme Court
**Date of decision:** 13 December 2012
**Name of the parties:** J. S. v. the Czech Republic – the Ministry of Education, Youth and Sports
**Reference number:** 30 Cdo 4277/2010
**Address of the webpage:**
http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/19B60A918249AF79C1257AFA0055D09F?openDocument&Highlight=0,
**Brief summary:** The applicant, who expressed his belonging to the Roma ethnic group, sought an apology and monetary satisfaction in the amount of 500.000,- CZK (18.519 Euro) due to the decision of the District national board in Cheb from 16.5.1985, ref. nr. 77/85-SR, whereby he was placed into the special school, where he lately completed the primary education, until the end of June 1995. This was seen by the applicant as discrimination based on his ethnic origin and as an unlawful intervention into his personal rights.

The Municipal Court in Prague dismissed the case with the reasoning that the placement of the applicant into a special school was justified and legitimate due to the repeated examinations in pedagogical-psychological consultancy, the suspension of starting the compulsory education, repeating the grade, IQ measurement and deciding of the possible exemption from the compulsory education. It concluded that this was not a discriminatory approach since the defendant acted in compliance with then legislation regarding the mental state of the applicant as well and did not commit any unlawful or discriminatory treatment. The High Court in Prague confirmed this decision. According to the appellate court, the alleged discrimination was not possible to be deduced based on the statistics, since they do not reflect the individual case of the applicant.

In his appeal on points of law the applicant argued that according to the case law of the ECtHR, in cases where it has been established through the statistics that the relevant legislation as applied in practice at the material time had a disproportionately prejudicial effect on the Roma community, the ECtHR considers that the applicants as members of that community necessarily suffered the same discriminatory treatment. Accordingly, it does not need to examine their individual cases. (D. H. v the Czech Republic, § 209).

The Supreme Court did admit that in this specific case the legal issue is of a significant legal importance. In particular, the issue regarded the question which of the parties and in which extent bears the burden of proof in the proceedings regarding protection of the personal rights (and protection against discrimination) according to section 113a (b) of the Code on Civil Proceedings in the version effective since 1. 9. 1999.[19] The court rejected the arguments presented by the applicant pointing out at the last developments in case law of the ECtHR and arguing that according to the ECtHR´s decision in the case of Oršuš v. Croatia, statistics can be considered *prima facie* evidence of discrimination only in cases when they prove that proportion of disadvantaged children in special schools was over 50 %. However, at the time when the applicant was placed into the special school, the proportion of Roma pupils placed into the special schools was 40,2% followed by the next five years period with an average of 38,28% of the Roma pupils. These figures are by a few percent higher than the numbers in the case of Oršuš v. Croatia (particularly regarding the Macineč primary school, where the proportion was 36%), however, they still cannot reach the rate of 50% or higher, which according to the Supreme Court establishes the proportional significance for establishing the evidence prima facie and transferring the burden of proof. According to the Supreme Court in the case of Oršuš v. Croatia the ECtHR found segregation but not because of the statistics but based on the language criteria.

In the case of the applicant the proportion of the Roma pupils in special schools was below 50% and therefore it was, according to the Supreme Court, up to the applicant

[19] The proceedings were initiated before the Anti-Discrimination Law was passed.

to prove that he was discriminated against through the fact he was placed into a special school.

As it is mentioned in the Report on the state of human rights in the Czech Republic in 2012, conclusions of the Supreme Court can be questionable in different aspects. [20] Firstly, the court did not take into consideration that in cases of indirect discrimination the discriminatory intent does not need to be proven. Secondly, there is a question whether it is legitimate to evaluate a level of representativeness of statistics in a way it was done by the Supreme Court. The case was later challenged by the constitutional complaint which is pending.

**Name of the court:** Legal opinion of the Public Defender of Rights (Ombudsman) – this is not comparable to a decision by a court
**Date:** 26 November 2012
**Name of the parties:** The parties have been anonymised
**Reference number:** 117/2012/DIS/JKV
**Address of the webpage:** http://www.ochrance.cz/diskriminace/pripady-ochrance/
**Brief summary:** A married couple's application for a credit card was refused by several banking institutions because of their age (70 years). The Ombudsman concluded that if a bank acts in this way purely on the basis of the age of the applicants, although they proved adequate property and income, it is unlawful discrimination. The Ombudsman's Office also announced that it will conduct a general investigation into discrimination on the ground of age in the provision of financial services during 2013.

**Name of the court:** Legal opinion of the Public Defender of Rights (Ombudsman) is not comparable to decision of the court
**Date:** 11 September 2012
**Name of the parties:** The parties are anonymised
**Reference number:** 85/2011/DIS/JŠK
**Address of the webpage:** http://www.ochrance.cz/diskriminace/pripady-ochrance/
**Brief summary:** The complainant alleged that his employer did not respect his need of adequately long breaks between the shifts. The Ombudsman concluded that the employer has a duty to be active in removing obstacles encountered by the employee with disability in the workplace.

**Name of the court:** Legal opinion of the Public Defender of Rights (ombudsman) – this is not comparable to a decision by a court
**Date:** 23 May 2012
**Name of the parties:** The parties have been anonymised
**Reference number:** 67/2012/DIS/JKV
**Address of the webpage:** http://www.ochrance.cz/diskriminace/pripady-ochrance/

[20] Czech Government. Zpráva o stavu lidských práv v roce 2012, s. 51 (Report on the state of human rights in the Czech Republic in 2012, p. 51). http://www.vlada.cz/cz/ppov/rlp/dokumenty/zpravy-lidska-prava-cr/zprava-o-stavu-lidskych-prav-v-ceske-republice-v-roce-2012-109674/.

**Brief summary:** Two Roma people complained that they were refused registration by a dentist on discriminatory grounds. An NGO organised testing of the dentist, who was widely supposed to systematically refuse Roma patients. The testing proved that, while Roma patients were refused registration, patients from the majority population were registered and treated by the dentist. The Ombudsman concluded that a doctor may only refuse to register a patient on grounds specified by law. Therefore a doctor does not have the right when meeting a new patient attending a scheduled appointment to decide whether or not to register him/her for treatment. In the case presented here, there are reasonable grounds for concern that the real reason for the refusal was the ethnicity of the new patients, who received an appointment for treatment in advance, but then, when they appeared in person, were refused treatment by the dentist.

**Name of the court:** Legal opinion of the Public Defender of Rights (Ombudsman) – this is not comparable to a decision by a court
**Date:** 01 March 2012
**Name of the parties:** The parties have been anonymised
**Reference number:** 12/2012/DIS/LO
**Address of the webpage:** http://www.ochrance.cz/diskriminace/pripady-ochrance/
**Brief summary:** The complainant and her same-sex partner, with whom she is in a registered partnership, each have a baby. There was a period when both women received parental benefit. Since they are considered to be a family, in accordance with the Law on Social benefits, and according to the law only one parent in a family may receive parental benefit, the period when the benefit was paid to both was subsequently identified by the respective state body as a period of overpayment. The couple was asked to return the relevant amount. The Ombudsman came to the conclusion that this practice cannot be identified as discrimination on the ground of sexual orientation, because the law treats homosexual and heterosexual couples identically in this respect.

*Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.*

There is almost no new case-law in 2012 in this respect within the national legal system, therefore it is not possible to describe trends or patterns in cases brought by Roma victims of discrimination.

# 1 GENERAL LEGAL FRAMEWORK

## Constitutional provisions on protection against discrimination and the promotion of equality

*a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

Although the Czech Constitution[21] lacks a specific provision prohibiting discrimination, a general anti-discrimination clause can be found in the Charter of Fundamental Rights and Freedoms.[22] The Charter prohibits discrimination with regard to basic rights and freedoms in relation to sex, race, colour, language, religion or belief, political or other orientation, national or social origin, adherence to a national or ethnic minority, property, birth or any other status. In theory, other grounds, such as disability, age, or sexual orientation might also fall under 'other status', if the treatment in question were to be identified as discriminatory by the courts. According to the Czech Constitution, the Charter forms part of the constitutional order, which has precedence over ordinary laws.[23] The material scope set out in the EU Directives corresponds in the main to the rights guaranteed by the fourth chapter of the Charter (social, economic and cultural rights).[24]

*b) Are constitutional anti-discrimination provisions directly applicable?*

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).[25] 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".[26] All other rights guaranteed

[21] *1/1993Sb., Ústava České republiky* [No. 1/1993 Coll., Constitution of the Czech Republic (Collection of Laws 1993, no. 1 p. 001)].
[22] *2/1993 Sb., Listina základních práv a svobod* [No. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms (Collection of Laws 1993, no. 1 p. 017)].
[23] Newly approved constitutional laws must be in accordance with the Constitution and the Charter. Although the Charter is regarded as part of the constitutional order, it is not possible to challenge the Constitution or any constitutional law for being inconsistent with the Charter. There are no provisions giving details about interpretation in the event of conflicts between the Charter and Constitution or constitutional laws. Public authorities, including the courts, are not permitted to apply any laws that contradict any of the basic rights guaranteed by the Charter.
[24] See Articles 26-35 of the Charter.
[25] Rights declared by Article 26, Article 27 para. 4, Articles 28-31, Article 32 paras 1 and 3 and Articles 33 and 35 of the Charter.
[26] Czech Republic/Ústavní soud/Decision of the Constitutional Court No. Pl. ÚS 35/95 (206/1996 of the Coll.), Pl. ÚS 45/2000.

by the Charter (fundamental, political and civil rights) and the Constitution can be directly invoked.

For example, if a homosexual parent is discriminated against in relation to the care of his son for no other reason than that he is living in a same-sex relationship, he 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 his occupation as a dentist (for example, if an insurance company refuses to insure him because, in their view, he is at higher risk than heterosexuals of contracting HIV/AIDS and endangering the health of his patients), he may be refused when attempting 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 the 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.

The Constitution[27] incorporates into national legislation international treaties promulgated and ratified by the Parliament, many of which also provide protection against discrimination. International treaties are not, however, on the same level in the constitutional hierarchy as constitutional laws or the Charter – they are at a lower level. Most importantly, it is not possible to challenge the Charter or any constitutional law on the grounds of its alleged inconsistency with international treaties, and newly adopted international treaties are in accordance with the Constitution and the Charter once the ratification process is completed. The ordinary courts are empowered and obliged to apply a treaty instead of a law as a *lex specialis* (where there is **no contradiction** between the two, but only where the treaty clarifies a specific point). However, where there is a contradiction between the law and the international treaty, the ordinary courts must submit a petition to the Constitutional Court to propose that the ordinary law or provision be repealed.[28]

[27] Article 10 of the Constitution reads as follows:
'Promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; should an international agreement make provision contrary to a law, the international agreement shall be applied.'

[28] Section 109 para. 1(c) of the Civil Procedure Code reads as follows: 'When the court concludes that the law which has to be applied in a case under adjudication or an individual provision of this law is contrary to constitutional law or an international treaty, which has precedence before the law in question, the court interrupts the procedure, and at the same time submits a petition to the Constitutional Court to repeal this law or revoke its individual provision.' *Zákon č. 99/1963 Sb., občanský soudní řád* [Law No. 99/1963 of the Coll., the Civil Procedure Code, Section 109 para. 1(c) (Collection of Laws 1963, no. 56 p. 0383)].

The existence of a contradiction between an ordinary law and an international treaty would be reason to repeal the ordinary law or an individual provision, and this power is vested by the Constitution in the Constitutional Court only.[29]

*c) In particular, where a constitutional equality clause exists, can it (also) 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 which allows constitutional provisions to 'radiate' through the formulations of ordinary laws, which are directly binding on private persons. However, such 'radiation' of the 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 which identifies the type and form of this 'radiation' effect.

[29] Article 95 of the Constitution reads as follows: 'In his/her decision-making, a judge is bound by the law and international agreements constituting part of the legal order; he/she is entitled to assess the conformity of a different legal regulation with the law or with such international agreement. Should a court conclude that the law to be applied in deciding a case contravenes the constitutional order, it shall submit the issue to the Constitutional Court.' *Zákon č. 182/1993 Sb., o Ústavním soudu* [Law no. 182/1993 Coll., on the Constitutional Court, Section 64 para. 3 (Collection of Laws 1993, no. 46, p. 914)] sets out the procedure for ordinary courts to apply to the Constitutional Court to have a law repealed, in whole or in part.

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 according to 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.[30]

[30] See decision of the Constitutional Court 07 December 2005. Ústavní soud/sp. zn. IV. ÚS 412/04, Sb.n.u.ÚS, č. 39, roč. 2007, page 353. '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

*Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.*

As regards sanctions imposed by public law (criminal offences, minor and administrative offences), exceptionally severe acts of racial discrimination (involving physical violence or verbal attacks amounting to incitement of racial hatred) would constitute a criminal offence and be prosecuted under the Criminal Code.[31] Acts of racial discrimination, the severity of which does not reach the level of crimes defined by the Criminal Code, are punishable under the Misdemeanours Law.[32]

### 2.1.1 Definition of the grounds of unlawful discrimination within the Directives

*a) How does national law on discrimination define the following terms: (the expert can provide first a general explanation under a) and then has to provide an answer for each ground)*

With the exception of the definition of disability in Section 5 paragraph 6 of the Anti-discrimination Law, there are no definitions in the strict sense of any of these grounds. **In the opinion of expert, a specific definition of the grounds could unreasonably narrow the scope of protection.**

*i) racial or ethnic origin,*

There is no normative definition of racial or ethnic origin in Czech national law.

*ii) religion or belief,*

There is no normative definition of religion or belief in Czech national law.

*iii) disability. Is there a definition of disability at the national level and how does it compare with the concept adopted by the Court of Justice of the European Union in Case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which*

[31] *Zákon č. 40/2009 Sb., trestní zákoník* [Law No. 40/2009 Coll., the Criminal Code (Collection of Laws 2009, no. 11, p. 354)].
[32] *Zákon č. 200/1990 Sb., o přestupcích* [Law No. 200/1990 Coll., (Collection of Laws 1990, no. 35, p. 0810)]. In Czech law, sanctions are to be imposed for a) criminal offences punishable by criminal law and b) offences punishable by administrative law, classified as (i) 'administrative offences' ('správní delikty') and (ii) 'misdemeanours' ('přestupky'). Discrimination is legally classified as a misdemeanour.

*results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?*

**Disability**

Section 5 paragraph 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. 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. This concept is compatible with the concept adopted by the European Court of Justice (ECJ) in case C-13/05, Chacón Navas.

*i) age,*

There is no normative definition of age in Czech national law.

*ii) sexual orientation?*

There is no normative definition of sexual orientation in Czech national law

*b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

*i) racial or ethnic origin*

Czech legislation does not contain any definition of racial or ethnic origin. According to Section 4 of the Data Protection Law, 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 Broadcasting[33] issued a decree announcing the violation of the law by CET 21, the owner of the major Czech private TV channel, TV Nova. The Council stated that the news presented during the first five months of 2012 provided, almost without exception, only negative information on the Roma. Most reports were connected to criminality and, in contrast with 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 the 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 corrective measures to be made by CET 21 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 lack of definition of racial or ethnic origin makes any attempt to collect ethnic data very difficult. However, there remains the possibility of collecting such data anonymously. The most recent 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 individual and is never based on the individual'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 know their pupils very well. The collected data were subsequently handled and processed purely as numerical identifications, with no links to specific individuals. The combination of these two approaches was used by the researchers as the prevailing method for the collection of anonymous ethnic data in schools.[34]

*ii) religion or belief (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)?*

[33] Czech state agency established by Law no. 231/2001 Coll., to monitor whether the law in the area of radio and TV broadcasting is observed and respected.
[34] 6 June 2012, *Veřejný ochránce práv: Výzkum etnického složení žáků bývalých zvláštních škol*. [Public Defender of Rights: Research into the ethnic composition of former special school pupils.] www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf (last accessed 15 March 2013).

Detailed regulations on churches and religious organisations exist,[35] but their purpose is to regulate the existence of churches and religious organisations as legal entities *sui generis,*[36] 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 Coll., on the Freedom of Belief and the Status of Churches and Religious Organisations, 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.[37] 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), and as such it is perceived not as a 'positive' right, but as a right of a 'defensive' character. It is characterised by a line demarcating the individual's free space which public authorities are not permitted to enter…".[38]

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.

Cases of religious discrimination are rarely discussed in the media and are rarely monitored by NGOs and other bodies.[39] Incidents have occasionally been reported

[35] *Zákon č. 3/2002 Sb., o svobodě náboženského vyznání a postavení církví a náboženských společností* [Law No. 3/2002 Coll., on the Freedom of Belief and the Status of Churches and Religious Organisations (Collection of Laws 2002 no. 2, p. 83)].

[36] 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 which 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.

[37] Article 15 para. 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.'

[38] *Pl.ÚS 6/02, 4/2003 Sb., Sbírka nálezů a usnesení ústavního soudu* [Law no. 4/2003 Coll. (Collection of Rulings and Resolutions of the Constitutional Court no. 28, Ruling no. 146, p. 295)].

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

by Muslims themselves, but according to information from employment offices, cases of discrimination on grounds of religion or belief do not occur in the Czech Republic.[40]

*iii) disability*

Besides the definition provided by the Anti-discrimination Law, a certain overlap of terms can be found in different laws (e.g. the legislation governing construction uses the phrase "persons with limited mobility and orientation",[41] who include people with disabilities, older people, pregnant women and people accompanying a minor under three years of age or in a pram or pushchair). In general, definitions apply only within the material scope of the specific laws containing them.

With effect from 1 January 2012, the amendment to the Law on Employment no. 367/2011 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, the Law on Employment preserved the special definition of disability contained in Section 67 paragraph 2 of the Law. Following the amendment, 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 authorities rather than on the real degree of disability:

Potentially the existence of two different legal definitions could cause problems of implementation in situations where an individual is refused reasonable accommodation because he or she is not officially recognised as having a disability. However, there is no evidence that such problems are really affected by the existence of two definitions.

Since 1 January 2012, the Law on Employment has referred to the Anti-discrimination Law with respect to protection against discrimination, for example, with regard to 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 purely because they have not been registered as a person with a disability by the social security authorities. No official data has been

[40] See Poradna pro občanství, občanská a lidská práva: *Hodnocení projevů diskriminace z pohledu Úřadů práce* [Counselling Centre for Citizenship, Civil and Human Rights: Evaluation of incidents of discrimination from the point of view of the Employment Offices], available at: http://poradna-prava.cz/poradna/diskriminace_up.doc.

[41] *Vyhláška č. 398/2009, o obecných technických požadavcích zabezpečujících bezbariérové užívání staveb* [Decree No. 398/2009 Coll., on general anti-barrier accessibility requirements (Collection of Laws 2009, no. 129 p. 6621)] 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.

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 produce an expert assessment or an official certificate to prove their disability status (Section 67 paragraph 3). This is an administrative requirement which does not oblige the disabled person 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.

According to the 2011 governmental report on the state of human rights in the Czech Republic, high unemployment among persons 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 persons 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 the employment opportunities for people with disabilities. However, this approach leads to a situation where people with disabilities are not receiving a wage corresponding to the work done and this statutory arrangement thus leads to *de facto* discrimination on the ground of disability.[42]

The problem of exploitation at work of people with disabilities and the parliamentary initiative to remedy it recently led to the introduction of amendment no. 367/2011 Coll. to Law no. 435/2004 Coll., on Employment. With effect from 1 January 2012, employment agencies may 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 is very probably discriminatory, in breach of Directive 2000/78/EC.

As it was pointed out by the Ombudsman, there are persisting difficulties with differentiation between the categories of illness and disability. The dismissal of an employee due to his or her disability may be found discriminatory, but illness is not protected by the Anti-discrimination Law, although there might be other rights and duties based on the current legislation concerning labour and employment.[43]

[42] Report on the State of Human Rights in the Czech Republic in 2011, http://www.vlada.cz/cz/ppov/rlp/dokumenty/zpravy-lidska-prava-cr/zprava-o-stavu-lidskych-prav-v-ceske-republice-v-roce-2011-104281/ p. 57.
[43] Annual Report on the Activities of the Public Defender of Rights in 2011, p. 93. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2011.pdf.

*iv) age*

There are no interpretative terms used to define age in national law.

*v) sexual orientation*

There is no definition of sexual orientation, nor any distinctive interpretative terms used to define sexual orientation in national law.

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

*c) Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

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 employment office evaluations,[44] age is one of two most frequently occurring grounds of discrimination (the other being gender).
The most common example of age discrimination, as reported by employment offices, is the preference of employers for young people for positions as secretaries (personal assistants) or staff for bars and restaurants.

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 that employers often avoid promoting young people, as they find it inappropriate that young people supervise and give instructions to older employees.

### 2.1.2 Multiple discrimination

*a) Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*
*Would, in your view, national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?*

[44] Poradna pro občanství, občanská a lidská práva: *Hodnocení projevů diskriminace z pohledu Úřadů práce*, [Counselling Centre for Citizenship, Civil and Human Rights *Evaluation of incidents of discrimination from the point of view of the Employment Offices*] available at: http://poradna-prava.cz/poradna/diskriminace_up.doc.

There are no rules, plans for their adoption or case-law dealing with situations of multiple discrimination. In order to facilitate adjudication of these cases, national or European legislation would be necessary.

b) *How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

There have been no cases involving multiple discrimination adjudicated by the courts. However, cases involving the sterilisation of Roma women might well involve this element, although 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. These 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 a recent judgment by the Supreme Court. With respect to cases of unlawful sterilisations taking place after the Velvet Revolutions, serious shortcomings were identified by the Czech courts with respect to the duty to obtain informed consent from these women. Although a considerable number of these 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 CZK 200,000 (approx. €8,000). In a second case, compensation of CZK 150,000 (approx. €6,000) was awarded to a woman whose ovaries were surgically removed by doctors without her informed consent; 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. With Decree no. 1424, approved on 23 November 2009, the government expressed its concern that at least some sterilisations carried in the past were contrary to the law. The government decree on apology for sterilisation was based on an initiative of the Minister for Human Rights of 2007. In February 2012, the Governmental Council for Human Rights approved a recommendation from its Committee against Torture that the government should introduce a new set of legal provisions governing sterilisations and also introduce a new, efficient compensation mechanism for unlawfully sterilised women.[45]

[45] Human Rights Council, Committee for Human Rights, motion on the unlawful sterilisations of women, www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-9--kvetna-2011-86162/.

### 2.1.3 Assumed and associated discrimination

a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

Section 2 paragraph 5 of the Anti-discrimination Law provides for prohibition of discrimination on the ground of assumed characteristics.

b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

There is no law or 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 paragraph 3 of the Anti-discrimination Law also allows for a broader interpretation, encompassing discrimination based on association with persons with particular characteristics.

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

a) *How is direct discrimination defined in national law? Please indicate whether the definition complies with those given in the directives.*

b) *Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn).*

Discriminatory statements or job vacancy announcements by employers are generally speaking 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 Feryn case, 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 a 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- and gender-related requirements were the most common ones.[46]

c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

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 paragraph 1 the law implements exceptions on the ground of age, corresponding to Article 6 paragraph 1 of Directive 2000/78/EC. The provisions of Section 6 also allow for differential pensionable ages between women and men; however, this only applies to the state pension system. Genuine occupational requirements are provided for in Section 6 paragraph 3. In Section 6 paragraph 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 protection of young people under 18 years of age. Section 6 paragraph 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 paragraph 1 of the Anti-discrimination Law deals with differential treatment corresponding to the material scope of the law, going beyond the scope of the Directives. Thus, the law provides for lawful differential treatment which can be objectively justified by legitimate aims and where the measures are proportionate and necessary. Section 7 paragraphs 2 and 3 deal with positive measures. The law allows for positive measures to be implemented within the whole material and personal scope of the law. These measures must not introduce rules of automatic preference.

The rules on protection of disability are in the position of *lex specialis,* therefore special conditions also apply to disability in this respect.

[46] Annual Report on the Activities of The Public Defender of Rights in 2011, p. 91. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2011.pdf.

*d) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?*

There are no specific guidelines regarding comparison in relation to age discrimination.

### 2.2.1 Situation Testing

*a) Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.*

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 Czech Constitution[47] 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. 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. However, the legislation does place certain limitations on *recording* situation testing (with exceptions related to journalists and press licences[48] and other exceptions defined by various laws), 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 would probably not constitute admissible evidence before the courts. Those breaching this secrecy could be subject to criminal prosecution according to the Criminal Code. [49]
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.
c. The protection of personality 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. This does not apply to recordings under press license, including images of people active in public and political life, or performing public duties.

*b) Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc.).*

[47] Article 2 paragraph 4 of the Constitution.
[48] See, for example, *Zákon č. 46/2000 Sb., o právech a povinnostech při vydávání periodického tisku a o změně některých dalších zákonů (tiskový zákon)* [Law No. 46/2000 Coll., on Rights and Duties Relating to the Publication of Newspaper Periodicals (Collection of Laws 2000, no. 17 p. 586)].
[49] See Section 182 of the Criminal Code.

In practice, situation testing is used by NGOs in order to prove discrimination in access to employment, services and housing.

As far as the author of this report is aware, all 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.[50]

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

The aim is to test whether the other person will receive the same 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.[51] Thus testing has been used almost exclusively for litigation purposes, although research projects have also been carried out where testing was used to obtain statistics on possible discriminatory behaviour by employers (for example, to investigate discriminatory patterns in job advertising).[52]

The Czech equality body (Ombudsman) is not allowed to use situation testing, however in 2012 the Ombudsman initiated collaboration with two NGOs who might conduct situation testing in cases identified by the Ombudsman. The 2012 annual report produced by the Ombudsman mentions that an NGO carried out situation testing involving a doctor suspected of systematically refusing Roma people in a case being dealt by the Ombudsman.[53]

c) *Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

[50] 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 plaintiffs before the courts.
[51] For more on testing cases, see, for example, http://poradna-prava.cz/poradna/projekt_diskriminace.htm (13 June 2009).
[52] For more see the publication *Situační testing. Zpráva z průzkumu* [Situation testing. Research report]: http://www.poradna-prava.cz/folder05/situacni_testing_vysledky.pdf last accessed 15 February 2011.
[53] Annual Report on the Activities of The Public Defender of Rights in 2012, p. 101. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2012.pdf.

No, there is no such reluctance. National law has not been influenced by developments in other countries. The practice of Czech NGOs in this respect has been strongly influenced by USA case-law developed in cases involving situation testing.

*d) Outline <u>important</u> case law within the national legal system on this issue.*

The right of a plaintiff to use 'situation testing' to prove discrimination has in fact never been questioned by Czech courts. There are only two cases where a court assessment of such evidence was expressly provided for. In the first of these, the Municipal Court in Prague gave an assessment in a case where the respondent interpreted situation testing as voluntary consent by the plaintiff to possible racially discriminatory treatment, whereby the plaintiff's personal dignity could not be affected by discrimination occurring during situation testing.

The court noted that it did not, "question the right of the plaintiff to test the reactions of others, and where, during this testing, an illegal act affecting the plaintiff'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…".[54]

The High Court in Prague in its judgment assessed contradictions in evidence submitted by the plaintiffs 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 plaintiffs themselves […] the court dismisses as ungrounded the plaintiffs' objection that these contradictions were caused by the extensive time-lapse between the incident and the interrogation before the court of first instance, especially because the plaintiffs themselves admitted that they went to the restaurant in order to test discrimination and were therefore prepared for the situation beforehand."[55]

In a recent judgment in another case the same court identified the factual consequences of situational testing as a reason for denying the plaintiff the right to compensation and awarded him only 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".[56] The High Court of Prague, in an appellate judgment in December 2011, held that the human dignity of the plaintiff was not considerably affected, given that neither the

[54] Decision of the Municipal Court of Prague, Městský soud v Praze/no. 34C 66/2001–42 (7 March 2002).
[55] Decision of the High Court in Prague, Vrchní soud v Praze/č.j. 1 Co 321/2003–196 (17 August 2003).
[56] 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.

plaintiff nor the witnesses were able to explain why precisely the plaintiff went to the restaurant to see the baseball bat. Consequently the court did not see any grounds for awarding the compensation claimed by the plaintiff.[57]

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

*a) How is indirect discrimination defined in national law? Please indicate whether the definition complies with those given in the directives.*

In current legislation, two definitions of indirect discrimination are provided: one in the Law on Members of the Security Services and one in the Anti-discrimination Law. These definitions conform to the definitions given in the Directives.

*b) What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

No definite answer can be given in this respect, as there is almost no case-law on indirect discrimination in the Czech Republic. 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 aid. Another possible reason for not having almost any 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.

An important case was decided by the Supreme Court in 2012.[58] The alleged victim of discrimination complained that she was discriminated against on the ground of property because the National Heritage Institute where she applied for a job, had sent the invitation for the 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 the case where the applicant did not state in the application or other correspondence that she does not possess any personal computer and does not have any daylong access to email service, the defendant had no way to be aware of these facts, therefore this matter of fact could not serve as

[57] Judgment of the High Court in Prague, Vrchní soud v Praze/č.j. 1 Co 321/2003-196 (13 December 2011).
[58] Decision of the Supreme Court, Nejvyšší soud ČR/no. 21 Cdo 4586/2010 (27 March 2012).

grounds for any actions of the defendant and it is also impossible to deduce that the defendant has, by sending the invitation for personal interview by email, pursued any disadvantageous treatment towards the applicant compared to the other applicants for the job position. Therefore, it is not possible to consider as discriminatory any such actions of employer, whose motive is not any circumstance in which the candidate sees the reason of discrimination, even if – while known by the employer – it could otherwise be a fact, which is objectively able to be a reason for discrimination.

The court made no clear distinction whether the case was considered under provisions of direct or indirect discrimination. However, the court indicated that discriminatory intent is necessary to be present in both cases of direct and indirect discrimination. It seems clear that the court did not examine whether or not the action (sending out invitation via e-mail 24 hours before interview) was objectively neutral but has disproportionate effects on persons in an economics situation such as that of the applicant.

*c) Is this compatible with the Directives?*

The test specified by the legislation is compatible with the Directives.

*d) In relation to age discrimination, does the law specify how a comparison is to be made?*

The laws containing definitions do not give details of how comparisons are to be made regarding an individual'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.

*e) Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?*

There is no case-law in respect of language discrimination.

### 2.3.1 Statistical Evidence

*a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?*

According to the Civil Procedure Code,[59] 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. Although the Civil Procedure Code does not expressly mention statistical evidence, it does not exclude it either, which means that, generally speaking, it is admissible evidence. However, whether a court considers statistical data as convincing evidence in an individual case is a matter to be assessed on a case-by-case basis.

*b) Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

Although statistical evidence is generally the standard means of proof, it is not used before the courts in discrimination disputes. It is interesting that statistical evidence was used as the main method proving the disproportionate placement of Roma children in so-called "practical schools" by the Czech Ombudsman's office in its research conducted in 2012.[60]

*c) Please illustrate the most important case law in this area.*

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, the Czech Republic, and after being ruled inadmissible on procedural grounds by the Constitutional Court (1999), the plaintiffs lodged an application with the European Court of Human Rights (ECHR) in Strasbourg (2000).

The petitions filed with both the Czech Constitutional Court and the ECHR 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 the racial segregation of Roma in education. The petitions were based on a comparison of statistical data from eight special schools and 69 primary schools in the city of Ostrava (at that time Ostrava had 70 primary schools and eight 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 as non-Roma children. The statistics further

[59] *Zákon č. 99/1963 Sb., občanský soudní řád* [Law No. 99/1963 Coll., the Civil Procedure Code, Section 109 para 1(c) (Collection of Laws 1963, no. 56 p. 0383)].
[60] 6 June 2012, *Veřejný ochránce práv: Výzkum etnického složení žáků bývalých zvláštních škol*. [Public Defender of Rights: Research into the ethnic composition of former special school pupils.] www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf (last accessed: 15 March 2013).

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,[61] according to which approximately 75% of Roma children attend special schools and substantially more than half of all special school students are Roma.[62]

The renowned *D.H. and Others v. the Czech Republic* judgment delivered by the Grand Chamber of the ECHR[63] 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 ECHR had seized an opportunity which was unlikely to be repeated in future.[64] On the basis of persuasive evidence consisting of statistical data, the ECHR 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.[65]

At the end of 2012 the Supreme Court was dealing with a case regarding alleged discrimination based on ethnic origin of a person in access to education.[66] The applicant was placed into the special school, where he lately completed the primary education. The Supreme Court was in detail dealing with the issue of statistical evidence.

The court rejected the arguments presented by the applicant pointing out the last developments in case law of the ECtHR and arguing that according to the ECtHR´s decision in the case of Oršuš v. Croatia, statistics can be considered *prima facie* evidence of discrimination only in cases when they prove that proportion of disadvantaged children in special schools was over 50 %. However, at the time when the applicant was placed into the special school, the proportion of Roma pupils placed into the special schools was 40,2% followed by the next five years period with an average of 38,28% of the Roma pupils. These figures are by a few percent higher than the numbers in the case of Oršuš v. Croatia (particularly regarding the Macineč primary school, where the proportion was 36%), however, they still cannot reach the

[61] Resolution No. 279 of 7 April 1999, *Draft government policy on the Roma community*, para. 5 (Exhibit 8F) ("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").
[62] 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: see Exhibits 6A-6G.
[63] D.H. and Others v. Czech Republic, ECHR /[GC] No. 57325/00 (13 November 2007).
[64] See, for example, the commentary to the 2006 ECHR Senate judgment: B.Čechová (2007), 'ESLP: umístění dětí romského původu do zvláštních škol', in M. Bobek, P. Boučková, Z. Kühn (eds), *Rovnost a diskriminace,* Prague: C.H. Beck [B. Čechová (2007), 'ECHR: Placement of Roma children in special schools', in: M. Bobek, P. Boučková, Z. Kühn (eds), *Equality and discrimination,* Prague: C.H. Beck].
[65] ECHR/ No. 57325/00, § 176 (13 November 2007), *D.H. and Others* v. *the Czech Republic*.
[66] Supreme Court, Nejvyšší soud ČR/no. 30 Cdo 4277/2010 (13 December 2012).

rate of 50% or higher, which according to the Supreme Court establishes the proportional significance for establishing the evidence prima facie and transferring the burden of proof. According to the Supreme Court in the case of Oršuš v. Croatia the ECtHR found segregation but not because of the statistics but based on the language criteria.

In the case of the applicant the proportion of the Roma pupils in special schools was below 50% and therefore it was, according to the Supreme Court, up to the applicant to prove that he was discriminated against through the fact he was placed into a special school. The decision was criticized by the 2012 Report on the state of human rights in the Czech Republic because it does not clearly distinguished that in case of indirect discrimination there is no need to prove any discriminatory motive, it is necessary to consider only the actual behaviour and its objective consequences.[67] The case was later challenged by the constitutional complaint which is pending.

d) *Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*

Data on ethnic or racial origin, disability, religion or belief or sexual orientation belong to the category of "sensitive data" and, according to Section 4 of the Data Protection Law,[68] 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). Employers are allowed to keep such records where they can prove the express consent of the individual in question, but given this restriction, they prefer not to keep these records at all. According to Section 12 paragraph 2 of the Law on Employment,[69] 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.[70] Similarly, an employer is prohibited from requesting information which is contrary to ethical principles and also 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.

[67] Czech Government. Zpráva o stavu lidských práv v roce 2012, s. 51 (Report on the state of human rights in the Czech Republic in 2012, p. 51). http://www.vlada.cz/cz/ppov/rlp/dokumenty/zpravy-lidska-prava-cr/zprava-o-stavu-lidskych-prav-v-ceske-republice-v-roce-2012-109674/.
[68] *Zákon č. 101/2000 Sb., o ochraně osobních údajů* [Law No. 101/2000 Coll., on the Protection of Personal Data (Collection of Laws 2000, no. 32, p. 1521)].
[69] *Zákon č. 435/2004 Sb., o zaměstnanosti* [Law no. 435/2004 Coll., on Employment (Collection of Laws 2004, no. 143, p. 8270)].
[70] 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 individual concerned.[71]

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.[72] There are no laws and regulations providing for positive measures and therefore there is also no data collection for this purpose.

### 2.4 Harassment (Article 2(3))

*a) How is harassment defined in national law? Does this definition comply with those of the directives? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

The Anti-discrimination Law contains definitions of both harassment and sexual harassment, which comply with the definition of the Directives. The Law on Service by Members of the Security Services and the Law on Service by Members of the Armed Forces contain a definition of harassment.

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

Serious instances of racial harassment or harassment on the ground of religion, especially involving racial or religiously motivated hatred or violence, may amount to one of the criminal offences established by the Criminal Code.[73] 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 and liberties of a group or an individual. Furthermore, support and expressions of support for

[71] *Zákon č. 20/1966 Sb., o péči o zdraví lidu,* [Law No 20/1966 Coll., on Public Health (Collection of Laws 1966 no. 7, p. 0074)].
[72] 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 www.czso.cz/sldb/sldb2001.nsf/tabx/CZ0000 (20 January 2007). In contrast, other estimates of the Roma population vary between 150,000 and 300,000. See, for example, K. Kalibová (1999), 'Romové z pohledu statistiky demografie' in: *Romové v České republice,* Praha: Socioklub, p. 107 ['Roma from the point of view of demographic statistics' in *Roma in the Czech Republic,* Prague: Socioklub].
[73] Law No. 40/2009 Coll., the Criminal Code.

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 which 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.[74]

*b) Is harassment prohibited as a form of discrimination?*

Yes, harassment is prohibited as a form of discrimination by the Anti-discrimination Law.

*c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

The Czech legal system does not contain any category similar to 'codes of practice'. Moreover, rights and duties for natural or legal persons cannot be created by regulations. This restriction under the Constitution[75] and the Charter[76] is exercised very strictly; additional duties cannot therefore be imposed over and above the basic duties binding natural and legal persons. For this reason, it might be difficult to employ a 'code of practice' approach in the Czech Republic.

*d) What is the scope of liability for discrimination)? Specifically, can employers or (in the case of racial or ethnic origin, but please also look at the other grounds of discrimination) service providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?*

[74] See Section 11 of Law No. 64/1961 Coll., Civil Code.
[75] Article 2 paragraph 3 of the Constitution reads as follows: "State power shall serve all citizens and may be applied only in cases, within limits and by methods defined by law."
[76] Article 2 paragraph 2 of the Charter reads as follows: "State authority may be asserted only in cases and within the bounds provided for by law and only in the manner prescribed by law." www.psp.cz/cgi-bin/eng/docs/laws/1993/2.html.

Natural or legal persons are liable where the damage was caused by operations 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) *Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?*

Instructions to discriminate are prohibited by national law in Section 4, para 4 of the Anti-discrimination Law. The concept is defined as an abuse of superiority in the instruction of a subordinate to discriminate against a third person. 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 and the Commercial Code.

*b) Does national law go beyond the Directives' requirement? (e.g. including incitement)*

According to Section 4, paragraphs 4 and 5 of the Anti-discrimination Law, both incitement and instruction to discriminate are deemed unlawful, including in relation to age, sexual orientation, disability and belief, going beyond the scope of the framework directive. The law defines incitement as the conduct of someone who persuades, confirms someone's attitudes or provokes someone to discriminate against a third person.

*c) What is the scope of liability for discrimination)? Specifically, can employers or (in the case of racial or ethnic origin ) service providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?*

Natural or legal persons are liable where the damage was caused by operations 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, provided that they were employed to act on their behalf. 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.

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

*a) How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?*

The Anti-discrimination Law provides for a special definition of disability, inspired by the ECJ interpretation of disability in its judgement on the *C-13/05, Chacón Navas* case.[77] It declares the failure to provide a reasonable accommodation to a person with a disability to be a form of indirect discrimination. The law covers access to services as well as all relevant aspects of employment.

The law also 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. Particular attention should be paid to:

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

The duty to provide reasonable accommodation is imposed on employers acting within the scope of the Law on Employment and the Labour Code (Labour Code 2007). According to the Labour Code 2007, employers are obliged at their own cost to secure for persons with disabilities the necessary workplace accommodation, labour conditions, protected workshops and workplaces, special training and guidance.[78] These obligations of employers exist independently alongside the anti-discrimination protection of the Anti-discrimination Law. As case-law is non-existent, it is not clear whether the courts would deny protection to persons who are not registered as disabled 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 disabled. 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

[77] See also 2.1.1 Disability.
[78] Sec. 103 para 5 of the Labour Code 2007.

also a lack of financial support expressly dedicated to accommodation costs, the only exception being allowances under the specific provisions of Section 78 of the Law on Employment (see Part 5. Positive action).

b) *Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

There are no differences in the definition of disability.

c) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

The concept of reasonable accommodation applies in the area of employment, labour relations including counselling, vocational training and services provided to the public. Duty to provide reasonable accommodation in the area of services provided to the public has been interpreted in wider sense by the Czech Ombudsman, covering also access to public parking places or access to higher education. Legislation does not distinguish use of the term "disproportionate burden" in the area of employment and services provided to the public. No case law has been developed by courts in this regard.

d) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect 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 paragraph 2 of the Anti-discrimination Law.

e) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)*

*i) race or ethnic origin*
*ii) religion or belief*
*iii) age*
*iv) sexual orientation*

No.

*f) Please specify whether this is within the employment field or in areas outside employment*

*i) race or ethnic origin*
*ii) religion or belief*
*iii) age*
*iv) sexual orientation*

Not applicable.

*g) Is it common practice to provide for reasonable accommodation for other grounds than disability in the public or private sector?*

Within the grounds specified by the Directives such practices are only implemented with respect to disability.

*h) Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?*

Yes. The shift of the burden of proof when claiming the right to reasonable accommodation is covered by the relevant provision of Section 133a of the Civil Procedure Code.

*i) Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?*

Accessibility standards have been introduced into legislation on building and construction, such as the Law on Spatial Planning and Construction (Law No. 183/2006 Coll.) and the Decree on General Technical Requirements securing General Accessibility of Buildings (Decree No. 398/2009 Coll.). The accessibility of buildings without barriers represents one of the general building requirements according to Section 2 paragraph 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”[79] 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 of issuing official planning and building permissions, from the spatial planning stage to building permits, approval of finished buildings and their inspections. In addition, the Decree imposes the duty to

[79] Decree no. č. 398/2009Sb., on general non-barrier accessibility requirements.

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 provide accessibility in respect of infrastructure measures and to reserve places for disabled people with respect 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] ensures through monitoring in all stages of construction procedures that accessibility requirements are met. In the case of non-compliance, reparation measures are applied. A construction permit cannot be issued and the building cannot be approved for use, if the accessibility standards are not met.[80] The State Construction Administration also has a duty to prohibit the use of such buildings.[81]

In practice, people with disabilities encounter considerable difficulties when accessing buildings, although the situation has gradually improved in recent years. Problems with securing non-barrier access still persist. For example, in 2010, only 72 court buildings offered accessible entrance, to enter another 23 courts, the assistance of court guards was necessary. The Ministry of Justice recommended that the courts establish on first contact with a party, whether they have a disability.[82] The Public Defender of Rights, as the Czech equality body, was 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.[83] Similarly, the Public Defender of Rights found discrimination in the case of people with hearing impairments in access to TV broadcasts, with the duty of the TV broadcasters to provide subtitles for 15% of TV programme not being respected and some TV broadcasters providing subtitles not for 15% of broadcasting time, but only for 15% of the total number of broadcast programmes.[84]

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[80] For example, Section 115 paragraph 1 and Section 122 paragraph 3 of Law No. 183/2006 Coll., the Law on Spatial Planning and Construction.
[81] See Section 120 paragraph 2 of Law No. 183/2006 Coll., the Law on Spatial Planning and Construction.
[82] 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.
[83] Recommendation from the Public Defender of Rights to access for guide dogs to public places, www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Doporuceni/31-10-DIS-JKV_doporuceni-psi.pdf.
[84] *Souhrnná zpráva o činnosti Veřejného ochránce práv 2010* [Report on the activity of the Public Defender of Rights in 2010]

Health requirements are laid down in many different laws and statutes, such as Decree No. 48/1982 Coll., on the basic requirements for safety at work and technical arrangements, which sets out basic standards for infrastructure. 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 Coll. establishes conditions for employees' health at work. It lists risk factors which affect the health of employees and stipulates how these factors are to be evaluated.

*j) Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?*

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

*k) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?*

As well as the legislation providing for accessibility for people with disabilities, the Law on Employment provides for 'protected workplaces' and a mandatory quota system for people with disabilities. These measures are dealt with in the appropriate sections of this report. However, these could be classified as specific positive measures rather than as ensuring the specific rights of individuals.

## 2.7 Sheltered or semi-sheltered accommodation/employment

*a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?*

The conditions for setting up 'protected workplaces' (sheltered and semi-sheltered employment) are secured on the basis of agreements. An agreement may be concluded between an employment office and an employer to establish a protected workplace for a person with a disability.[85]

www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna_zprava_VOP_2010.pdf.

[85] See Section 75 of the Law on Employment.

Such agreements may also be concluded between employment offices and individual people with disabilities engaging in self-employment. Where the employees with disabilities constitute at least 50% of the workforce, the employer is entitled to a special subsidy to cover a maximum of 75% expenses for their salaries.

*b) Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?*

Yes. This, of course, means that individuals employed in such workshops are covered by the protection of the Labour Code and the Law on Employment.

# 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)

*Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?*

Anti-discrimination provisions apply to every natural and legal person, irrespective of nationality, citizenship or residence status. According to the amended Schools Law, effective from 1 January 2008,[86] 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.

According to Section 1 paragraph 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.

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

*a) Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or 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 are under instruction from a superior (see below). The only limitation on legal persons consists of the fact that only natural persons can become employees and enter into that side of an employment contract. Only natural persons have a right to equal treatment and protection against discrimination.

*b) Is national law applicable to both private and public sector including public bodies?*

There are no specific provisions stating whether particular laws apply to private or 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 case, this is stated in the law itself.

[86] Section 20 of the Amendment to Schools Law No. 343/2007 Coll.

### 3.1.3 Scope of liability

*Are there any liability provisions than those mentioned under harassment and instruction to discriminate? (e.g. employers, landlords, tenants, clients, customers, trade unions)*

#### 3.1.3.1 Civil liability

Liability for discrimination is in the first place interpreted as civil liability. General provisions on civil liability for damages for unlawful acts, including acts committed by a third party, are contained in the Civil Code.[87] An individual is liable for damages caused by their violation of the law or contractual duty. Natural or legal persons are also liable where the damage was caused by the conduct of 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, provided that they were employed to act on their behalf.

The rules on the liability of natural and legal persons according to Section 420 paragraph 2 of the Civil Code also apply *per analogiam* to liability for non-material damages.[88] Therefore, it does not matter whether the persons acting on their behalf are employees, clients or customers – a person who instructs others to perform actions on their behalf is liable. For example, if an employer hires a consultant to conduct recruitment interviews for a vacancy, the employer must be held liable for any discrimination during these interviews, although the person who conducted them was not their employee, but a freelance consultant.

Liability according to Section 420 of the Civil Code always applies in civil matters where a different framework of liability is not provided for by specific laws. The liability of trade unions is governed by the general rules on the liability of persons acting on behalf of a natural or legal person, i.e. liability depends on whether or not the person was acting on behalf of the trade union. It is possible for several types of liability to emerge from one act: an unlawful act or damage that results from the instruction to discriminate might give rise to liability under civil law, labour law, various branches of administrative or criminal law, etc.

Even stricter rules on liability apply to businesses, in relation to both natural and legal persons. According to the Commercial Law,[89] persons who have been authorised to take certain responsibilities in running a business are authorised to undertake any

[87] *Zákon č. 40/1964 Sb., občanský zákoník* [Law no. 40/1964 Coll., Civil Code, Sec. 420 (Collection of Laws 1964, no. 19 p. 0201)].
[88] Jehlička, O., Švestka, J., Škárová, M. a kolektiv (2003) *Občanský zákoník. Komentář.* Prague: C. H. Beck, p. 95 [Jehlička, O., Švestka, J., Škárová, M. and others (2003) *Civil Code. Commentary.* 8th edition, Prague: C. H. Beck].
[89] *Zákon č. 513/1991 Sb., obchodní zákoník* [Law no. 513/1991 Coll., Commercial Law (Collection of Laws 1991, no. 98, p. 2474)]. Sections 15 and 16.

action which would normally be associated with their role. For example, it is part of a secretary's duties to order office supplies and to manage small everyday tasks; their company is thus liable for discrimination if they place a discriminatory job advertisement in a newspaper. Even if an individual transgresses the authorisation granted them, the business is liable for their conduct, provided that a third person did not and could not know that there had been a transgression. A business is also liable for the conduct of any person on its premises, if others could not know that this person was not authorised to act.

For example, if someone at a disco refuses entry to a Roma couple, it is not a relevant defence for the disco owner to prove that this person was not their employee and that they were not even aware of this person's presence.

The owner is liable for discrimination unless they can prove that the Roma couple knew that the person at the disco was not authorised by the owner. (However, this liability rule would not apply to a state administration office in relation to the conduct of an unauthorised person on its premises, as the state administration is not a business.)

In general, labour law is governed by the principle of strict employer liability in relation to the employee:

- For damages which arise in the course of employment due to a violation of legal duties or an intentional act contrary to good morals in connection with professional duties.
- For harm inflicted by the employer's employees in the course of employment and in connection with their professional duties and when acting on behalf of the employer.[90] The responsibility of the employer is presumed: the employer can only exonerate themselves if they prove that the employee who has suffered harm is jointly liable for it. The employer has a right of recourse (to recover what he or she paid for damages against a party who is secondarily liable) against the employee who was responsible for the harm for which the employer is held liable. This recourse does not include non-pecuniary damage.
- For harm suffered by third persons, the employer is responsible for the actions of their employees under civil law arising *ex contractu* (providing services, renting premises, etc.).

#### 3.1.3.2 Criminal liability

Liability for administrative offences and crimes is governed by different regulations from civil liability described above. Responsibility for acting upon instruction is expressly defined in the Misdemeanours Law.[91] It lies with the person who gave the

[90] See Section 265 paragraphs 1 and 2 of Law no. 262/2006 Coll. (Labour Code 2007).
[91] Section 6 of Law no. 200/1990 Coll., on Misdemeanours.

instruction. However, this provision applies only to legal entities and has a negligible impact because legal entities are themselves not subject to the Misdemeanours Law. Thus, it is applicable only to natural persons liable for punishment for misdemeanours committed in their capacity in relation to legal entities.

## 3.2 Material Scope

### 3.2.1 Employment, self-employment and occupation

*Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?*

National legislation applies to all sectors of public and private employment including contract work, self-employment, military service and holding statutory office.

*In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.*

### 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)) Is the public sector dealt with differently to the private sector?

National legislation covers access to employment, self-employment[92] 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,[93] which are governed by specific laws.[94]

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

[92] *Zákon č. 455/1991 Sb., o živnostenském podnikání* [Law no. 455/1991 Coll., on Self-employment Activity (Collection of laws 1991 no. 87, p. 2122)].
[93] See Section 3 paragraph 2 of Law no. 455/1991 Coll., on Self-employment.
[94] For example, *Zákon č. 128/1990 Sb., o advokacii* [Law No. 128/1990 Coll., on Lawyers (Collection of Laws 1990, no. 26, p. 0554)], *Zákon č. 220/1991Sb., o České lékařské komoře, České stomatologické komoře a České lékárnické komoře* [Law no. 220/1991 Coll., on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Pharmacy Chamber (Collection of Laws 1991, no. 44, p. 1047)], *Zákon č. 36/1967 Sb., o znalcích a tlumočnících* [Law No. 36/1967 Coll., on Experts and Interpreters (Collection of Laws 1967, no. 14, p. 0125)].

or administration officials). Their relations are governed by special laws. Where there are no specific anti-discrimination provisions in these laws, the Anti-discrimination Law applies.

The self-governing professional bodies are on the boundary between the private and public sectors, as they have the capacity to issue internal rules which are binding on their members and trainees, setting out conditions for training and admission to the profession, and they also have disciplinary powers. For more details, please see above (3.2.1, 3.2.2.).

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

*In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.*

*Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.*

Non-discrimination provisions on equal pay are to be found in the Labour Code (Section 110 of the Law No. 262/2006 Coll.) and for institutions in the public sector, in the Law on Salaries (Law No. 143/1992 Coll.) 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. The Labour Code contains detailed provisions on equal pay for work of equal value for women and men and forbids 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 addition, the Anti-discrimination Law prohibits discrimination in remuneration for work, which also applies to benefits provided in the occupational pensions systems. 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, a system for occupational pensions does not exist.

### 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))

*Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination law apply to vocational*

*training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning courses?*

The general equality clause of the Law on Employment 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, paragraph 1 of the Labour Code 2007) 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 specific 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 Armed Forces). Where special definitions of discrimination are absent, the provisions of the Anti-discrimination Law also apply.

As regards educational activities covered by the Schools Law and the Law on Higher Education,[95] the Anti-discrimination Law applies.

Access to self-employment and other occupations conducted in a self-employed capacity is often undermined 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 relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.*

[95] *Zákon č. 111/1998 Sb., o vysokých školách* [Law no. 111/1998 Coll., on Higher Education, (Collection of Laws no. 39, p. 5388)].

**Workers' and employers' organisations**

The establishment and existence of workers' and employers' organisations is governed by the Law on Associations.[96] Membership of and involvement in these organisations are governed by their own statutes. The Anti-discrimination Law applies to this area.

Trade unions usually include non-discrimination clauses in collective agreements, but these are primarily of a declaratory nature only. Provisions of collective agreements that contravene the law are null and void.[97]

**Membership of organisations whose members carry on particular professions**

The establishment and existence of such organisations are governed by special laws on professional bodies (known as 'chambers' in Czech).[98]

Membership of these bodies is often obligatory, although some have voluntary membership (e.g. the Czech Chamber of Commerce and the Czech Chamber of Agriculture).[99]

Professional bodies with obligatory membership perform important disciplinary functions vis-à-vis members and trainees. They also have supervisory functions and in certain cases establish examination conditions, examine trainees and subsequently determine admission to the body governing *conditio sine qua non* performance of the particular occupation. Practising the profession is conditional on being a member of the body. However, no non-discrimination provisions exist in the laws governing professional bodies.

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

*In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?*

[96] *Zákon č. 83/1990 Sb., o sdružování občanů* [Law no. 83/1990 Coll., on Assemblies (Collection of Laws no. 19, p. 0366)].
[97] *Zákon č. 2/1991 Sb., o kolektivním vyjednávání* [Law no. 2/1991 Coll., on Collective Bargaining, Section 4 (Collection of Laws 1991, no. 1, p. 0010)].
[98] For example, see *Zákon č. 358/1992 Sb., o notářích a jejich činnosti* [Law No. 358/1992 Coll., on Notaries and their Activity (Collection of Laws 1992, no. 73 p. 1999 )], Law No. 85/1996 Coll., on Lawyers, Law No. 220/1991 Coll., on the Czech Medical Chamber, the Czech Dental Chamber and the Czech Pharmacy Chamber.
[99] *Zákon č. 301/1992 Sb., o Hospodářské komoře České republiky a Agrární komoře České republiky* [Law No. 301/1992 Coll., on the Chamber of Commerce of the Czech Republic and the Czech Chamber of Agriculture (Collection of Laws 1992 no. 62, p. 1683)].

Social protection, social security and healthcare are governed by a number of special laws that cover areas such as social benefits,[100] social services,[101] pension insurance,[102] health insurance[103] and healthcare.[104] In all these areas, the Anti-discrimination Law applies.

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

*This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.*

Typical advantages for socially disadvantaged people, e.g. the elderly (special reductions on admission prices or cheap fares), are currently regulated principally by the Law on Contracts under the Civil Code. The Anti-discrimination Law sets out a definition of social advantages. They include any reduction or waiver of fees or monetary or non-monetary duty provided, directly or indirectly and independently of state 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)

*This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.*
*Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.*

[100] For example, see *Zákon č. 117/1995 Sb., o státní sociální podpoře* [Law No. 117/1995 Coll., on State Social Support (Collection of Laws 1995, no. 31, p. 1634)].
[101] *Zákon č. 106/2006 Sb., o sociálních službách* [Law No. 106/2006 Coll., on Social Services (Collection of Laws 2006, no. 37, p. 1257)].
[102] *Zákon č. 155/1995 Sb., o důchodovém pojištění* [Law No. 155/1995 Coll., on Pension Insurance (Collection of Laws 1995, no. 41, p. 1986)].
[103] For example, see *Zákon č. 54/1956 Sb., o nemocenském pojištění zaměstnanců* [Law No. 54/1956 Coll., on Employees' Sickness Insurance (Collection of Laws 1956, no. 29, p. 0123 )].
[104] For example, see *Zákon č. 20/1966 Sb., o péči o zdraví lidu* [Law No. 20/1966 Coll., on Healthcare of the Population (Collection of Laws 1966, no. 7, p. 0074 )].

The Schools Law contains a general anti-discrimination clause,[105] forbidding discrimination against EU and Czech citizens. The non-discrimination provisions of the Anti-discrimination Law therefore apply to its material scope.

The Schools Law, adopted in 2004 and in effect from 1 January 2005, changed the former system of special and mainstream schools. It provided children with special educational needs, including 'socially disadvantaged' children, the right to be accommodated by means of 'special educational arrangements'. No special actions or measures were taken to accompany the legislation, except those already in effect (for example, preparatory classes or class teaching assistants). See also above, Sections 2.3.1, 3.2.4.

The Schools Law formally abolished the so-called special schools, which in the past catered for a considerable proportion of Roma pupils. In practice, the segregation of children of Roma origin continues to take place in schools with reduced curricula, although these schools are no longer labelled as "special". There are no clear and objective criteria for placement in special education and no measures to enhance the sensitivity of educational professionals and foster a system based on cultural diversity. The actual implementation of culturally sensitive or adapted tests for determining the academic and intellectual abilities of children from ethnic minorities is low. The situation is similar in relation to the implementation of other measures to secure the inclusion of Roma children in mainstream education.

Because of the persistent problem of the segregation of Roma children in schools with reduced curricula in comparison to mainstream schools, the Czech Republic has been criticised repeatedly by international institutions, most recently by the Committee on the Rights of the Child in its 'Concluding observations' on the third and fourth periodic report of the Czech Republic, adopted on 17 June 2011. The CRC criticised the slow implementation of effective reform measures to facilitate inclusion and integration, which has led to schools formerly designated as "special" and those in socially excluded areas continuing to be attended by a majority of children of Roma origin, the continued placement of children of Roma origin in separate classes with a reduced syllabus formerly used for special schools, the absence of financial support for children from socially or financially disadvantaged backgrounds resulting in such children being classified as having "disabilities" and the lack of informed consent in the process leading to a child's placement in the Framework Education Programme for Children with Mild Intellectual Disabilities.

In January 2012 the Organisation for Economic Cooperation and Development (OECD) released a report on education in the Czech Republic which concluded that

[105] Law no. 561/2004 Coll., on Pre-school, Primary, Secondary and Higher Vocational and other Education.

for Romani children, “attendance [at] special schools is still very high in spite of the decision to progressively integrate disadvantaged students into mainstream.”[106]

In 2012 the Czech Ombudsman performed 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% or 35% of all pupils. When these figures are compared to the share 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 the given schools is disproportionate. Indirect discrimination in access to education therefore continues, and Czech authorities have so far failed to remedy the situation quoted in the judgment five years ago.

On the basis of the survey results, the Ombudsman formulated legal recommendations addressed to the Government, and to the Ministry of Education, Youth and Sports.[107] These recommendations included:

- To clearly and consistently incorporate the individual integration of pupils with special educational needs into the provisions of Section 16 of the Schools Law;
- To leave out the option to place a pupil with no disability into a special class or school as granted by the provisions of Section 10 Paragraph 2 and the provisions of Section 3 Paragraph 5 a) and b) from the Decree on the Education of Pupils with Special Educational Needs;
- To create precise records of former special schools and the number of pupils educated in accordance with the appendix to the Framework Education Program for Children with Light Mental Disability; these records should be regularly updated and sent to the Ombudsman and to the Czech School Inspectorate.

Other questions, such as the process of placing a pupil to a special school, activities of school counselling facilities, financing assistant teacher etc., should be examined within expert discussions initiated by the Ministry. Expert meeting culminated with "Equal Access of Children to Education" panel discussions, co-organized by the Ministry, the Office of the Government and the Ombudsman in September 2012.

In 2012 it had been five years from the D. H. judgement of the European Court of Human Rights had been issued and therefore there were various events and public discussions concerning this issue organized and various reports produced. The Amnesty International together with the European Roma Rights Center issued a

[106] OECD Reviews of Evaluation and Assessment in Education: Czech Republic, p. 19. http://dx.doi.org/10.1787/9789264116788-en.
[107] Final Report from the Survey into the Ethnic Composition of Pupils of Former Special Schools (2012). http://www.ochrance.cz/en/discrimination/research/.

report “Five more years of injustice: Segregated education for Roma in Czech Republic” calling on the Czech government to take all necessary measures to end this injustice in order to avoid yet another generation being trapped in the cycle of poverty and deprivation.[108] In addition, following a four-day visit to the Czech Republic, the Commissioner for Human Rights, Nils Muižnieks, issued the following statement on 15 November 2012 to coincide with the fifth anniversary of the DH decision. Noting that Roma segregation remains a serious problem in the Czech Republic, the Commissioner said that the practical schools should be phased out and replaced by mainstream schools that need to be properly prepared to host and provide support to all pupils, irrespective of their ethnic origin. There are certain examples in the country that show the feasibility of this necessary paradigm shift, which will require the government’s political will and sustained commitment.[109]

2012 annual report produced by the Czech Ombudsman mentioned cases where regional authorities failed to grant funds for teacher assistants. The costs were then born by the pupils´ parents, among others in the form of a donation to the school. In these cases, the State fails to secure the right of a pupil with special needs to education. Similarly the report mentioned insufficient support to students with disabilities during higher education.

### 3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

*a) Does the law distinguish 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)? If so, explain the content of this distinction.*

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. In all other respects, the Anti-discrimination Law applies.

*b) Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

[108] Five more years of injustice: Segregated education for Roma in Czech Republic. http://www.amnesty.org/en/library/asset/EUR71/006/2012/en/9f09fcf0-8917-43ae-a7cd-9b56e48c89cb/eur710062012en.pdf.

[109] Roma segregation remains a serious problem in the Czech Republic. http://www.coe.int/t/commissioner/News/2012/121115CzechRepublic_en.asp.

The law does not forbid private entities from distinguishing 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 disabled people from certain types of financial products, typically life insurance, on an ongoing basis. Usually the financial institutions maintain that the differential treatment is based on statistical data. In fact, as far as the author is aware, there has never been any attempt to verify what kind of data they use and how relevant they are for consideration of risk. In 2012 the Czech Ombudsman concluded that excluding applicants for credit cards because they exceeded the age limit 65 or 70 years constitutes direct discrimination on grounds of age. However, according to the Ombudsman, the age criterion can justify requiring additional information necessary for assessing ability of clients to meet their obligations towards the bank.[110]

### 3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

*To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.*

Housing is governed by a number of specific laws regulating rent,[111] ownership[112] and cooperative housing.[113] The Anti-discrimination Law applies to the material scope of 'housing' defined within the wider scope of services provided and offered to the public.

The law does not contain any specific prohibition of segregation in housing. Czech cases of discrimination in housing in 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 accommodation. This leads to Roma being concentrated in segregated areas with high levels of criminality. On the other hand,

[110] Annual Report on the Activities of The Public Defender of Rights in 2012, p. 99. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2012.pdf.
[111] For example, see Law No. 40/1964 Coll., the Civil Code; *Zákon č. 128/2000 Sb., o obcích* [Law No. 128/2000 Coll., on Municipalities (Collection of Laws 2000, no. 38, p. 1737)].
[112] For example, see *Zákon č. 72/1994 Sb., o vlastnictví bytů* [Law No. 72/1994 Coll., on Home Ownership, (Collection of Laws 1994 no. 22, p. 552)].
[113] For example, see Law no. 40/1964 Coll., Civil Code; *zákon č. 513/1991 Sb., obchodní zákoník* [Law No. 513/1991 Coll., the Commercial Code (Collection of Laws 1991, no. 98, p. 2474)].

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 are not the same. 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.

There is no law requiring or promoting the availability of housing accessible for people with disabilities and older people. However, the building of such housing can be supported from public funds dedicated for this purpose, based on individual projects, usually maintained by municipalities.

# 4 EXCEPTIONS

## 4.1 Genuine and determining occupational requirements (Article 4)

*Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?*

Genuine and determining occupational requirements are defined in Section 6 paragraph 3 of the Anti-discrimination Law, as well as in Section 16 paragraph 3 of the Labour Code (Labour Code 2007). 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.

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 moral character.

## 4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

Section 6 paragraph 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”. This exception is in accordance with Article 4. 2 of the Directives.

b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).*

Registered churches and religious organisations as legal entities *sui generis* are endowed with special rights, including 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. Freedom of religion is not limited only to churches and religious organisations registered with the state in the special register. Other religions may still be practised, they are simply not regulated by these laws and do not have access to the special rights guaranteed by the state for registered churches and religious organisations.

There are exemptions which are not seen as general occupational requirements, but rather as general exemptions for the religious acts of individuals from state interference which are, according to official interpretation, applicable to the clerics of churches and other religious organisations. The Constitutional Court has held that labour disputes involving clerics are inadmissible in the civil courts and that labour law does not apply at all in labour relationships involving clerics.[114] The Constitutional Court stated that the adjudication by national courts as to whether or not a cleric's service should continue would represent an unlawful interference in the internal autonomy of the church or religious community, in its independent and genuine capacity.[115] This conclusion applies without exception to the establishment and dismissal of clerics from service in accordance with the internal regulations of churches and religious organisations.

The situation is different with respect to any conduct by a church or religious organisation which is not in accordance with the national regulations in the area of labour law and social security, for example, the non-payment of remuneration due etc. A church or religious organisation can maintain its internal autonomy, but is not allowed to act contrary to valid legislation. National courts have the duty to provide protection against violations of the rights of every individual. In its decision No. I. ÚS 211/96 the Constitutional Court stated that, with respect to the right to remuneration or other material claims, the national courts have competence even with respect to the employment relationship of clerics and that such exercise of competence does not represent interference with religious autonomy. In such matters, according to the view of the Constitutional Court, courts must apply relevant legislation, for example the Civil or Labour Codes, and adjudicate on any claims. The Supreme Court accords with the view of the Constitutional Court (see, for example, decisions No. 20 Cdo 1487/2003, No. 21 Cdo 702/2007, No. 28 Cdo 1271/2006).

c) *Are there cases where 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 (e.g. the Catholic church in Italy*

[114] The fact that only 'churches', not other religious organisations, are mentioned here does not mean that religious organisations other than churches would be treated differently, but that this case only involved the Protestant church and no other religious organisation. The same would apply, for example, to the Rabbinate of the Prague Jewish Community.
[115] See Constitutional Court decision Ústavní soud/no. I. ÚS 211/96 (26 March 1997) (N 34/7 SbNU 227), III. ÚS 136/2000 (31 August 2000), U 30/19, SbNU 283, No. I. ÚS 611/06, (17 January 2007), No. I. ÚS 1244/07, (18 October 2007).

*or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?*

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, 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.[116] 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 (Art. 3(4) and Recital 18 Directive 2000/78)

*a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

The laws governing service by members of the armed forces and security services do not provide for age and disability as protected grounds within the scope of these laws (fire fighters, customs officers, prison officers, the Security Information Service, officials of the Office for International Contacts and Information, police officers[117] and soldiers).[118]

*b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

The laws governing service by members of the armed forces and security services lay down large numbers of specific occupational requirements (usually called "specific preconditions of vocational capability"), detailed in various regulations. The

[116] In order to establish a religious class in a state school, the Schools Law prescribes a minimum number of seven pupils per school year in the whole school.
[117] Section 77 paragraph 2 of Law no. 361/2003 Coll., on Service by Members of the Security Services.
[118] *Zákon č. 221/1999 Sb., o vojácích z povolání*, [Sec. 2, para 3 of Law no. 221/1999 Coll., on Service by Members of the Armed Forces (Collection of Laws 1999, No. 76, p. 3722)].

regulations list illnesses and disabilities which exclude applicants from recruitment.[119] 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.

### 4.4 Nationality discrimination (Art. 3(2)

*Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).*

*a) How does national law treat nationality discrimination? Does this include stateless status?*
*What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?*
*Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?*

There are no further provisions in national law relating to nationality discrimination, with the exception of those dealt with in 3.1.1 above. The anti-discrimination clause in the Schools Law does not apply to third-country nationals. The Anti-discrimination Law also applies to discrimination on grounds of nationality (in Czech: *národnost)*, with the exception of the application of immigration rules. This term is not identical to "citizenship" (in Czech: občanství). In the case of the grounds of nationality and racial or ethnic origin, there could be significant overlap, especially in cases of indirect discrimination.

*b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?*

There is an exception applying to immigration rules included in the Anti-discrimination Law.

### 4.5 Work-related family benefits (Recital 22 Directive 2000/78)

*Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06*

[119] For example, see *Vyhláška Ministerstva obrany č.103/2005 Sb., o posuzování zdravotní způsobilosti k vojenské činné službě* [Regulation of Ministry of Defence no. 103/2005 Coll., on Assessment of Fitness for Active Service by Soldiers (Collection of Laws 2005, No. 31, p. 861)].

*Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.*

*a) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?*

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.). The 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.

With regard to such family 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 the wife or husband. In the case of a non-married 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 comparative legal concepts in the Czech Republic, as both family law and other special laws do distinguish between marriage and registered partnership.

*b) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?*

Distribution of benefits only to opposite-sex partners would probably be contrary to the Anti-discrimination Law, as it could constitute direct discrimination on the ground of sexual orientation.

### 4.6 Health and safety (Art. 7(2) Directive 2000/78)

*a) Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?*

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

job-related activities.[120] With regard to the health and safety of people with disabilities, Section 103 paragraph 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.[121]

*b) Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.)?*

The law does not have any provisions ruling on the exceptions described.

## 4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

### 4.7.1 Direct discrimination

*Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the Court of Justice of the European Union in the Case C-144/04, Mangold and Case* C-555/07 *Kucukdeveci?*

*a) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

The exceptions related to the ground of age, with respect to access to employment and occupation, are identified in Section 6 paragraphs 1 and 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 it is necessary for the proper performance of or access to specific rights and duties to perform this employment or occupation.

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. An additional exception is related to age and sex and allows for differential treatment related to the difference of pensionable age for men and women. This exception does not apply to social security provisions for workers.

[120] See Part 5, Sections 101-108 of Law no. 262/2006 Coll., Labour Code.
[121] See Section 103 paragraph 1 of Law no. 262/2006 Coll., Labour Code.

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, set up by specific laws. The general test of 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…"[122] The test of the Czech Constitutional Court corresponds more closely to the position taken by the CJEU in case C-411/05, *Félix Palacios de la Villa v Cortefiel Servicios SA*, than to the test applied by the ECJ in case C-144/04 *Mangold*. The Anti-discrimination Law provides for a justification test which is along the lines of Article 6 of Directive 2000/78.

*b) Does national legislation allow 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.

Firstly, 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 judgements, the Constitutional Court asserted that arbitrariness should also be avoided, thus acknowledging that stricter tests are

[122] See the decision of the Constitutional Court, Ústavní soud/No. Pl. ÚS 9/95. 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 according to Article 28 of the Charter. The Constitutional Court upheld the law and rejected the complaint.

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".[123] 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 benefit to one group and at the same time place disproportionate duties on others with reference to public values".[124] 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.[125]

### 4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

*Are there any 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? If so, please describe these.*

Special conditions for younger workers are discussed below (see 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 ten 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.[126] There are no special conditions for protection of older workers.

[123] See the decision of the Constitutional Court, Ústavní soud/No. Pl. ÚS 33/96.
[124] Ústavní soud/No. Pl. ÚS 33/96. 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, appealing to 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.
[125] Decisions of the Constitutional Court Ústavní soud/No. II.ÚS 1174/09, Ústavní soud/No. Pl. ÚS 53/04, 341/2007 Coll., Ústavní soud/No. Pl. ÚS 42/04, 405/2006 Coll.
[126] Law No. 54/1956 Coll., on Sickness Insurance for Employees.

### 4.7.3 Minimum and maximum age requirements

*Are there 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 labour contracts.[127] 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 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.

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 and in certain circumstances requires employers to secure medical examination of employees under 18.

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.

[127] In the Czech Republic compulsory education is for nine years, but the maximum age by which time this duty must be complied with is 17 years.

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, a public prosecutor's contract is terminated on 31 December of the year in which they reach the age of 70 years.

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**

Conditions of pay dependent on years of experience:

The Labour Law 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 according to 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 above 2.1).

### 4.7.4 Retirement

*In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-*

*imposed, imposed by an employee's employment contract or imposed by a collective agreement).*
*For these questions, please indicate whether the ages are different for women and men.*

a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

There is a pensionable age at which the state pension is payable, but in the Czech Republic there is no compulsory retirement age, and if an individual wishes to work for longer, they may choose to defer retirement and also to receive a pension and continue to work. Following a 1995 law, the pensionable age for men was 60 years;[128] for women it depended on the number of children they have raised.

This condition did not apply to men, even if a man had brought up a child or children as a single parent. In October 2007, the Constitutional Court held that this distinction between lone parents is legitimate and not discriminatory. This conclusion was finally confirmed by the ECHR.[129] Since 31 December 2012, the pensionable age has been 63 years for men and has been reduced for women depending on the number of children they have raised. It is exclusively up to the employee to decide whether they choose to retire on reaching pensionable age. There is an ongoing political discussion regarding pension reform and a further rise in the retirement age, but without any clear outcome at present. 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 above 4.7.3.1).

b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?*

In the Czech Republic, there are no 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.

c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

[128] Law no. 155/1995 Coll., on Pension Insurance.
[129] Decision of the Constitutional Court (Ústavní soud) no. Pl. ÚS 53/04 , 341/2007 Coll..,ECHR judgment on 17 February 2011, *Andrle v. Czech Republic*, no. 6268/08.

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 (see 4.7.3 above). There are no changes planned in this respect in the near future.

d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

No, 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) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?*

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).

f) *Is your national legislation in line with the CJEU case law on age (in particular Cases C-229/08 Wolf, C-499/08 Andersen, C-144/04 Mangold and C-555/07 Kücüdevici C-87/06 Pascual García [2006], and cases C-411/05 Palacios de la Villa [2007], C-488/05 The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform [2009], C-45/09, Rosenbladt [2010], C-250/09 Georgiev, C-159/10 Fuchs, C-447/09, Prigge [2011] regarding 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) *Does national law 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.

*b) If national law provides compensation for redundancy, is this 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.[130] 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)

*Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?*

All existing exceptions of this kind have already been mentioned (see 4.3, 4.7.3 above).

### 4.9 Any other exceptions

*Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.*

All existing exceptions have already been discussed.

[130] See Section 67 of Law no. 262/2006 Coll., the Labour Code.

## 5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

*a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.*

Section 7 paragraphs 2 and 3 of the Czech 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 paragraph 1 j) and k) and the Labour Code 2007, Section 16 paragraph 3. 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.

*b) Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.*

It can be said that except for positive actions on behalf of persons with disabilities, these measures are used only rarely.

**Mandatory quota system for people with disabilities**

The duty of employers to compensate for disadvantages linked to disability is governed by a type of quota system. Companies with more than 25 employees must apply one of three measures:[131]

- employ a certain percentage of disabled employees (4% of employees);
- commission goods or working programmes from employers who employ more than 50% disabled employees;
- make payments to the state budget. (The 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 state pays allowances to employers whose staff comprise more than 50% disabled employees.[132] The allowances provided constitute 75% of the average wage in the Czech Republic in the preceding year for a person classified as fully disabled. For a person classified as partially disabled or disadvantaged on health grounds, the allowances constitute a 0.33 multiple of the average wage.

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 over employing people with "altered working ability" (the term used for 'disability' by the former Law on Employment). According to research conducted by the National Council for People with Disabilities, of 43 state institutions (central state institutions, regional offices, courts and state-owned enterprises), the legal duty to employ 4% of persons with "altered working ability"[133] was not met by 20 of them, including the Czech Senate, the Chamber of Deputies and the Office of the Government. In total, they paid penalties of CZK 10 million (€370,370).[134]

[131] See Section 81 paragraph 2 of the Law on Employment.
[132] See Section 78 of the Law on Employment.
[133] At the time the research described here was conducted, Law no. 1/1991 Coll., on Employment, was still in force. According to Section 24 of this law, every employer with more than 25 employees has a duty to employ 4% of persons with altered working ability. If this quota is not met, the employer must pay 150% of the average wage to the state budget.
[134] 'Úřady nestojí o postižené a platí pokuty' ['State administration does not want disabled workers and pays penalties'], *Hospodářské noviny* newspaper, (3-5 September 2004).

### Other positive action for people with disabilities

People recognised by the state social security service as disabled have the right to employment rehabilitation,[135] provided by employment offices. 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. (For the legislation on sheltered or semi-sheltered employment, please see 2.7 above.)

### Social policy measures with respect to Roma

In respect of Roma, no measures which can be labelled as 'positive action' in the strict sense exist. Nevertheless, the police have established posts for contact officers for minorities and for assistants to the police for work with socially excluded communities. Another small programme which could perhaps be described as a positive measure is the system of supporting Roma students in higher education through special state financial subsidies.[136]

After serious social tension and conflict emerged between Roma and the majority population in late 2011, a Strategy to combat social exclusion was approved by government Decree no. 699 on 21 September 2011. The Strategy develops the programme of Roma integration for 2011-2015. It represents very good attempt to provide for multifaceted solutions of the housing segregation of mostly Roma living in excluded settlements.

The Strategy was prepared by the government Agency for Social Inclusion and imposed a duty to realise the planned measures in accordance with the respective timetable and according to distinct competencies. The Decree imposed the duty to secure for this purpose the budgetary means from the respective chapters of their budgets on the Minister of Labour and Social Affairs, the Minister of Education, Youth and Sports, the Minister of Regional Development, the Minister of Health, the Minister of Justice, the Minister of the Interior and the Minister of Industry and Trade. By the same Decree, the Deputy for Human Rights was assigned the duty to monitor, in cooperation with the Agency for Social Inclusion, the implementation of individual

[135] See Section 69 of the Law on Employment.

[136] The scheme operates as one of the supporting measures for members of national minorities. *Zákon č. 273/2001 Sb, o právech příslušníků národnostních menšin a o změně některých zákonů* [Law no. 273/2001 Coll., on rights of members of national minorities (Collection of laws no. 2001, No. 104 p. 6461)] defines who is a member of a national minority. Members of a national minority "differ from other citizens by common ethnic origin, language, culture and traditions, create a minority of inhabitants and at the same time show a will to be regarded as a national minority in order to preserve their own identity, language and culture and to express and protect the interests of their historically created community". In practice, the declaration by an individual as a member of a national minority is a satisfactory qualification to be included in the specific programmes to support the education of Roma. These programmes usually consist of subsidies in the form of social benefits to help a student to maintain themselves during studies.

measures contained in the Strategy, to report on the progress in this implementation and to identify proposals for measures planning up to 2020. The respective Ministers are bound by the Decree to provide cooperation with the Agency for Social Inclusion when fulfilling the tasks following from the Strategy.

The measures contained in the Strategy are divided into six chapters: security; housing; social services, family and healthcare; education; employment and security benefit schemes; and regional development. In each chapter, the key problems, goals and priorities are identified and to the individual priorities are assigned corresponding measures.

The Strategy was prepared by more than 100 specialists from the government, the Agency for Social Inclusion, non-governmental organisations, and academics.

The Agency for Social Inclusion aims to work in cooperation with regions and municipalities (especially in the areas of housing and education). It is involved in preparing a conceptual outline for work in 2014 and beyond, with a focus on obtaining financing from EU resources. There have been instances of the Agency withdrawing from some municipalities because of their segregating policies, as well as the development of immediate field assistance in places where inter-ethnic tensions have been triggered by economic crisis.[137]

According to the current Schools Law (Law no. 561/2004 Coll.), school directors can establish posts for teaching assistants to work with children from socio-culturally disadvantaged backgrounds. In state schools, these assistants are to be paid from the publicly funded school budget.

Several studies were conducted, followed by research undertaken by the Institute for Information in Schooling.[138] In recent years, no comprehensive statistical data have been collected at governmental level, although partial surveys showed that the "special schools", formally abolished since 2005, continued to function and were renamed "elementary schools" or "practical elementary schools". They continue to cater for a disproportionate percentage of Roma children. A study by the Ombudsman, released in June 2012 and supported by two studies by the Czech School Inspectorate dating from April 2010 and July 2012, showed that the proportion of Roma children included in programmes for pupils with intellectual disabilities ranges from 26.4% to 32%. This fact led the Ombudsman to draw the conclusion that this over-representation of Roma children constituted indirect discrimination in access to education. The government has not yet found an efficient remedy to this unsatisfactory situation.

[137] *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.

[138] For more information see: http://www.msmt.cz/pro-novinare/jake-jsou-vzdelanostni-sance-deti-ze-socialne-znevyhodnujiciho.

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. The basis for the establishment of the Agency was formally provided by the government Decrees dated 23 January 2008, No. 85, and 9 June 2008, No. 731. These Decrees tasked the Office of the Government with securing the financial basis for the Agency for Social Inclusion in 2009 and 2010. They provided a practical basis for the preparatory work and launching of the pilot activities of the Agency.

Since 1 January 2010, the Agency has been implementing the project, Support for Social Inclusion, in selected Roma localities through the Agency for Social Inclusion. The project 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 members. The project currently has established cooperation in 26 selected localities and has already announced the addition of 17 new localities in 2013.

As outstanding good practice, the Manual published by the Agency is notable. 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 paragraph 8 of Law no. 137/2006 Coll., on Public tenders, which forms the basis of the requirement that a proportion of at least 10% long-term unemployed persons should be employed in public contracts. The Agency'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.

# 6 REMEDIES AND ENFORCEMENT

## 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

*In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.*

*a) What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)?*

**Judicial civil 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"*.[139] In addition, victims of discrimination can bring an action in accordance with special provisions of the Law on Employment.[140] The Civil Procedure Code[141] and the shift of the burden of proof apply in both cases.

The exceptional character of monetary compensation as it is embodied in the law corresponds to the traditional concept of Section 11 of the Civil Code, which provides for protection of the personal rights of individuals. These personal rights extended mainly to life, health, civil integrity 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 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 amount claimed and sometimes reduce it considerably. On occasions, the compensation awarded is unreasonably low and thus cannot be considered effective.

[139] This is the exact formulation of the Law, but in court practice, monetary compensation for discrimination is always the rule.
[140] See Section 4 paragraph 10 of the Law on Employment.
[141] Law No. 99/1963 Coll., Civil Procedure Code.

### Criminal judicial procedures

The Criminal Code[142] sets penalties for crimes relating to racial discrimination and discrimination on the grounds of religion or belief.

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 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.

### Administrative judicial procedures

The Code on Administrative Court Procedure regulates the judicial review of administrative decisions.[143] The revision of administrative decisions can be a result of discriminatory practice; in practice the court also reviews the decisions of administrative bodies, which have identified as discriminatory certain practices of petitioners.

### Administrative procedures

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.

Employment offices and Labour Inspectorates, using their powers in the area of employment and labour relations, and the Czech Trade Inspectorate, which controls access to goods and services, are competent to investigate misdemeanours and administrative offences involving discrimination and to impose sanctions. 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 CZK 1 million (approx. €37,037).[144] However, the sanctions imposed in practice are much lower. In their 2011 report the Czech Ombudsman strongly criticised work of Labour

[142] Law No. 40/2009 Coll., the Criminal Code.
[143] *Zákon č. 150/2002 Sb., soudní řád správní* [Law No. 150/2002 Coll., the Code on Administrative Court Procedure (Collection of Laws 2002, no. 61, p. 3306)].
[144] See Sections 139 and 140 of Law no. 435/2004 Coll., on Employment.

Inspectorates who dealt only with certain facts indicated in a complaint while disregarding other essential facts or documents that pointed out possible unlawful conduct. This included specifically failure to check the variable components of the salary whose payment was not subject to the employer's discretion and inconsistent checks of overtime work performed by employees of retail chains.[145]

The Law on Employment defines the competencies of employment offices[146] and the Administrative Code[147] 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 become income for the state budget.

Where the powers of other specialised inspectorates or administrative bodies do not apply, local government authorities (through their misdemeanour commissions) are vested with the competency to investigate acts of discrimination.

Administrative bodies and inspectorates established in fields other than employment and trade inspection that fall within the scope of Directives 2000/43/EC and 2000/78/EC do not have administrative procedures to protect against discrimination. This is mainly due to the lack of material provisions in specific laws.

The same situation occurs with 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).

The Law on Service by Officials of the State Administration (Law No. 218/2002) provides for special investigative powers to be given to the State Service Office. The application of this law has been postponed, currently until 1 January 2015.

**Czech Trade Inspectorate**

The 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). Under the Law on the Czech Trade Inspectorate, the CTI is authorised to inspect legal entities and individuals which sell or deliver goods and services. 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

[145] Annual Report on the Activities of The Public Defender of Rights in 2011, p. 40. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2011.pdf.
[146] See Sec. 7 of Law no. 435/2004 Coll., on Employment.
[147] *Zákon č. 500/2004 Sb., správní řád)* [Law No. 500/2004 Coll., the Administrative Code (Collection of Laws 2004, no. 174, p. 9782)].

other legal entities and individuals. Although the CTI is required to collaborate with civic 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 the consumer can only serve as a reason to carry out an inspection.

**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.[148] 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 an individual 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 was caused by the misdemeanour to their property).

**Legal aid**

Legal aid is provided in limited circumstances through court advocates and the Czech Bar Association. In fact, free legal aid is provided predominantly to appoint a representative for court disputes. Therefore access to other legal assistance free of charge is difficult. According to findings of the Ombudsman difficulties in finding qualified legal aid are among the most common reasons why victims of discrimination, even in cases when the Ombudsman finds discrimination, do not want to file a discrimination complaint with civil courts. To challange this state of affairs, the Ombudsman initiated collaboration with NGO Pro Bono Alliance securing pro bono repesentation in some cases.

*b) Are these binding or non-binding?*

These are binding.

*c) What is the time limit within which a procedure must be initiated?*

The law does not set explicit uniform limits for procedures. In civil court procedures, material claims, including the claim for monetary compensation, become statute-barred after a certain time (usually three years), but for certain claims this will not apply. In the area of public law, strict limits exist for prosecution of crimes or misdemeanours, but this is not always so with respect to administrative offences.

[148] See Section 49, Law No. 200/1990 Coll., on Misdemeanours.

*d) Can a person bring a case after the employment relationship has ended?*

It is possible to bring a case whether or not the employment relationship has been terminated. Procedural time limits for litigation are only rarely set. One exception relevant in this context is action for unlawful dismissal, which must be submitted within two months after the dismissal.

*e) In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).*

Court procedures are financially onerous and very long. This can be demonstrated by the case of the 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 support of an NGO, a Roma victim turned to the civil court with a claim for apology and financial compensation in 2001. However, the application is still pending and the outcome of the proceedings is uncertain.

According to the Czech Ombudsman, the present amount of court fee for filing a discrimination complaint is one of the reasons victims seldom turn to civil courts. The court fee for an application to initiate proceedings seeking monetary compensation for immaterial harm amounts to CZK 2,000 (approx. 74 Euro). If a victim of discrimination claims monetary compensation in excess of CZK 200,000 (approx. 7400 Euro), the fee amounts to 1% of the amount claimed. If the victim includes other claims, e.g. termination of discriminatory conduct, he or she will also be required to pay extra CZK 2,000 (approx. 74 Euro). The Ombudsman suggested that the amount of court fee for filing a discrimination application with courts is modified so that it no longer includes a percentage amount of the monetary compensation claimed for immaterial harm, and the flat court fees is reduced to CZK 1,000 (approx. 37 Euro).[149]

In very limited circumstances court fees can be waived upon application and the lawyer can be provided free of charge by the court to litigants who cannot afford to pay for one. However, this is not the case with the duty to compensate for the costs of the other party, if the plaintiff 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 exceptional.

[149] Annual Report on the Activities of The Public Defender of Rights in 2012, p. 18. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2012.pdf.

Such protracted cases raise costs to insupportably risky levels, which means that it is rarely possible for a victim (who is not supported by an NGO or trade union) to bear these difficulties alone for longer periods.

*f)Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.*

According to statistical data provided by the Ministry of Justice, Czech civil courts reached final and conclusive decision only in 4 cases regarding discrimination in 2012. In 2011 there were only two such decisions.[150] Decisions of the Supreme Court or the Constitutional Courts are not covered by these data.

## 6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

*Please list the ways in which associations may engage in judicial or other procedures*

*a) What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association, organisation, trade union, etc.).*

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 to these associations. According to Section 26 of the Civil Procedure Code, a party to proceedings can be represented by a legal entity which includes protection against discrimination in its articles of incorporation. The organization can only represent the victim as a chosen representative, based on power of representation.

*b) What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?*

[150] Ministry of Justice 2012. Přehled o pravomocných rozhodnutích soudů v občanskoprávních věcech podle druhů sporů: http://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html.

The entitlement of associations with a legitimate interest to engage in judicial procedures 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 can be represented in proceedings by a legal entity established according to a special law,[151] where protection against such discrimination is part of this legal entity's activities. Trade unions can also represent their members as parties to proceedings on any matter, with the exception of business or trade disputes. The entitlement of trade unions to engage in proceedings is not limited to matters of protection against discrimination.

c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

They need the full power of representation to represent the victim.

d) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

No association has a legal duty to act in such situations.

e) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.*

This type of engagement by associations is reserved for civil proceedings only. The representation by the associations is not possible in proceedings before the Supreme Court or the Constitutional Court where only an advocate can represent the victim.

f) *What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.*

The associations themselves are not entitled independently to seek any remedy. They can only seek the remedy as the representatives of the victims.

g) *Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?*

[151] Law No. 83/1990 Coll., on Citizens Assembly.

The rules on the shifting of the burden of proof are general; they are not reserved for any particular type of legal representatives of the claimants.

*h) Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

*Actio popularis* is not permitted with respect to discrimination claims in the Czech Republic.

*i) Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Class actions are not permitted with respect to discrimination claims in the Czech Republic.

### 6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

*Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).*

A shift of the burden of proof in discrimination cases is permitted by Section 133a of the Civil Procedure Code. The Constitutional Court declared the Czech provisions on burden of proof compatible with the guarantees of fair trial provided by the Czech Charter. The provision states that, where facts from which it may be presumed that there has been direct or indirect discrimination are established before the court, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

### 6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

*What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).*

Section 4 paragraph 4 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.

## 6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

*a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

**Administrative sanctions according to specific laws and the Misdemeanours Law**

In theory, administrative sanctions in the area of access to employment and labour law extend up to CZK 1 million (approx. €37,037). The same level of sanctions can be imposed by the Czech Trade Inspectorate. However, the amounts actually enforced are much lower and the number of cases concerning discrimination where a sanction is imposed is very limited. Administrative bodies often cite by way of an explanation that discrimination is hard to prove, or that they are unable to identify any evidence of discrimination, and the investigations often end in the administrative or misdemeanour procedure being terminated. Therefore, these administrative sanctions cannot be considered as dissuasive, effective and proportionate. In addition, the administrative investigation of misdemeanours is extremely ineffective because the Law on Misdemeanours requires the investigation to be completed within one year, otherwise it must be dropped. Therefore it is quite exceptional for discriminatory acts to be punished within the misdemeanour procedure.

**Criminal sanctions according to the Criminal Code**

In criminal procedures, 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, confiscation of items, the penalty of expulsion from the Czech Republic for a determined or undetermined period (which would result in deportation) and a ban on residence.[152]

In cases concerning criminal acts related to ethnic or religious violence and hatred, punishments primarily consist of imprisonment. In less severe cases, such as those involving extremist attacks committed by skinheads or young people, the courts will assign community work. 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. Where discrimination occurs, the investigative bodies usually conclude that the act

[152] See Section 27 of Law no. 140/1961 Coll., the Criminal Code.

committed is not so dangerous to society as to be regarded as a crime and consequently refer these incidents to misdemeanour commissions for administrative investigation.

In criminal procedures, 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.[153]

**Civil sanctions (claims for material damages and non-pecuniary damages)**

While material damages can generally be claimed by individuals who suffer material losses 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 and the Civil Code (in provisions concerning protection of personal rights) allow for non-material damages to be claimed. 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.[154]

The court can award non-pecuniary damages of up to the amount requested by the petitioner, but can also award a lower amount. The amounts vary considerably – courts have awarded plaintiffs in discrimination cases amounts ranging from CZK 5,000 (as awarded in 2004 by the Olomouc High Court in a case of racial discrimination in housing) to CZK 250,000 (€185 to €9,259) in cases relating to racial discrimination in employment, services or housing.

*b) Is there any ceiling on the maximum amount of compensation that can be awarded?*

Amounts of compensation awarded by the courts to compensate private individuals are not, as a principle, limited by a ceiling.

*c) Is there any information available concerning:*
*i) the average amount of compensation available to victims?*
*ii) the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?*

[153] For example, in the case of a racially motivated arson attack, the Ostrava Regional court ordered the four convicted perpetrators to pay jointly CZK 9.5 million CZK (approx. €352,000) to the child victim, who was seriously burned during the attack, as non-material compensation.
[154] See Section 13 paragraph 3 of Law no. 64/1961 Coll., Civil Code and Section 4 paragraph 11 of Law no. 435/2004 Coll., on Employment.

There is no official information of this kind to refer to. It is true that some compensation amounts awarded by the courts are extremely low. 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 inquired 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 plaintiff CZK 10,000 (€370), the defendant appealed and the court of second instance lowered the amount to half the original award (CZK 5,000 / €185).[155]

[155] Judgment no. 23 C 110/2003 (Regional Court Ostrava [Krajský soud v Ostravě]), no. 1 Co 99/2004 (High Court in Olomouc [Vrchní soud v Olomouci]).

## 7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

*When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.*

a) *Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).*

The Anti-discrimination Law awards the role of anti-discrimination body to the Public Defender of Rights (Czech Ombudsman). The Public Defender of Rights 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). Since this date, the Public Defender of Rights also has the remit as an equality body competent with regard to the full scope of anti-discrimination law. The budget allowed the Ombudsman to hire only five new persons dealing with discrimination issues and from the very beginning there have been concerns regarding how the Ombudsman will be able to perform all their competencies as an equality body.[156]

In 2011, the Office of the Public Defender of Rights registered 271 complaints of discrimination. Of this number, 221 complaints were processed, the rest are still undergoing investigation. Discrimination was identified by the Ombudsman in 70 of these complaints (32%).[157] In 2012 the Public Defender of Rights registered 253 discrimination complaints and 178 complaints were processed. Discrimination was identified by the Ombudsman in 18 of these complaints (10%).[158] The Public

[156] Otevřená společnost, *Ženy a česká společnost – hodnocení implementace Pekingské akční platformy na národní a mezinárodní úrovni (Peking + 15),* [Open Society. *Women and Czech Society – evaluation of implementation of Peking action platform on the national and international level (Peking + 15)*], Prague, March 2010, p. 82. Available from http://www.otevrenaspolecnost.cz/cz/component/phocadownload/category/1-publikace?download=20:zeny-a-ceska-spolecnost.

[157] *Souhrnná zpráva o činnosti Veřejného ochránce práv 2011* [*Report on the activities of the Public Defender of Rights in 2011*]. www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna_zprava_VOP_2011.pdf.

[158] *Annual Report on the Activities of the Public Defender of Rights in 2012*, p. 95. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2012.pdf.

Defender of Rights issued three recommendations and conducted one piece of research in 2011. In 2012 the complainants referred most frequently to discrimination in the areas of labour law (96 complaints), the provision of goods and services (42 complaints) and social area.[159]

*b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.*

The Public Defender of Rights (Czech Ombudsman) is elected by the Chamber of Deputies of the Czech Parliament for periods of six years and is responsible to this Chamber. Candidates are proposed by the Czech President and the Senate. The law provides that the body is funded from the state budget, through its own independent budget line. According to the article 5 of the Law on the Public Defender of Rights, the Ombudsman shall carry out his/her duties independently and impartially. To ensure their independence, the office of 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 Defender 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 Defender may not be a member of a political party or a political movement. The oath of the Defender 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) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

According to the law, the competences of the Ombudsman cover all grounds of discrimination as specified in the Directives. The Czech Ombudsman is already vested with competence to supervise fairness in state administration, places of detention and institutional care.

*d) Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

[159] *Annual Report on the Activities of the Public Defender of Rights in 2012*, p. 95. http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2012.pdf.

According to the Anti-discrimination Law, the Public Defender of Rights should provide independent assistance to victims of discrimination, undertake research, publish independent reports and exchange information with anti-discrimination bodies in other EU Member States. However financial and personal capacities allow Ombudsman only very limited activities in these areas. In 2012, the Ombudsman published only one new recommendation, and performed one research pertaining to equal treatment. While the need for the recommendation arose as a result of an increasing number of complaints in a field where administrative practice seemed at a loss (creating reserved parking spaces), research activity responded to persisting criticism of the Czech Republic by international institutions regarding access of Roma pupils to education.

Current personal and financial capacities only allow the Czech Ombudsman to provide very limited assistance to victims. The Ombudsman is not entitled to provide representation of victims before courts. The Public Defender of Rights can only evaluate the case, whether there is discrimination or not, and provide the victim with recommendation whether there is a chance to be successful before Czech courts. In 2012 the Ombudsman established cooperation with NGO Pro bono alliance (Pro bono alliance), which arranges free legal aid to selected victims of discrimination. Specific legal aid is provided on the basis of a contract between a cooperating law firm or an attorney involved in pro bono clearinghouse served by the Pro bono alliance and a complainant (client). Three victims of discrimination accepted such legal aid in 2012. Two cases concerned discrimination in access to services on grounds of disability and the third concerned discrimination in access to employment due to age.[160]

*e) Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).*

Yes, the tasks are undertaken by the body independently.

*f) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

The Anti-discrimination Law makes no provision for these competences. However, the body can provide mediation or legal analysis for individual cases or systemic legal problems. Even in providing this form of assistance there might be problem with finding adequate funding in the budget of the Ombudsman for more than few victims per year.

[160] *Annual Report on the Activities of the Public Defender of Rights in 2012,* p. 93. Available from http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/Annual_2012.pdf.

*g) Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions).*

The Public Defender of Rights is not a quasi-judicial institution. It does not have competence to issue decisions and therefore no appeals are possible.

*h) i) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

The Public Defender of Rights is not required to treat any vulnerable group as a priority issue, nor does the Anti-discrimination Law require this. The mandate allows important social problems affecting one vulnerable group only to be reflected, such as segregation in housing and education, affecting mostly Roma. For example, the first recommendation made by the Public Defender of Rights in its capacity as the equality body was dedicated to the issue of housing segregation, where the Public Defender of Rights established non-discrimination rules for the rental of municipal flats.[161]

[161] 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

*Describe briefly the action taken by the Member State*

*a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

There have been no notable activities by the government with respect to dissemination of information about legal protection against discrimination in recent years.

*b) 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) and*

There has been no notable action in this respect in recent years.

*c) 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) to specifically address the situation of Roma and Travellers. Is there any specific body or organ appointed on the national level to address Roma issues?*

There are no Travellers in the Czech Republic. 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. The Agency for Social Inclusion is a body established by the government to address Roma issues in socially excluded communities.

## 8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

*a) Are there mechanisms 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? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

There are no mechanisms explicitly created to meet this aim. 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) Are any laws, regulations or rules that are contrary to the principle of equality still in force?*

Under Section 66 of amendment no. 367/2011, the Law on Employment was amended with effect from 1 January 2012. According to this section of the amended law, employment agencies may not temporarily assign to work for a client an employee who has been issued with a green or a blue card or a work permit or a person with disabilities. The extension of the clause banning people with disabilities employed by the agencies from assignment to a client was inserted into the government proposal for the amendment during the second reading in parliamentary session. Efforts to support the regular (i.e. long-term) employment of workers, which is perceived as not being met by agency employment, can hardly be viewed as a legitimate aim for this statutory ban. The statutory provisions were not accompanied by any other arrangements to support regular employment for workers with disabilities.

Given that people with disabilities are an especially vulnerable group in the labour market, it is disproportionate to exclude them from temporary assignments by agencies only because there is an interest in securing long-term employment for them. There is no doubt that long-term employment is desirable, but employment by an employment agency could be a solution for a person who cannot secure other employment at all. In other words, there are no special requirements of agency work linked to disability which could represent genuine occupational requirements, in accordance with Article 4 of Directive 2000/78/EC. Therefore the exclusion of people with disabilities from agency work could be identified as disproportionate and not in line with the requirements of Directive 2000/78/EC.

The Czech Ombudsman concluded in their survey of 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 into special education. The provisions of Section 16 Paragraph 8 of the Law on Schools covers certain corrective, allowing segregated education in cases where it is required by the nature

of a pupil's disability. However, this often gives rise to doubts about the intention of the legislator, as these provisions may be interpreted in a very broad sense.

The Decree no. 73/2005 Coll., on the Education of Pupils with Special Educational Needs, contains the provision of Section 10 Paragraph 2, which allow pupils with a different type of disability or health disadvantage to be placed in a class (group) of pupils with disability. According to Section 16 Paragraph 3 of the Law on Schools, "health disadvantage" shall mean a serious health defect, long-term disease or modest health defect resulting in problems in learning and behaviour which must be taken into account in education. Although a recommendation from a counselling facility is required and in terms of capacity the proportion of pupils without disability is limited to 25%, according to the Ombudsman this provision is contrary to the Law on Schools.[162]

Section 3 of the Decree on the Education of Pupils with Special Educational Needs allow a school, class or group for pupils with disabilities (former "special school") to teach a pupil with a health disadvantage if that pupil experiences a "total failure" at elementary school (letter a/), or a socially disadvantaged pupil for a period of up to five months (letter b/).

These above mentioned provisions allow placing a pupil with no disability into a special class or school and might not constitute adequate safeguard against continuing discrimination of Roma children in access to education.

[162] Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools - Final Report, p. 16. http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Survey_Ethnic_Special-schools.pdf.

## 9 CO-ORDINATION AT NATIONAL LEVEL

*Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?*

Anti-discrimination Law: Public Defender of Rights
www.ochrance.cz/

Employment and labour relations: Ministry of Labour and Social Affairs
www.mpsv.cz/cs/

Service by members of the security forces: Ministry of the Interior
www.mvcr.cz/

Service by members of the armed forces: Ministry of Defence
www.army.cz/

Self-governing professional bodies/chambers: Ministry of Health, Ministry of Justice
www.mzcr.cz/
http://portal.justice.cz/Justice2/Uvod/uvod.aspx

Housing: Ministry for Regional Development
www.mmr.cz/

Education: Ministry of Education
www.msmt.cz/

*Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.*

No, there is no general action plan. There is also no coordination at present between the above-mentioned departments with respect to anti-discrimination policy. There are only initiatives and action plans for different groups or areas.

In March 2010 the Czech Government adopted National Plan for the Creation of Equal Opportunities for Persons with Disabilities 2010–2014 and also the National Action Plan on Inclusive Education. In 2012 the Ministry of Labour and Social Affairs prepared the National Action Plan Supporting Positive Ageing for 2013-17. At the end of 2012 the Ministry of Education, Youth and Sports prepared 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.

There are also individual projects, usually implemented by NGOs and supported by EU funding.

## ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**
3. **Previous case-law**

## ANNEX1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**
3. **Previous case-law**

## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the main transposition and Anti-discrimination legislation at both Federal and federated/provincial level

**Name of Country: Czech Republic** **Date 1 January 2013**

| Title of Legislation (including amending legislation) | Date of adoption: Day/month/ year | Date of entry in force from: Day/month/ year | Grounds covered | Civil/Administrative/ Criminal Law | Material Scope | Principal content |
|---|---|---|---|---|---|---|
| No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms, Art. 3, para. 1 | 16 December 1992 | 1 January 1993 | Sex, race, colour, language, religion or belief, political or other orientation, national or social origin, | | Fundamental rights declared by the Charter | Prohibition of discrimination |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | adherence to national or ethnic minority, property, birth or other status. | | | |
| Title of the law: Law No. 198/2009 Coll., Anti-discrimination Law<br>Abbreviation: Anti-discrimination Law<br>Date of adoption: 23 April 2009<br>Entry into force: 1 September 2009/1 December 2009<br>Latest amendments: Law No. 89/2012 | 23 April 2009 | 1 September 2009 | Race, colour, ethnic origin, 'nationality' (*národnost*), sex, sexual orientation, age, disability, religion or belief. | Civil law, administrative law. | Public employment, private employment, access to goods or services (including housing), social protection, social advantages, education. | Prohibition of direct and indirect discrimination, reasonable accommodation, harassment, instruction to discriminate, creation of a specialised body. |
| Title of the Law: Law No. 361/2003 on Service by Members of the Security Services<br>Date of adoption: 23 September 2003 | 23 September 2003 | 1 January 2007 | Age, race, colour, sex, sexual orientation, religion and belief, political | Labour law. | Public employment. | Prohibition of direct and indirect discrimination. |

| | | | | | | |
|---|---|---|---|---|---|---|
| Latest amendments: No amendments related to Anti-discrimination Entry into force: 1 January 2007 | | | orientation, 'nationality' (*národnost)*, ethnic or social origin, property, birth, marital and family status or family duties, membership of trade unions and other organisations. | | | |
| Title of the Law: Law No. 221/1999 on Service by Members of the Armed Forces Abbreviation: Date of adoption: 14 September 1999 Latest amendments: No amendments | 14 September 1999 | 28 June 2002 | Race, colour, sex, sexual orientation, religion and belief, 'nationality' (*národnost)*, ethnic or | Labour law. | Public employment. | Prohibition of discrimination. |

| | | | | | | |
|---|---|---|---|---|---|---|
| related to anti-discrimination<br>Entry into force: 28 June 2002 | | | social origin, property, birth, marital and family status and family duties, pregnancy or motherhood or breastfeeding (female soldiers). | | | |
| Title of the Law: Law No. 218/2002 Coll., on Official Service in State Administration and on Remuneration of these Officials and other Employees<br>Date of adoption: 26 April 2002<br>Latest amendments: No amendments related to anti- | 26 April 2002 | 1 January 2015 | Race, colour, sex, sexual orientation, language, religion or belief, political or other orientation, membership of political | Labour law. | Public employment. | Prohibition of discrimination. |

| | | | | | | |
|---|---|---|---|---|---|---|
| discrimination<br>Entry into force: 1 January 2015 | | | parties or movements, trade unions and other assemblies, 'nationality' (*národnost)*, ethnic or social origin, property, birth, state of health, age, marital and family status or family obligations. | | | |

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Name of country: Czech Republic** **Date: 1 January 2013**

| Instrument | Date of signature (if not signed please indicate) Day/month/year | Date of ratification (if not ratified please indicate) Day/month/year | 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 | 28 April 1995 | 18 December 1997 | No | No | Theoretically, yes, but it contains |

| Instrument | Date of signature (if not signed please indicate) Day/month/year | Date of ratification (if not ratified please indicate) Day/month/year | 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? |
|---|---|---|---|---|---|
| for the Protection of National Minorities | | | | | obligations of result which, in my opinion, are formulated in such a way as to exclude direct applicability. |
| International Convention on Economic, Social and Cultural Rights | 7 October 1968 | 23 December 1975 | No | No | Theoretically, yes, but it contains obligations of result which, in my opinion, are formulated in such a way as to exclude direct applicability. |
| Convention on the Elimination of All Forms of Racial Discrimination | 7 March 1966 | 29 December 1966 | No | Yes | Yes |

| Instrument | Date of signature (if not signed please indicate) Day/month/year | Date of ratification (if not ratified please indicate) Day/month/year | 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 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 my 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 |

## ANNEX 3: PREVIOUS CASE-LAW

**Name of the court**
**Date of decision**
**Name of the parties**
**Reference number** (or place where the case is reported).
**Address of the webpage** (if the decision is available electronically)
**Brief summary** of the key points of law and of the actual facts (no more than several sentences).

**Name of the court:** Constitutional Court in Brno
**Date of decision:** 27 January 2009
**Name of the parties:** František Krosčen, constitutional complaint against a decision of the Supreme Court and High Court in Prague
**Reference number:** (or place where the case is reported) II.ÚS 1174/09
**Address of the webpage:** (if the decision is available electronically)
http://nalus.usoud.cz/Search/Search.aspx
**Brief summary:** The claimant brought a constitutional complaint against decisions made by the ordinary courts, which dismissed his claim for compensation for a racially motivated infringement of his personal rights. According to his assertions, the infringement consisted 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”.

The Krajský soud [Regional Court – Municipal Court of Prague] and the Vrchní soud [High Court] rejected his claim. Both found the defendant’s act “inappropriate”, but refused to hold the defendant liable for infringement of personal rights. According to established case-law, the scope of personal rights protection provision did not cover harassment.

The Constitutional Court reversed the decision. It acknowledged that, when deciding on incidents which took place before the accession of the Czech Republic to the European Union, it is necessary for domestic courts to take into account the norms of the *acquis communautaire* when applying the law. This also applies to protection of personality rights in accordance with the Civil Code, which also covers racial harassment. In the case discussed above, the ordinary courts, when deciding on its merits, concluded that there was no racial harassment, although they did not support this conclusion with any relevant argumentation. At the same time, it is evident from the definition of harassment itself, that in the given circumstances, harassment according to the definition of Directive 2000/43/EC was *prima facie* not excluded in the case. In other words, the Constitutional Court said that the ordinary courts cannot interpret the provisions of Czech laws (i.e. personal rights protection provisions) without any regard to EU law, where *prima facie* racial harassment is concerned, even when the acts concerned date from the period before Czech accession to the EU. The Constitutional Court therefore overturned the decisions of the ordinary courts. In the subsequent proceedings, the Municipal Court of Prague again rejected

the claim. On appeal, the High Court allowed for the apology, but again rejected the compensation claim. An extraordinary appeal will be lodged with the Supreme Court. In 2011, the case had been pending for 10 years.

**Name of the court:** Supreme Court in Brno
**Date of decision:** 9 October 2009
**Name of the parties:** (in accordance with Czech rules, the names of the parties are anonymised)
**Reference number:** (or place where the case is reported) 30 Cdo 4431/2007
**Brief summary:** In 2005, the Regional Court in Ostrava decided in favour of a group of Roma plaintiffs, who were denied services in a restaurant in Ostrava, and awarded each of them compensation of CZK 50,000 (approx. €2,000). In response to an appeal by the defendants, the High Court in Olomouc reduced the amount awarded to CZK 5,000 (approx. €200) to each of the plaintiffs.

The plaintiffs submitted an appeal to the Supreme Court on points of law against the judgment of the High Court, challenging the compensation ruling. The Supreme Court overturned the decision of the High Court in Olomouc on the points of law and returned the case to the High Court for a new decision, rejecting the grounds given by the High Court for reducing the amounts of compensation. According to the Supreme Court, it was irrelevant that the plaintiffs were conducting testing of restaurant premises, as their personal motivation was irrelevant. According to the Supreme Court, the personal motivation of the plaintiffs was irrelevant. These facts do not in any case mitigate the extent of protection of the personal rights of the plaintiffs. In addition, the intensity of the violation of the plaintiffs' personal rights is not reduced by the fact that the incident was not noisy and that the restaurant staff did not behave especially rudely towards the plaintiffs. The dispute was subsequently settled through an out-of-court settlement. According to the terms of the settlement, each of the plaintiffs received compensation of CZK 20,000 (approx. €740).

**Name of the court:** Constitutional Court in Brno
**Date of decision:** 30 April 2009
**Name of the parties:** (in accordance with Czech rules, the names of the parties are anonymised)
**Reference number:** (or place where the case is reported): II. ÚS 1609/08
**Address of the webpage:** (if the decision is available electronically): http://nalus.usoud.cz/Search/Search.aspx
**Brief summary:** The complainant was dismissed from a Czech government office in 2004, formally on redundancy grounds. He alleged that his dismissal from the department was, in fact, based on his age, and the job was immediately taken by younger applicants. He referred to statistics proving that 80% of employees dismissed from this department on the ground of redundancy were over the age of 50, while 93% of newly appointed employees were younger than 28 years old. The Constitutional Court declared the statistics submitted by the applicant to be *prima facie* proof in the case. On this ground, the burden of proof should have been shifted to the defendant to prove the objective reason for the differential treatment of the

applicant. The ordinary courts failed to inquire into the criteria for selecting people for redundancy. In addition, the ordinary courts did not inquire about the character of the new employment positions and how they differed from those which had been abolished. This would have helped the ordinary courts to decide whether the new qualification criteria really had the sole purpose of concealing the real ground for dismissal – the age of the employees subject to discrimination.

**Name of the court:** Supreme Administrative Court
**Date of decision:** 17 January 2010
**Name of the parties:** Ministry of the Interior v. The Worker's Party
**Reference number:** (or place where the case is reported): Pst 1/2009-348
**Address of the webpage:** (if the decision is available electronically): www.nssoud.cz/docs/Delnicka_strana_original.pdf
**Brief summary:** The Court dissolved The Worker's Party (political party) because of its systematic focus on spreading racial hatred, xenophobia and instigating violence against certain groups of inhabitants, such as Roma or migrants.

In its decision, the Court relied to a great extent on the recent ECHR judgment in the case *H. Batasuna and Batasuna v. Spain*, no. 25803/04 and 25817/04. The party serves as an umbrella organisation for cooperating neo-Nazi groups and is able to bring together considerable resources to instigate violence. It glorifies individuals who commit armed racial attacks. The conduct of party leaders, who were found to approve of and celebrate acts of racial violence on many occasions, was found to be part of a political programme, which in its essence is contrary to the basic principles of democracy. According to the conclusion of the Court, in such a situation, democracy cannot wait until such a party is raised to power and starts to realise its political programme.

**Name of the court:** Regional Court in Ostrava
**Date of decision:** 20 October 2010
**Name of the parties:** Czech Republic v. David Vaculík, Jaromír Lukeš, Ivo Müller and Václav Cojocaru
**Reference number:** (or place where the case is reported):
**Address of the webpage:** (if the decision is available electronically):
**Brief summary:** In April 2009, three members of a Roma family in Vítkov, Czech Republic, were seriously wounded by a fire started in their house in the middle of the night. The most seriously wounded, Natalie, a child of just under two years old, suffered 80% burns. She was saved by the hospital staff, but will bear the consequences of her injuries for her whole life, including pain and physical disfigurement. Later, four right-wing extremists were identified by the police as the perpetrators of the crime and charged with attempted murder with racial motivation. The court of first instance found all four men guilty. They were each sentenced to between 20 and 22 years of confinement and must also pay jointly CZK 9.5 million (approx. €352,000) to Natalie as non-material compensation. The compensation awarded to Natalie is exceptionally high. The same can be said of the punishment for the perpetrators. The consequences of the crime were exceptional: the family was

selected for the attack only because they were Roma, the attack was carried out during the night and deliberately planned so as to give the people in the house, including small children, the minimum chance to escape. All four men appealed. The judgment was subsequently upheld by the High Court in Olomouc as the Court of Appeal.

**Name of the court: Supreme Court in Brno**
**Date of decision: 23 June 2011**
**Name of the parties: Municipal Hospital Ostrava** v. I.Č.
**Reference number:** 30 Cdo 2819/2009
**Brief summary:** The case concerns the unlawful sterilisation of a Roma woman who was sterilised during delivery in 1997. She only filed the action in 2005 and her claim for compensation for violation of personal rights caused by the unlawful sterilisation was rejected by the courts as statute barred, with reference to the constant case-law of the Supreme Court. In its decision, the Supreme Court relied instead on the case-law of the Constitutional Court. The Constitutional Court held that the ordinary courts should always consider whether the objection that the claim for compensation for breach of personal rights caused by malpractice in medical care is statute barred, is not contrary to good morals. The Supreme Court therefore quashed the judgment of the Court of Appeal and returned it to be re-considered by the appeal court.