

**REPORT ON MEASURES TO COMBAT  
DISCRIMINATION IN THE 13 CANDIDATE  
COUNTRIES (VT/2002/47)**

**COUNTRY REPORT  
CZECH REPUBLIC**

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## 1. The legal framework, definitions and scope

### a. The legal framework

*Does national law guarantee the principle of equal treatment or non-discrimination with respect to the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation? If so, what is the nature of the national legal framework (e.g. are the anti-discrimination laws and provisions general or ground-specific?)*

Czech legislation contains a general constitutional level framework on equal treatment. Although the Czech Constitution<sup>1</sup> lacks a specific provision prohibiting discrimination, a general anti-discrimination clause can be found in the Charter of Fundamental Rights and Freedoms<sup>2</sup>. The charter, according to the Czech Constitution, forms part of the constitutional order which has precedence over ordinary laws<sup>3</sup>. Article 3 of the Charter guarantees equality in access to fundamental rights and freedoms and embodies a non-exhaustive list, expressly prohibiting discrimination on the grounds of gender (*pohlaví*), race, colour, language, religion or belief, political or other conviction, national or social origin, membership in a national or ethnic minority, property, and birth or other status.

In addition, the Constitution<sup>4</sup> incorporates into national legislation international treaties promulgated and ratified by the Parliament, many of which also provide protection against discrimination (see the Annex to this Report). International treaties are not, however, on the same level of constitutional hierarchy as constitutional laws or on the same level as the Charter. Most importantly it is not possible to challenge the Charter or any constitutional law on the grounds of its alleged inconsistency with international treaties. These treaties are so-called *lex specialis* to ordinary laws. In the event there is contradiction between ordinary laws, the courts will refer the case to the Constitutional Court<sup>5</sup>.

The majority of the material scope provided for in the EC Directives corresponds to the rights guaranteed by the Fourth Chapter of the Charter (social, economic and cultural rights)<sup>6</sup>. But in general, the Charter does not encompass any further conditions or details regarding economic and social rights. Rather, it solely provides the framework. For further detailed provisions, the Charter refers to the regulations specified under ordinary Czech laws. Therefore, protection against violations is granted only if specific material and procedural provisions exist in ordinary Czech laws. Article 41 of the Charter states that rights can be vindicated only within the limits set up by the laws implementing them (indirect applicability)<sup>7</sup>. According to the Constitutional Court's own interpretation, these rights "*are explicitly concretised by appropriate legislation, and they can be vindicated only within the framework and limits set by this legislation*"<sup>8</sup>. Material provisions are therefore limited to separate non-discrimination clauses embodied in specified laws (see more below).

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<sup>1</sup> Constitution of the Czech Republic (*Ústava České republiky*), the Law No. 1/1993 of the Coll., as Subsequently Amended ("the Constitution").

<sup>2</sup> The Law No. 2/1993 of the Coll., the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*), ("the Charter").

<sup>3</sup> The newly approved constitutional laws must be in accordance with the Constitution and the Charter. Although the Charter is regarded as a 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 on the interpretation in the case of conflict with the Charter and constitution or constitutional laws. The public authorities, including courts, are not allowed to apply any laws that contradict any of the basic rights guaranteed by the Charter.

<sup>4</sup> Article 10 of the Constitution reads as follows:

*"Promulgated international treaties, 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."*

<sup>5</sup> The Law No. 99/1963 of the Coll., the Civil Procedure Code, (*občanský soudní řád*), "the Civil Procedure Code", Section 109 para 1 letter c).

<sup>6</sup> The Charter, Articles 26 – 35.

<sup>7</sup> Rights declared by the Article 26, the Article 27 para 4, the Article 28 - 31, Article 32 para 1 and 3, Article 33 and 35 of the Charter.

<sup>8</sup> Decision of the Constitutional Court No. Pl. ÚS 35/95 (206/1996 of the Coll.), Pl. ÚS 45/2000.

Initial plans for implementation of EC non-discrimination legislation were connected to efforts to implement EC directives on gender equal treatment. A study undertaken on implementing EC directives on equal treatment on gender grounds, *The Expert Study Justifying the Elaboration of the Law on Equal Treatment Between Women and Men*<sup>9</sup> (from 26 June 2000), proposes two options for implementing the EC Directives on gender equality. The first option entails inserting non-discrimination provisions into the respective specific laws (the so-called *diffusive model*). The second option proposes regulating the material scope of protection against discrimination and right to equal treatment through one special law. The author of the *Expert Study* questions whether existing laws and provisions provide sufficient incorporation of all of the EC Directives' requirements. He concludes negatively against the diffusive model, "[C]ertain principles, for instance the principle of equal opportunities in access to employment and positive measures, cannot be integrated into existing laws because there are no laws for this purpose"<sup>10</sup>. However, the Ministry of Labour and Social Affairs, who commissioned the study, has failed to initiate any concrete steps leading to the elaboration of such a special law on equal opportunities for women and men. Several reasons account for this failure. First of all, opinions within the Ministry at the time (2001), were far from unanimous. Secondly, suggestions were raised, at the time, that the decision to take such a vast legislative step should be taken by the new government formed after the summer 2002 elections. Although the conclusions contained in the *Expert study* exclusively concern gender equality, they are relevant for future discussions on implementing Directives 2000/43/EC and 2000/78/EC.

In 2002, the former government officially acknowledged the poor situation regarding protection against sex and racial/ethnic discrimination. *The Report on Possible Measures to Combat Discrimination*<sup>11</sup> evaluated the sufficiency of current legislation on protection against sex and racial/ethnic discrimination. The report discussed the following two possible legislative methods for future solutions:

- Preserve the current system of non-discrimination clauses embodied in separate laws, amend all these laws, as well as other laws that do not contain non-discrimination clauses, to definitions of discrimination and specific procedural provisions that provide for remedies, especially civil remedies (the "*diffusive*" model as identified by Mr. Blahož);
- Draft and adopt a new single law on equal treatment and protection against discrimination on sex and race/ethnicity grounds that includes both material and procedural provisions for enforcement.

The report, approved in February 2002 by the Czech government<sup>12</sup>, strongly recommends adopting one law on equal treatment, thereby implementing EC Directives 2000/43/EC and 76/207/EEC. Further support for adopting one law was also concluded in the Twinning project, a project conducted between the United Kingdom and the Czech republic<sup>13</sup>, and was supplemented by extensive legislative research and analysis strongly supporting the idea of one single law on equal treatment. Thereafter, a working group was established with the task of further elaborating on this on this proposal according government instructions. The working group started to work on the Draft General Law on Equal Treatment and Protection against Discrimination. The working group later decided to include in the draft law implementation of Directive 2000/78/EC. Nevertheless, disputes, within different ministries, on both possible models have continued to mark the debate on implementation. And public awareness on equal treatment and its principles remains low.

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<sup>9</sup> Blahož, J.: *The Expert Study Justifying the Elaboration of the Law on Equal Treatment Between Women and Men*, prepared for the Ministry of Labour and Social Affairs in 2000. The author is an expert employed by the Institute of State and the Law of the Academy of Sciences of the Czech republic. He is also an elected member of the International Academy for Comparative Law, Paris (*Institute de la Droit comparé, Paris*).

<sup>10</sup> Id.

<sup>11</sup> Decree No. 170/2002 from 20 February 2002, Decree to the *Report on Possibilities to Combat Discrimination (Usnesení ke Zprávě o možnostech odstranění diskriminace)*.

<sup>12</sup> Id.

<sup>13</sup> *Promotion of Racial and Ethnic Equality, Report to the Government of Czech Republic (Podpora rasové a etnické rovnosti, Zpráva pro vládu České republiky)*.

The Draft General Law on Equal Treatment and Protection against Discrimination contains definitions of both direct and indirect discrimination while fully adopting the formulations of the Directives. However, the Minister of Labour and Social Affairs also submitted to the government a proposal for an amendment to the Labour Code implementing the requirements of the Directives<sup>14</sup>. This amendment to the Labour Code, which was passed, is supposed to include definitions of direct and indirect discrimination (therefore, partially following the diffusive model).

The parallel activities of the working group and the Ministry of Labour and Social Affairs are however, threatening to duplicate legislative provisions, and which have never been properly co-ordinated. The lack of co-ordination within the governmental network is not the only reason for the lack of a final draft being completed for vote by parliament. A high level of uncertainty about which of the two possible approaches is best for implementation and which will finally prevail, has contributed to the problem. Currently, two options have been proposed. The first option is to provide a general framework for protection against discrimination in the General Draft Law on Equal Treatment and Protection against Discrimination and preserve the Labour Code's special principles implemented under the Labour Code amendment. The second option is to preserve labour relations within the framework of the General Draft Law and at the moment the Draft Law enters into force, declare void provisions contained in the Labour Code's provisional amendment.

The Labour Code amendment can be viewed as an example of the diffusive model, a continued enforcement of protection against discrimination within the limits of separate special laws. In its entirety the issue illustrates the fact that the debate regarding optimal implementation of Directives has not yet reached resolution.

*Is discrimination on all of the grounds listed in Article 13 EC expressly prohibited in law (as opposed to a non-exhaustive list that could be interpreted to include all listed grounds)? What is the scope of these laws and provisions?*

The general non-discrimination clause of the Charter is non-exhaustive, and it does not specifically protect against discrimination on sexual orientation and disability grounds. Article 3 paragraph 1 of the Charter guarantees protection of all genuine (human) rights and freedoms without any discrimination on the grounds of gender, race, colour, language, religion or belief, political or other orientation, national or social origin, adherence to national or ethnic minority, property, genus or other position ("position" is defined broadly but not concretely in Czech law).

For a substantial period of time, the non-discrimination clause of the Law on Consumer Protection<sup>15</sup> had been the only principle prohibiting discrimination against consumers on any unspecified ground. Recently though, non-discrimination clauses have been incorporated into the Labour Code and the Law on Employment, supplemented by provisions on equal pay in regulations governing remuneration and pay (Laws No. 143/1992 of the Coll. and No. 1/1992 of the Coll.). The grounds covered in these legal provisions vary: some laws prohibit gender discrimination only and other laws encompass a non-exhaustive clause which sometimes provide additional grounds to those covered under the Charter's non-discrimination clause. An example of the latter situation is demonstrated in the Law on Employment and Labour Code. Additional grounds are included as a result of international agreements, such as the International Labour Organization agreements (e.g. prohibition to discriminate based on the membership in trade unions), or through implementation of other European directives (e.g. family status and duties to the family as provided by the Directive 86/613/EEC).

Exceptionally severe racial discriminatory acts are specifically outlawed under the Criminal Code<sup>16</sup>. Acts of racial discrimination, the severity of which does not reach the level of crimes defined by the

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<sup>14</sup> The Law No. 65/1965 of the Coll., the Labour Code As Subsequently Amended (*Zákoník práce*), "the Labour Code."

<sup>15</sup> The Law No. 634/1992 of the Coll., the Law on Consumer Protection As Subsequently Amended (*Zákon o ochraně spotřebitele*), "the Consumer Protection Law."

<sup>16</sup> The Law No. 140/1961 of the Coll., the Criminal Code As Subsequently Amended (*trestní zákon*), "the Criminal Code."

Criminal Code, are punishable under the Misdemeanours Law<sup>17</sup>. However, in general it can be stated that there are no provisions specifically defining discrimination.

Due to the disjointed manner in which anti-discrimination provisions have been incorporated into specific laws, the legal framework of the Czech Republic fails to provide effective protection against discrimination. Legislative gaps are quite common and non-discrimination clauses are not accompanied with procedural provisions. The existing protection system is mostly limited to administrative sanctions (with the possibility of awarding pecuniary penalties) or criminal prosecution. In principle, both Czech civil and criminal law provide compensation for pecuniary damages, while compensation for non-pecuniary damages are provided only in exceptional cases (when the law expressly determines so) such as:

- Under labour law: a victim is allowed to claim non-pecuniary damages for sexual harassment;
- Under civil law: racial or religious discrimination acts could in principle be classified as a violation of “*the right to personality protection*”, where the awarding of non-pecuniary damages depends on the court’s discretion (see below for more details).

*Is the level of protection the same for all grounds? Is there a definition of the grounds for racial or ethnic origin, religion or belief, disability, age and sexual orientation, in legislation or case law? Does national law cover other grounds of discrimination (in particular nationality and membership of a national minority)?*

As stated above, the level of protection varies from one ground to another. And there are no definitions of grounds in the strict sense. A discussion covering individual grounds follows:

## **1. Racial or ethnic origin**

Czech legislation does not contain any definition of racial or ethnic origin<sup>18</sup>. However, at the same time, there is almost a unanimous view (including the opinion of the authors of this report) that the adoption of such a definition could lead to complicated legal problems. (For example, it could create incompatibility with other laws, mainly with the Law on the Protection of Personal Data<sup>19</sup>, or with the Charter.) Moreover, the terms themselves are not of a legal nature but rather have inter-disciplinary connotations (e.g. ethnographic) and the attempts to define them could cause the exclusion of some groups from the scope of protection. The difficult issue of whether or not to define racial or ethnic origin is highlighted by an early 1990s court decision. The court in a racially motivated attack case, in the District Court of Hradec Králové (a first instance court), permitted the use of an openly racist defence. The defence challenged the validity of the claim that a racial motivated crime occurred, objecting that the attack on Roma should not have been classified as “racially motivated acts” because Roma belonged to the Indo-European racial group, the same racial group as the perpetrators of the crime<sup>20</sup>.

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<sup>17</sup> The Law 200/1990 of the Coll., the Law on Misdemeanours (*zákon o přestupcích*), “the Misdemeanours Law.”

<sup>18</sup> Article 1 para. 1 of ICERD does not contain the definition of racial or ethnic origin. It contains a definition of what constitutes racial discrimination.

<sup>19</sup> The Law No. 101/2000 of the Coll., the Law on the Protection of Personal Data (*Zákon o ochraně osobních údajů*), further only “the Data Protection Law”. According to Section 4 of the Data Protection Law, ethnic origin belongs to the category of “sensitive” data that can be gathered and processed only under very strict conditions (e.g. the consent of the data subject is required for collecting and processing the sensitive data).

<sup>20</sup> Decision of the District Court in Hradec Králové from 20 November 1996, the Decision No. 3T 196/96. The reasoning of the Court:

*“It is necessary to distinguish between three large racial groups: Indo-European, Negro-Australian and Mongolian; while the citizens of the Roma origin belong to the same group as the citizens of the Czech national origin as they are the representatives of the same Indo-European race. Therefore, it is not possible to prosecute [those violent crimes] as racially motivated because they had been committed by perpetrators who are of the same race [as the victim]”.*

(Quoted from Machalová, T. and others: *Human Rights Against Racism*, Doplněk Brno, 2001).

Further note, the Court did not distinguish between terms “racial”, “ethnic” or “national” origin although they are not identical in legal meaning.

Despite the above-mentioned problems, it does appear to be desirable to operate with some type of quasi-definition that would permit extended legal protection in cases where a certain ethnic or racial origin is attributed to the victim of discrimination, whether or not the victim is actually of such racial or ethnic origin<sup>21</sup>. However, interpretation of this ground should be left to jurisprudence. There is no protection under Czech law for those who are mistakenly discriminated against on the basis of racial or ethnic origin because the law requires that an individual actually be of that racial or ethnic origin.

In practice, racial discrimination cases are widely identified by the media and NGOs<sup>22</sup>. In employment, access to goods and services and the housing area, victims are primarily Roma. Residential segregation is the main problem in the area of housing. Despite broad awareness of such problems, it comes as a surprise that the Czech Trade Inspection (the institution in charge of control over consumer protection) did not identify any racial discrimination cases in 2002 when it conducted 1,117 checks<sup>23</sup>. And employment offices (responsible for the control of equal treatment within labour relations and access to employment) in general do not maintain records on reported and identified cases of discrimination classified on specific grounds<sup>24</sup>. There is only limited case law, so rare it can be counted with one's fingers, on racial discrimination (the existing petitions are brought under the personality protection or submissions on violation of rights in labour relations). And the courts do not keep official statistics on the number of racial discrimination cases filed.

## 2. Religion or belief

A definition of religion or belief is lacking in Czech legislation. Detailed regulations on churches exist<sup>25</sup>, but their purpose is to regulate churches' existence as legal entities *sui generis*<sup>26</sup> rather than to provide detailed regulations for protection of freedom of belief. Freedom of religion is not limited only to churches and national assemblies registered with the State in the special register. These can still be practiced; they are simply not regulated under these laws.

The authors of this report believe that it is necessary to include in the scope of protection some quasi-definition, similar to the race and ethnic origin definition, of an individual's assumed or practiced religion or faith or lack of denomination. The application in individual cases should be left for jurisprudential interpretation<sup>27</sup>.

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<sup>21</sup> A similar quasi-definition is also proposed in the Draft Law on the Right to Equal Treatment and Protection Against Racial Discrimination.

<sup>22</sup> See for example: "*Shall we take discrimination seriously?*", Centre for Citizenship/Civil and Human Rights, Prague 2001, available at [www.poradna-prava.cz](http://www.poradna-prava.cz), last accessed on 1 May 2003.

<sup>23</sup> Report on the Situation of Human Rights in the Czech Republic in 2002, (*Zpráva o stavu lidských práv v České republice v roce 2002*), working version of the governmental report (March 2003).

<sup>24</sup> The information provided by Jana Židoňová, the Ministry of Labour and Social Affairs. For the year 2002, the statistics cover for the first time overall data for all grounds included in the non-discrimination clauses of the Labour Code and the Law on Employment. According to the statistical evidence gathered by the Ministry of Labour, in 2002 employment offices conducted 10,583 controls. They identified 1,610 violations of the provisions under the Law on Employment. Out of this number, 228 cases involved discrimination. Similarly, out of total 13,770 cases of violations under the Labour Code in 2002, only 183 involved discrimination.

<sup>25</sup> The Law No. 3/2002 of the Coll., the Law on the Freedom of Belief and the Position of Churches and Religious Assemblies (*zákon o svobodě náboženského vyznání a postavení církví a náboženských společností*).

<sup>26</sup> The status of churches and religious assemblies as legal entities *sui generis* is created by their registration with the state. It is up to the churches to decide whether to register. Those who do not wish to register can exist and perform 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 the others. Upon registration, churches and religious assemblies are endowed with 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 and the like. 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 persons with Czech citizenship and it must include a list of signatures of at least 300 people who agree with the registration.

<sup>27</sup> The Draft Law on Equal Treatment and Protection against Discrimination proposes to include such a quasi-definition.

Cases of religious discrimination are rarely discussed in media and NGOs or other bodies rarely monitor them<sup>28</sup>. For example, incidents of Moslems being denied services, such as access to public accommodation have been reported, but according to information from the employment offices, cases of discrimination on religious or belief grounds do not occur in the Czech Republic<sup>29</sup>. Because of the factual existence of such incidents occurring, the correctness of this information appears doubtful. Registered churches, acting as legal entities, can bring cases to the Constitutional Court. For example, a group of churches recently won a case before the Constitutional Court, after complaining about a breach of their constitutional right to religious freedom. But, this particular case involved the rights of churches to maintain special establishments under privileged conditions, operating under different regulations. Therefore the merits of this case are not particularly relevant with respect to discrimination on grounds of religion or belief<sup>30</sup>.

### 3. Disability

The absence of a definition of disability in Czech legislation is striking. Albeit other terms can to some extent be substitutes for the term disability, the situation is far from convenient. A whole range of various terms exists in different laws, some of them containing definitions of disability, some of them not (e.g. the laws of building construction uses the phrase “*individuals with limited ability of movement and orientation*”<sup>31</sup> without providing a definition for this category). The problems generally encountered by disabled individuals with limited ability of movement were demonstrated in a recent European Court of Human Rights case, *Mr. and Mrs. Zehnal v. Czech republic*<sup>32</sup> (for details see below). Large inconsistencies exist in the scope of entitlements because of the various terms used. In general, definitions apply only in the scope of applicability of such specific laws that embody them.

Examples of definitions include individuals “*with changed working ability*” and individuals “*with changed working ability who are seriously disabled*”. Both terms are used in the Law on Employment<sup>33</sup> and in the Law on Pension Insurance<sup>34</sup>. Non-discrimination clauses of the Law on Employment and the Labour Code use the term “*health state*” as identification for this disability ground. The non-uniformity in defining the term “disability” results in the extent of anti-discrimination protection being unclear.

The Law on Employment’s definition of “*citizen with changed working ability*” applies only in employment relations and only within the scope of this law. Under this law a citizen with a changed working ability is “a citizen with a substantially limited possibility of working performance or training due to his/her long-lasting adverse state of health”<sup>35</sup>. Recipients of disability pensions are also considered to be citizens with limited working ability. Individual employers and institutions, who are responsible for the state administration in the employment area, do register the numbers of workers with changed working ability.

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<sup>28</sup> There have been identified cases of discrimination against Jehovah witnesses. Discrimination against Moslems does not seem to be a widespread problem, they do occur sporadically and are reported by the media and individual members of Moslem communities.

<sup>29</sup> Research of the Centre for Citizenship, Civil and Human Rights, on the file with the Centre, available on request from [poradna@iol.cz](mailto:poradna@iol.cz).

<sup>30</sup> The Decision of Constitutional Court was published in the Collection of Laws under the number 4/2003 of the Coll.

<sup>31</sup> The Law No. 50/1976 of the Coll., the Law on Territorial Planning and the Construction Law (*zákon o územním plánování a stavebním řádu*); the Law No. 369/2001 of the Coll., the Law on General Technical Requirements Securing Proper Use of Buildings by People with Limited Ability of Movement and Orientation (*zákon o obecných technických požadavcích zabezpečujících užívání staveb osobami s omezenou schopností pohybu a orientace*).

<sup>32</sup> European Court of Human Rights, decision on admissibility No. 38621/97.

<sup>33</sup> The Law No. 1/1991 of the Coll., the Law on Employment As Subsequently Amended (*o zaměstnanosti*), “the Law on Employment.”

<sup>34</sup> The Law No. 155/1995 of the Coll., the Law on Pension Insurance (*zákon o důchodovém pojištění*), “the Law on Pension Insurance.”

<sup>35</sup> See the Law on Employment, Section 21 para 1.

The phrase “*long-lasting adverse state of health*” is defined by the Law on Pension Insurance as “a state of health that according to medical knowledge should last for more than one year<sup>36</sup>”. An individual is therefore fully disabled if “due to his/her long-lasting adverse state of health his permanent working ability is decreased by 66% or if due to disability he/she can permanently work only under exceptional conditions”<sup>37</sup>.

The general Draft Law on Protection Against Discrimination introduces a disability definition. The definition, inspired by Irish legislation, will include:

- a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body;
- b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- c) the malfunction, malformation or disfigurement of a part of a person’s body,
- d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- e) a condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.

The definition also includes a disability that exists at present, or which previously existed but no longer exists, or which may exist in the future, or a disability which is imputed to a person.

Employment offices, administrative institutions regulating all aspects of employment, unanimously and continuously report on problematic situations faced by the disabled, that is, persons with limited mobility and capability of orientation. In particular, they face difficulties in seeking employment. According to employment offices, a higher percentage of disabled persons accept jobs that do not correspond to their qualifications. Many of them suffer the consequences of long-term unemployment, manifesting in low confidence in their abilities and a loss of capacity to maintain constant employment<sup>38</sup>.

#### **4. Age**

Similarly to the other grounds discussed in this report, there exists neither a definition of age. The age of an individual can be determined from any personal documents including information on an individual’s date of birth, so there really is no need to introduce a definition of age as it does not appear to be crucial.

Measures on protection against age discrimination in employment are covered by legislation in two main groups:

- young people without previous working experience – according to the Law on Employment when entering into employment contracts with this group, employers can only enter into contracts lasting an indefinite period with this group. No fixed time contracts.
- people older than 55 years of age – the Draft Law intends to extend the maximum age limit allowed for obtaining unemployment benefits.

According to the employment office evaluations<sup>39</sup>, age is one of two most frequented grounds of discrimination (the other being gender). The most common example of age discrimination, as reported by employment offices, is employers’ preferences for young women for positions of secretaries (assistants), and waitresses in bars, restaurants or clubs. Large international companies (for example hypermarkets and the like) reportedly discriminate on grounds of age and gender, but employment offices usually do not intervene due to the lack of sufficient evidence. It was also reported that

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<sup>36</sup> See the Law on Pension Insurance, Section 26.

<sup>37</sup> See the Law on Pension Insurance, Section 39 para 1.

<sup>38</sup> Research of the Centre for Citizenship, Civil and Human Rights, on the file with the Centre, available on request from [poradna@iol.cz](mailto:poradna@iol.cz).

<sup>39</sup> Id.

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

## 5. Sexual orientation

Czech legislation also lacks a definition of sexual orientation. Calls for a proper definition of sexual orientation are being raised by NGOs and groups engaged in advocacy for the rights of gays and lesbians. Though employment offices do not report sexual orientation discrimination, this can be explained by the fact that gays and lesbians usually do not disclose their orientation to employers and official administration due to fear of harassment and discrimination.

### b. The definition of discrimination

#### *Direct and indirect discrimination*

*Is there a definition in law of both direct and indirect discrimination? If so, does this conform to the definitions in the Directives?*

Definitions of both direct or indirect discrimination are gravely lacking. The definition of direct discrimination is contained in the Convention on Elimination of All Forms of Racial Discrimination and in the Convention of Elimination of Discrimination Against Women: both conventions are legally binding for the Czech Republic and applicable in internal legislation. But they are only directly applicable in position of *lex specialis* towards ordinary laws<sup>40</sup>. Therefore, there is a great need to adopt respective definitions within domestic legislation itself.

The Labour code includes a prohibition against indirect discrimination, stated as an “*act discriminating not directly, but in its results*”<sup>41</sup>. Despite this prohibition, the law does not contain a *strictu sensu* definition and this conception of indirect discrimination does not correspond to the EC Directives. Definitions for direct and indirect discrimination are proposed in the Draft General Law on Equal Treatment and Protection Against Discrimination. The amendment to the Labour Code (which includes an insufficient definition of indirect/direct discrimination) and the new draft of the Law on Employment should embody definitions of direct and indirect discrimination.

When seeking remedies for discrimination, victims are limited to submissions under the protection of personality (a tort claim). Section 11 of the Civil Code provides protection of personal rights of individuals, mainly to life, health, civil integrity and human dignity, privacy, his/her name and expressions of personal character. When utilizing this tort claim in discrimination cases, courts first look to see if conditions under the protection of personality can be applied generally. The conditions are identified as the so-called “*objective criteria*”:

- (1) there is unlawful infringement;
- (2) the infringement is aimed at a particular person who can be objectively identified.

Consequently, no protection is provided where the petitioner feels his personality has been subjectively infringed. For example, if an individual feels harmed by an advertisement, photograph or inscription of any sort that is not directly aimed at him as an individual, he is not afforded protection under the protection of the personality claim.

With regard to first aspect of the objective criteria, courts hold that direct discrimination always constitutes unlawful infringement. In 2002, the Upper Court in Prague ruled:

*“[t]he petitioner’s dignity had been gravely humiliated by ... an unlawful act of the defendant, aimed against the human dignity protected by the Article 10 of the Charter ..., as well as by the provisions of the Section 11 of the Civil Code. According to the opinion of the appeal court, this*

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<sup>40</sup> The Constitution, Article 10. For more detailed discussion on this issue see text above.

<sup>41</sup> For example see the Labour Code, Section 1, para 4.

*fact is able to be qualified as an infringement of dignity of the person concerned...to a significant extent.....it is necessary to refer to the Article 24 of the Charter, that adherence to national or ethnic minority cannot cause harm to anyone. This provision is related to the Article 3 para 1 and Article 3 para 2 of the Charter and specifies the prohibition of any discrimination for adherence to ethnic or national minority<sup>42</sup>.”*

In another case, the court linked the right to protection of personality with the right to equal treatment and personal freedom:

*“In view of the specific nature of the problem involved in this case, one must begin by pointing out a basic feature of the general subjective personal rights of an individual, and namely that these rights are granted without reservation to every natural person as a personality whose integrity relies upon physical and moral unity. The rights are effective with regard to all other entities of equal legal status. Such entities are under the legal obligation to respect these rights. In a democratic society, not only is equality before law granted to individuals and entities (including other than natural persons), but also specific equality between natural persons is respected as a personality value. Article 1 of the Charter ... states that people are free and equal in dignity and rights. These values are so deeply intertwined that the freedom of a natural person is realised through that person’s equality to other persons and entities. All persons and entities must, under certain conditions, have identical rights and duties. Each unjustified infringement upon this equality amounts at the same time to a violation of personal freedom<sup>43</sup>.”*

In the above-mentioned case, the court rejected the argument that service denied in a restaurant to a group of Roma guests was a matter of mistake. The court ruled that this fact, even if true, does not waive the responsibility of the defendant to intervene:

*“Despite the fact that the proceedings failed to prove that as a matter of principle, Roma were not served in the restaurant simply because they were Roma, there had still been a violation of Article 24 of the Charter of Fundamental Rights and Freedoms, which follows up on Article 3 para 1 of the Charter: ‘Membership of any nationality or ethnic group shall not injure anyone’. When the defendant argues that there has been a mistake, no one can spare him of liability for the intervention. The mere fact that the petitioners belong to the same ethnicity,..... which is not relevant for assessing the case, does not justify denying them service. Such action is objectively capable of interfering with their dignity to a significant degree<sup>44</sup>.”*

The court measured interference with the petitioner’s dignity on the basis of the actual feelings of the victim under the objective criteria. A description of the victim’s feelings as he was sitting, unattended by the staff in the restaurant, having to finally leave while being watched by other people from the neighbourhood, was cited by the court<sup>45</sup>.

There is no case law available on cases of indirect discrimination. And because of the shortcomings of Czech legislation in providing adequate protection, it is very likely that actions alleging indirect discrimination would be rejected by the Czech courts for a lack of a substantive claim (under the objective criteria).

### ***Harassment***

*Does national law define harassment, as defined in the Directives? Are there any existing or forthcoming Codes of Practice on harassment? Please make precise reference to the relevant legal provisions and case law.*

The only definition of harassment in Czech law can be found in the Labour Code’s definition of sexual harassment<sup>46</sup>. The definition of sexual harassment is included in the Labour Code’s clause protecting

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<sup>42</sup> Decision of the Upper Court Prague, decision No. 1 Co 62/2002-63.

<sup>43</sup> Decision of the Regional Court in Hradec Králové, decision No.16C 70/2001.

<sup>44</sup> Decision of the Regional Court in Hradec Králové, decision No. 16C 17/2001.

<sup>45</sup> Id.

<sup>46</sup> The Labour Code, Section 7, para 2.

the personal dignity of workers, a *lex specialis* to the general clause on personality protection in the Civil Code<sup>47</sup>. The definition reads as follows:

*“...unwanted action of sexual nature which is unwelcome, inappropriate or offensive or which can justifiably be regarded by other party in labour relationship as a condition for a decision influencing the performance of rights and duties in the labour relationship, is regarded as a humiliation of personal dignity.”*

Victims of sexual harassment can claim non-pecuniary damages in court. The amount of damages awarded is the discretion of the court but is limited by the amount the victim claimed<sup>48</sup>. The scope of the Labour Code covers labour and other labour-related relations, which the Code authorises to be regulated by special laws. Such situations include service relations such as state administration services, police forces (the Law No 283/1991 of the Coll.), army and fireman services (the Law No. 238/2000) etc. The rights and duties of servicemen and servicewomen are governed by special laws. Identical definitions to the Labour Code on sexual harassment were inserted in the Law on State Administration Service<sup>49</sup> and the Law on Army Service of Soldiers in Occupational Capacity<sup>50</sup>. The new Draft Law on Police, that will replace the law that is currently in force, also contains a definition of sexual harassment. The Czech Parliament originally rejected the Draft Law on Police in 2002, but it will once again be submitted.

Protection against harassment on the grounds defined by Directives 2000/78/EC and 2000/43/EC are not provided for in Czech legislation. The scope of protection of personal integrity (see more above) does not identically cover harassment. In a recent Czech court case, a Roma petitioner tried to invoke the definition of harassment as defined by Directive 2000/43/EC, asserting that creating an intimidating, hostile, degrading, humiliating or offensive environment<sup>51</sup> falls within the limits of protection of personal integrity. The Roma plaintiff was suing a restaurant owner who, for a long period of time, had had on the restaurant premises a statue of an antic goddess, holding in one hand a baseball bat with a visible inscription of “Go to get gypsies”. In accordance with the traditional view of personality protection the court rejected his claim for non-pecuniary damages stating that:

*“... the above mentioned inscription on the baseball bat was a general expression, without any relation to concrete individual; upon application of objective criteria, it could not infringe the petitioner’s personality. It is also not possible to identify it as an unlawful infringement of the personality rights of the petitioner; the subjective feeling of the petitioner, that his personality rights had been violated...is not a fact significant for legal qualification, with regard to the application of objective criteria as required by Section 13 of the Civil Code...Thus, because it was not proved that there was an unlawful infringement of the petitioners’ personality rights, there is a lack of fundamental component for civil liability<sup>52</sup>.”*

The Czech legal system does not contain a category similar to “codes of practice”. The purpose of regulations, a common statutory instrument, is to elaborate details of legislative provisions rather than to give practical guidance. Moreover, there cannot be any rights or duties of natural or legal persons created by regulations. This restriction under the Constitution<sup>53</sup> and Charter<sup>54</sup> is implemented very

<sup>47</sup> The Law No. 40/1964 of the Coll., the Civil Code As Subsequently Amended (*občanský zákoník*), Section 11, “the Civil Code.”

<sup>48</sup> The Labour Code, Section 7, para 5.

<sup>49</sup> The Law No. 218/2002 of the Coll., the Law on State Administration Service, “the Law on State Service” (*zákon o státní službě*).

<sup>50</sup> The Law No. 221/1999 of the Coll., the Law on Army Service of Soldiers in Occupational Capacity, “the Law on Professional Army Service” (*zákon o vojácích z povolání*).

<sup>51</sup> All information on the case are in the file with the Centre for Citizenship/Civil and Human Rights. Available on request at [poradna@iol.cz](mailto:poradna@iol.cz).

<sup>52</sup> See the decision of the Upper Court of Justice in Prague, No. 1 Co 162/2002 – 64.

<sup>53</sup> The Constitution, Article 2 para 3, reads as follows:

*“The State power shall serve to all citizens and can be asserted only in the instances, limits and manner provided by law”.*

<sup>54</sup> The Charter, Article 2 para 2, reads as follows:

*“The State power can be asserted only in instances and within limits set up by the law, and in the manner determined by the law.”*

strictly; therefore, additional duties cannot be imposed over and above the basic duties, binding natural and legal persons. In our opinion it is for this reason that it might be difficult to employ a type of “code of practice” in the Czech republic.

### ***Instruction to discriminate***

*Is it contrary to national law to give instructions to discriminate? Does this conform to the Directives?*

The Czech legislation lacks explicit provisions on instructions to discriminate. Nevertheless, it can be deduced from existing provisions that it would be a violation of the law to give such instructions, since there are non-discrimination clauses in internal laws and binding international treaties. In the absence of explicit provisions, the material scope of instructions to discriminate falls within the general provisions on liability for damages for unlawful acts including acts committed by a third person. The type of liability differs according to whether the unlawful act or damage, that results from the instruction to discriminate, falls within civil law, labour law, different branches of administrative law, or criminal law, etc. Depending on the specific area of law, liability ranges from strict liability to liability based on default. And, under liability based on default, it is extremely difficult to prove that someone acted on an instruction to discriminate. Labour law, in general, is governed by the principle of strict liability of employer in respect of the employee for damages:

- arisen in the course of employment by violation of legal duties or by intentional act in connection with professional duties or
- damage done by other employees of the same employer in the course of employment in connection with professional duties and acting on behalf of employer<sup>55</sup>. The responsibility of the employer is presumed: the employer can only exculpate himself/herself, when he/she proves that the damaged employee is co-liable for the damage. The employer has recourse to employee who was responsible for the damage for which the employer is held liable. The damage does not include non-pecuniary damage.
- towards third persons, the employer is responsible for the acts of his employee under civil law arising *ex contractu* (providing services, renting premises etc.)

Responsibility for acting upon the instruction is expressly defined in the Misdemeanours Law<sup>56</sup>. Responsibility for acting upon such an instruction lies with the person who gave the instruction. This provision, however, applies only to legal entities and it has a negligible impact because legal entities are themselves not subjected to the Misdemeanours Law. Thus, it is applicable only to natural persons who are punishable for misdemeanours committed in their capacity with respect to legal entities. (Responsibility of legal persons themselves for administrative offences is governed by different laws with different procedures, which do not recognise the institute of acting upon instruction.)

### **c. Scope**

#### ***Fields of application***

*Does the prohibition of racial and ethnic discrimination apply to all the fields of application listed in Article 3 of the Racial Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?*

Prohibition of discrimination does not reach beyond the scope of the Directive. The fields of application depend on the non-discrimination clauses and are limited to fields of application of specific laws in which these clauses are contained. Therefore, the scope of their application corresponds to the enumeration of laws where the clauses are contained.

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<sup>55</sup> See the Labour Code, Section 187 para 1 and 2.

<sup>56</sup> The Misdemeanours Law, Section 6.

Provisions on protection of personality and constitutional provisions prohibiting discrimination apply to the entire material scope of EC Directive, providing that infringement of personality (human dignity) can be proved and that there are not special provisions on personality protection in special laws.

Non-discrimination clauses apply to both the public and private sector, providing there are activities of both within the limits of concrete specific law (for example, judges or employees in state service cannot be employed in private sector).

### **1. Conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of professional hierarchy, including promotion.**

The general non-discrimination clause, contained in the Law on Employment, declares the right to employment on the grounds of race, colour, national or ethnic origin<sup>57</sup>. The right to employment is defined as the right to retraining, assistance of employment agencies and unemployment benefits. The Law on Employment does not provide any details on selection criteria, recruitment conditions or professional promotion, except for the general rule prohibiting employment offers that contradict the non-discrimination clause<sup>58</sup>.

As for access to specific occupations (e.g. judges, prosecutors, servicemen and women) conducted on the basis of labour/service contract, a number of special laws apply. These laws set up special provisions for selection criteria and recruitment conditions and either refer to the general non-discrimination clause of the Labour Code (e.g. the Law on Judges<sup>59</sup> or the Law on State Prosecution<sup>60</sup>) or contain their own non-discrimination provisions (for example the Law on Professional Army Service or the Law on State Service). General non-discrimination provisions are applicable to labour or service relations regulated by these laws but do not apply to conditions preceding the initiation of such contracts (that is on selection criteria and recruitment conditions).

There are several specific relationships that are similar to labour relations (e.g. working prisoners or volunteers), to which the Law on Employment does not apply. Laws governing the performance of such activities (e.g. the Law on Volunteers<sup>61</sup>, the Law on the Execution of the Imprisonment Service<sup>62</sup>) do not include any non-discrimination provisions.

The Law on Employment does not apply to self-employment activities and occupations conducted in a self-employment capacity. Self-employment activities in general are governed by the Law on Businesses<sup>63</sup>, which does not contain a non-discrimination clause. This law excludes, from the scope of its application, certain defined self-employment activities and occupations performed in an self-employment capacity, for example attorneys, medical doctors, interpreters and many others<sup>64</sup> which are governed by their special laws<sup>65</sup>. And these special laws similarly lack non-discrimination clauses, as well as definitions of discrimination or any regulations on protection against discrimination.

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<sup>57</sup> The Law on Employment, Section 1 para 1.

<sup>58</sup> The Law on Employment, Section 1 para 2.

<sup>59</sup> The Law No. 6/2002 of the Coll., the Law on Courts and Judges As Subsequently Amended (*zákon o soudech a soudcích*), “the Law on Courts and Judges.”

<sup>60</sup> The Law No. 283/1993 of the Coll., the Law on State Prosecution As Subsequently Amended (*zákon o státním zastupitelství*) “the Law on State Prosecution.”

<sup>61</sup> The Law No. 198/2002 of the Coll., the Law on Volunteer’s Service (*o dobrovolnické službě*), “the Law on Volunteer’s Service.”

<sup>62</sup> The Law No. 169/1999 of the Coll., the Law on Execution of the Sentence of the Imprisonment As Subsequently Amended (*o výkonu trestu odnětí svobody*).

<sup>63</sup> The Law No. 455/1991 of the Coll., the Law on Businesses As Subsequently Amended (*o živnostenském podnikání*); “the Law on Businesses.”

<sup>64</sup> The Law on Businesses, Section 3 para 2.

<sup>65</sup> For example the Law No. 128/1990 of the Coll., the Law on Attorney Profession As Subsequently Amended (*zákon o advokacii*) “the Law on Attorneys.” The Law No. 220/1991 of the Coll., the Law on the Czech Medical Chamber (*zákon o*

## **2. Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience**

Many different conditions apply in this area:

### **2.1. Labour and service contracts**

The general non-discrimination clause of the Law on Employment applies to re-training and vocational activities connected to the right of access to employment (see above). The general non-discrimination clause of the Labour Code covers all types of vocational training and practical work experience that is provided in the course of employment. Exceptions to this rule are seen in specific occupations, conducted on the basis of labour or service contracts, in which specific laws provide different requirements and rules for their specific type of vocational training provided during the course of employment. And some of these specific laws have their own non-discrimination clauses (e.g. the Law on State Service and the Law on Professional Army Service). Interpretation problems may arise with respect to these laws if they do not contain their own non-discrimination clauses and refer simply to the non-discrimination clause of the Labour Code. At the same time, these laws have set up special conditions for vocational training, guidance and working experience for trainees in those occupations that are not regulated by the Labour Code.

### **2.2. Self-employment and other occupations conducted in self-employment capacity.**

Access to self-employment activities and other occupations conducted in a self-employment capacity is often undermined by requirements to have certain training and requirements for a specified length of practical experience. In organisations where members carry out particular professions, compulsory training is controlled to a great extent by these organisations. Optional training and vocational training possibilities are offered to workers performing certain activities in the form of business services, or provided to its members through organisations for members employed in particular professions.

In this area, the non-discrimination clauses of the Labour Code and the Law on Employment do not apply. Laws governing the area of self-employment and other occupations conducted in a self-employment capacity (mentioned above) do not contain non-discrimination clauses or other provisions providing protection against discrimination.

## **3. Employment and working conditions, including dismissal and pay**

Protection against discrimination in employment and working conditions, including dismissals, is provided by the Labour Code's non-discrimination clause. The clause covers labour contracts governed by the Labour Code, and labour and service contracts when special laws refer back to the non-discrimination clause of the Labour Code (e.g. the Law on Courts and Judges<sup>66</sup>, the Law on State Prosecution<sup>67</sup>). Several special laws governing specific service relations embody their own non-discrimination provisions (for example the Law on Professional Army Service, the Law on State Service and the like). And these clauses similarly apply to employment and working conditions including dismissals.

As for regulations governing relationships that are similar to labour relations (working prisoners, volunteers), to which the Law on Employment does not apply, the relevant laws (e.g. the Law on Volunteers, the Law on Imprisonment) do not include non-discrimination provisions with regard to employment working conditions, including pay.

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*České lékařské komoře*). The Law No. 36/1967 of the Coll., the Law on Experts and Interpreters (*o znalcích a tlumočnících*); and others.

<sup>66</sup> The Law on Courts and Judges.

<sup>67</sup> The Law on State Prosecution.

Non-discrimination provisions on equal pay are to be found in special laws on wages and salaries (the Law No. 143/1992 of the Coll. and the Law No. 1/1992). However, these apply only on gender grounds. The Law on Wages (the Law No. 1/1992 of the Coll.) contain detailed provisions on equal wage for work of equal value for women and men. Wage (in the sense of this law) does not cover payments other than wages provided to workers in relation to working contracts (redundancy payment, supplementary insurance payments, shares and etc). The Law on Salary (the Law No. 143/1992 of the Coll.) sets up a division of tariff salaries where the provisions on equal pay for work of equal value apply only as subsidiary norm. The Law on Salary applies to remuneration of workers, in state institutions, financed from the state budget, and other organisations connected to the state budget.

#### **4. 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**

##### **4.1. Organisations of workers and employers**

The establishment and existence of workers' and employers' organisations are governed by the Law on Associations (the Law No. 83/1990 of Coll.). Membership and involvement in these organisations is voluntary and as such are governed by their own statutes. The law does not contain a non-discrimination clause although such clauses could be contained in the organisations' statutes. However, the law does not require them to do so. Trade unions usually include non-discrimination clauses in collective agreements but these are primarily of only a declaratory nature. However, provisions of collective agreements that are contrary to the law are null and void<sup>68</sup>.

##### **4.2. Membership of organisations whose members carry on particular professions**

The establishment and existence of such organisations are governed by special laws on professional chambers<sup>69</sup>: Membership of these chambers is often obligatory, although some have voluntary membership (e.g. the Czech Business Chamber and the Czech Chamber of Agriculture<sup>70</sup>).

Chambers 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 admittance into the chamber, determining *conditio sine qua non* performance of the particular occupation. Practicing the profession is conditional on being a member on the chamber. However, no non-discrimination provisions exist in the laws governing professional chambers.

#### **5. Social protection including social security and healthcare**

Social protection, social security and health care are governed by a number of special laws that cover areas such as social benefits<sup>71</sup>, pension insurance<sup>72</sup>, health insurance<sup>73</sup> and healthcare<sup>74</sup>; but these laws lack non-discrimination provisions.

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<sup>68</sup> The Law No. 2/1991 of the Coll., the Law on Collective Bargaining (*zákon o kolektivním vyjednávání*), "the Law on Collective Bargaining", Section 4.

<sup>69</sup> See for example the Law No. 358/1992 of the Coll., the Law on Notaries and Their Performance (*zákon o notářích a jejich činnosti*); the Law on Attorneys; the Law No. 220/1991 of the Coll., the Law on the Czech Medical Chamber, the Czech Chamber of dentists and the Czech Chamber of Pharmacists (*zákon o České lékařské komoře, České stomatologické komoře a České lékárnické komoře*).

<sup>70</sup> The Law No. 301/1992 of the Coll., the Law on Chamber of Commerce of the Czech Republic and the Czech Chamber of Agriculture (*zákon o Hospodářské komoře České republiky a Agrární komoře České republiky*).

<sup>71</sup> For example see the Law No. 117/1995 of the Coll., the Law on the State Social Support (*zákon o státní sociální podpoře*) and others.

<sup>72</sup> For example see the Law on Pension Insurance.

<sup>73</sup> For example see the Law No. 54/1956 of the Coll., the Law on Sickness Insurance of Employees (*zákon o nemocenském pojištění zaměstnanců*).

## 6. Social advantages

The substantive content of social advantages is still unclear. However, typical advantages for socially disadvantaged people, e.g. the elderly (special reduction of prices for admissions or cheap fares), are currently regulated by contract provisions under the Civil Code<sup>75</sup>. There are no non-discrimination clauses of any sort in this area, except the general provision of the Civil Code stating that in civil relations all parties are equal<sup>76</sup>.

## 7. Education

Different laws govern primary, secondary and university education. The Law on the System of Primary, Secondary and Vocational Secondary Education<sup>77</sup> establishes access and conditions for primary and secondary education and promulgates the rules for educational programmes. The Law on Universities<sup>78</sup> lays down general rules for self-governing state and private universities, their competencies and establishes conditions for approval of their educational programmes. However, these laws do not contain any non-discrimination provisions.

## 8. Access to supply of goods and services which are available to the public, including housing.

The Law on Consumer Protection<sup>79</sup> contains a general clause prohibiting discrimination of consumers on any specified grounds in the area of provision of goods and services. Its application is limited to persons that meet the definition of consumer contained in the Law on Consumer Protection. Only persons who acquire goods and services for their own use are included. And the Law on Consumer Protection does not apply to housing, which instead is governed by a number of specific laws regulating rent,<sup>80</sup> ownership<sup>81</sup> and co-operative housing<sup>82</sup>. These laws do not contain non-discrimination provisions.

*Does the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation apply to all the fields of application listed in Article 3 of the Employment Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?*

The above discussion applies to this section as well. The non-discrimination clauses described above with regard to the ground of racial and ethnic origin similarly apply to the grounds of religion or belief, disability, age or sexual orientation.

### 1. Conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

Section 24 of the Law on Employment identifies the general duties of employers who have workers with a changed working ability. Employers have a duty to report appropriate job vacancies, to create appropriate job vacancies and to secure appropriate conditions for job performance. However, the law

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<sup>74</sup> For example see the Law No. 20/1966 of the Coll., the Law on Health Care of the Population (*zákon o péči o zdraví lidu*).

<sup>75</sup> The Civil Code, Part VIII.

<sup>76</sup> The Civil Code, Section 4.

<sup>77</sup> The Law No. 29/1984 of the Coll., the Law on the System of Primary, Secondary and Vocational Secondary Education (*zákon o soustavě základních škol, středních škol a vyšších odborných škol*).

<sup>78</sup> The Law No. 111/1998 of the Coll., the Law on Universities (*zákon o vysokých školách a o změně a doplnění dalších zákonů*).

<sup>79</sup> The Law on Consumer Protection.

<sup>80</sup> For example the Civil Code; the Law No. 128/2000 of the Coll., the Law on Municipalities (*zákon o obcích*).

<sup>81</sup> For example the Law No. 72/1994 of the Coll., the Law on Flats Ownership (*zákon o vlastnictví bytů*).

<sup>82</sup> For example see the Civil Code; the Law No. 513/1991 of the Coll., the Commercial Code (*obchodní zákoník*).

does not explain what is “appropriate”. And there is no system of state allowances for employers who chose to provide additional reasonable accommodation (allowances may be provided to disabled persons themselves only).

As for self-employment and occupation, the situation is similar to the situation on racial grounds as referred to earlier in the report. There are no other provisions establishing conditions for selection criteria and promotion in the Czech legal system.

## **2. Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience**

The Law on Employment includes a general declaration that appropriate conditions of training, retraining and working conditions for workers with changed working ability should be created.<sup>83</sup> However, the state does not provide state allowances for employers. For the self-employed and those conducting special occupations in a self-employment capacity, there are no anti-discrimination provisions with regard to vocational guidance, training and practical working experience.

## **3. Employment and working conditions including dismissal and pay**

There are special provisions in the Labour Code on conditions for dismissal of those whose working ability has changed. Dismissal is permitted only with the prior consent of employment office<sup>84</sup>. Consent is not required for workers older than 65 years or for workers being dismissed on certain enumerated grounds, including dissolution of the employer, or a serious breach of duties connected to employment. Any worker whose working ability has changed, who is not receiving a pension, and who is dismissed due to redundancy, must be secured a new job by his employer.

The provisions on equal pay contained in the Law on Wages (the Law No. 1/1992) and the Law on Salaries (the Law No. 143/1992) only apply to discrimination on grounds of gender. No specified duties are placed on employers with regard to working conditions, save for a general duty of the employer to secure appropriate conditions for job performance<sup>85</sup> (compare above).

## **4. 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**

The situation for discrimination on grounds of racial and ethnic origin applies here as well.

The Draft of General Anti-discrimination Law proposes to apply the scope of Directive 2000/43/EC to the other grounds of discrimination contained in Directive 2000/78/EC.

### ***Exceptions and exemptions***

- ***Occupational requirements***

*Do such exemptions exist on the national level? Does national law define ‘genuine and determining occupational requirements’ and, if so, how?*

Genuine and determining occupational requirements are very broadly defined in Article 1 paragraph 4 of the Labour Code. This provision states that certain situations laid down in the Code or special laws are not considered to be discriminatory. Similarly when the difference in treatment is attributable to a material reason connected to the nature of the work performed by employee and that is necessary for

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<sup>83</sup> The Law on Employment, Section 23.

<sup>84</sup> The Labour Code, Section 50.

<sup>85</sup> See the Section 24 of the Law on Employment.

the proper performance of the work, discrimination is not considered to have taken place. The Law on Employment encompasses a similar provision. There are no specific provisions on the nature of admissible material reasons such as the religious ethos of organisations.

Various laws lay down have large numbers of specific occupational requirements (usually called “specific preconditions of vocational capability”), including requirements for a certain education level. Other criteria include state of health and reliability from a security point of view (for example clean criminal record, fulfilment of security checks for secret information and the like). Sometimes specific criteria and conditions for recruitment are set<sup>86</sup>. These provisions are usually motivated by public security or good moral character requirements.

Because such requirements are laid down by special laws, it is not possible to apply tests of objective justification or challenge these criteria (see the broad definition of exceptions regarding occupational requirements in the Labour Code and the Law on Employment). It is difficult to challenge statutory requirements before the Constitutional Court due to the *non-direct applicability status* of social and economic rights established by the Charter (see more above).

The general test of lawful differential treatment applied by the Constitutional Court is 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 pre-condition that it occurs in the public interest and for public benefit...”*<sup>87</sup>

In more than one of its later judgements, the Constitutional Court admitted that arbitrariness should also be avoided, thus acknowledging that more strict tests are applied by other bodies: *“...in repeatedly expressed opinions of the UN Committee for Human Rights inequality is admitted .... only on the pre-condition of non-arbitrariness, that is, that the inequality is based on reasonable and objective criteria.”*<sup>88</sup> However, it seems that the opinion of the 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 the other in the interest of securing state functions. The state shall not proceed with full arbitrariness; when the law awards benefit to one group and at the same time places disproportionate duties on others, it can occur only with reference to public values.”*<sup>89</sup>

In addition to these areas, there are exemptions for clergy in churches and religious assemblies. Exceptions are not constructed as general occupational requirements but rather as general exemptions for church affairs from state interference. The Constitutional Court held that labour disputes in such matters should be referred to the competent body of the church or religious assembly:

*“The civil Courts cannot decide disputes in the service relationships of clergy because it would represent inadmissible interference with the internal autonomy of the church and intrusion in its independent decision-making capacity... The decision-making process is thus not governed by labour law but by internal instructions approved for this purpose by the competent statutory body of Jednota Bratrská”*<sup>90</sup>.

This case was against the Union of Brethren, one of Czech protestant churches that had been sued by a dismissed clerk who claimed unlawful dismissal in a labour dispute. The civil court declared it was

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<sup>86</sup> For example, see the Law No. 283/1991 of the Coll., the Law on Police (*zákon o policii*); the Law No. 238/2000 of the Coll., the Law on Fireman Service (*zákon o hasičském záchranném sboru ČR*).

<sup>87</sup> See the decision of the Constitutional Court No. Pl. ÚS 9/95. The amendment of the Law on Professional Army Service excluded computing of certain periods for the purpose of entitlements to some perquisites of serving soldiers. A group of MP's invoked contradiction of this law with the right to fair remuneration for work according to Article 28 of the Charter. The Constitutional Court upheld the Law and rejected the complaint.

<sup>88</sup> See the decision of the Constitutional Court No. Pl. ÚS 33/96.

<sup>89</sup> Id. By the amendment to the Law on Universities<sup>89</sup>, the working contracts of university teachers concluded for undetermined period were changed to the contracts terminating on 30 September 1994. A group of MP's invoked contradiction of amendment with the Charter and international agreements, as for example ILO Discrimination Convention No. 111 (Employment and Occupation). The Constitutional Court upheld the constitutional conformity of the Law and rejected the complaint.

<sup>90</sup> See the decision of the Constitutional Court No. III.ÚS 136/2000.

not competent to decide the matter. The clerk subsequently submitted a petition to the Constitutional Court who upheld the decision of the civil court.

*Does national law governing disability discrimination make any specific exceptions or provisions in relation to occupational health and safety rules?*

The Labour Code contains general rules defining an employer's obligation to ensure the safety and protection of the health of employees and to prevent possible risks to their life and health in job-related activities<sup>91</sup>. The employer's obligation applies to all persons in the workplace to the best of his/her knowledge. Employers also have a duty to prevent employees from carrying out tasks that do not correspond to their abilities and occupational health<sup>92</sup>. Health requirements laid down in many different laws and statutes, such as Decree No. 48/1982 Coll., the Decree Laying Down the Basic Requirements to Secure Safety of Work and Technical Arrangements. This statute provides basic conditions for construction work such as stairs, walls, doors, hygiene requirements (e.g. light or heating), technical arrangements for communication equipment and requirements for certain machines and other technical means. In addition, Governmental Decree No. 178/2001 of the Coll., sets conditions for the health of employees at work. It provides risk factors that influence the health of employees and govern their evaluation of risk factors.

### **Reasonable accommodation**

*Article 5 (Employment Equality Directive)*

*Are there specific national law provisions regulating the use of pre-employment medical examinations? If so, what are the main provisions/norms? What is the relationship between this body of law and the principle of equal treatment/prohibition of disability discrimination? How does this body of law relate to the duty to provide 'reasonable accommodation'?*

There are no specific provisions governing this area. Requirements for special health abilities are generally set by the Labour Code, for instance, the newly defined term "*employee with special skills*." In this regard, the employer is obliged to ensure that his/her employees will have the required qualifications. The law permits factories' preventive health care groups to examine employees abilities<sup>93</sup>. According to the Law on Protection of Health of People<sup>94</sup>, the factory's health care group is preventive in character and, therefore, has a duty to comply with the prevention of health risks<sup>95</sup>. There are other provisions in the laws governing the safety of work; however, they regulate the care for employers in labour relations. Requirements for pre-employment examinations are not regulated, and thus they are not restricted by law. In practice, employers require job applicants to undergo such examinations conducted by specialists (for example they require women applicants to bring a statement from a specialist noting they are not pregnant).

*Does national law permit an employer to inquire about disabilities prior to entering into a contractual relationship with a prospective employee? If so, in which stage of the job application procedure? Are prospective employees required to disclose, prior to employment, disabilities that impact on job performance? If so, how much and what type of information are they obliged to disclose? According to the law, what consequences follow if they fail or refuse to disclose the information?*

Disabled job applicants might be recognised as "*a person with changed working ability*." Every employer with more than 20 employees is required to employ a certain percentage of employees

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<sup>91</sup> See the Labour Code, Section 132 para 1.

<sup>92</sup> See the Labour Code, Section 133 para 1.

<sup>93</sup> See the Labour Code, Section 134b.

<sup>94</sup> The Law No. 20/1966 of the Coll., As Subsequently Amended.

<sup>95</sup> See the Labour Code, Section 132a para 6.

whose working ability has changed<sup>96</sup>. The status of the prospective employee is an acknowledged fact. The employer does not need to inquire about prospective employees' disabilities, as it is known to him from the very beginning that he is employing a disabled worker. The process of awarding the status of a "person with changed working ability" can only be initiated by the person concerned or by state bodies with competency in the area of social security. The procedure regulating this area is set by the law<sup>97</sup>.

Persons who refused to undergo the assessment of "working ability", or who simply never have, do not show up automatically as disabled. Furthermore, there are not any set rules on job application procedures.

The situation is slightly different for disclosing disabilities that might impact job performance. The Law on Employment contains a provision referring to a non-discrimination clause. It provides that employers are not allowed to make offers of employment that breach the non-discrimination clause (which also contains a prohibition of discrimination on the ground of disability)<sup>98</sup>.

Theoretically, any such inquiry about disability prior to employment (on the initiative of the employer) would be a violation of this provision. However, in our opinion it would be problematic to invoke it, as the provision refers to Section 1 paragraph 1, which in its last sentence contains a broad definition of genuine occupational requirements (a material reason linked to the nature of the job that is necessary for its proper performance). It would be very difficult for a disabled person to prove that the examination was not necessary to verify (the shift of burden of proof does not apply in the area of access to employment and any pre-employment activities) proper performance of employment.

The newly proposed draft of the Law on Employment, prepared by the Ministry of Labour and Social Affairs, seems to address this problem more effectively. An employer would be prohibited from making discriminatory offers of employment and requiring discriminatory information during the recruitment of new employees. The recruitment criteria would have to be neutral in order to provide equal opportunities to all persons who apply for employment. This is the first time a proposed legal provision would also govern to some extent the recruitment procedure and criteria.

The Draft General Law on Prohibition of Discrimination proposes requiring all employers to ensure that his/her offers of employment, including advertisements, are in accord with the equal treatment principle. Namely, the equal treatment principle should be respected with regard to selection criteria in employee recruitment and in the content of information required by the employer. The reversal of burden of proof would also apply.

*Is the duty to provide reasonable accommodation defined by law? Is the failure to provide such accommodation considered to constitute direct or indirect discrimination and/or does it infringe other (labour law) standards? Does such a duty exist only with respect to people with disabilities or also with respect to people discriminated against on the other grounds covered by the two Directives?*

The general duty of the employer to secure appropriate conditions for job performance is declared in Section 24 of the Law on Employment (see above). The Law on Employment does not define in more detail the extent or limits of this duty.

General accessibility standards can be found in other Czech laws, though the extent of these requirements can hardly be considered optimal. Accessibility standards were recently introduced into regulations governing building construction, such as in the Law on Territorial Planning and

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<sup>96</sup> Governmental Decree No. 228/2000 of the Coll., on Fixed Duty to Employ Set Portion of Citizens with Modified Working Ability on Total Number of Employees (*o stanovení povinného podílu počtu občanů se změněnou pracovní schopností na celkovém počtu zaměstnanců zaměstnavatele*).

<sup>97</sup> The Law No. 582/1991 of the Coll., the Law on the Organisation and Implementation of Social Security (*zákon o organizaci a provádění sociálního zabezpečení*), Section 8 para 1.

<sup>98</sup> The Law on Employment, Section 1 para 2.

Construction (the Law No. 50/1976 of the Coll.) and the Decree on General Technical Requirements Securing Proper Use of Buildings by People with Limited Ability of Movement and Orientation (Decree No. 369/2001 of the Coll.). Regulation provisions require constructional solutions to enable the disabled to access buildings. Regulations apply to the preparation of territorial documentation, territorial planning, all stages of construction work and approval of new buildings as well as to constructional changes of existing houses. Products and construction used for building must guarantee safe use, including safe use by persons with limited ability of movement and orientation<sup>99</sup>. Also the State Construction Administration terminates building permit procedures if the building documentation does not ensure safe conditions for use by persons with limited ability of movement or orientation or when such documentation is not supplemented in a set period of time<sup>100</sup>. Requirements also apply to re-building and any other construction changes. In buildings serving the general public, the assigned public areas are required to have safe access and use for disabled.<sup>101</sup>.

Obviously, the legislator did not presume that *disabled employees* would use such buildings. The extent of difficulties faced by disabled persons when accessing buildings is apparent in the case of *Zehnalová and Zehnal v. Czech Republic*<sup>102</sup>. Although this case refers to general standards of use in relation to public use of buildings rather than to reasonable accommodation for disabled employees, it has indirect relevance. It is difficult to believe that employers undertaking practices such as those described by the complainants, employ disabled employees. Practices criticised include builders renting a device for non-barrier access solely for the purpose of obtaining approval of premises and occupancy permit procedures, then removing, rather than the repairing broken devices servicing the blind. The complainants, living in the city of Přeřov, Czech Republic, challenged the procedural provisions of the Law on Territorial Planning and Construction because they were denied participation in construction procedures with reference to these provisions. They asserted that more than one hundred and fifty public buildings were not accessible by the disabled, including administrative buildings, the post office, district court, the police office, medical institution buildings and a public swimming pool. They alleged that Mrs. Zehnalova's right to private life was violated since she had to use the assistance of others, mainly her husband, in accessing those premises. The complainants referred to Articles 1, 3, 8 and 14 of the European Convention on Human Rights and Articles 12 and 13 of the European Social Charter. They alleged discrimination based on the physical condition of Mrs. Zehnalova. The European Court held the complaint inadmissible on reasons which seem to be rather formal in character.

The European Court of Human Rights held that positive obligations derived from Art. 8 of the Convention might require the adoption of measures to ensure respect for one's private life at the level of relationships between individuals. The Court concluded that this type of state obligation does exist where there is an identified direct and immediate relationship between measures required by the complainant and his private and/or family life. On the other hand, the Court found that it was not possible to apply Article 8 generally and always when the everyday life of the complainant was endangered but rather only in exceptional cases, such as where unsatisfactory access to public buildings and buildings used in everyday life would prevent the complainant from living her life to such an extent that it would endanger her right to personality growth and her right to maintain relations with other people and outside world. The Court concluded that the complainants were not able to concretise the asserted impediments and provide persuasive proof of violation of their private life.

The General Draft Law proposes the introduction of a provision on disproportionate burden. The law proposes adopting a special provision on discrimination on grounds of disability that would require appropriate measures to be taken where needed to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo education or training or to avail himself or

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<sup>99</sup> The Law No. 50/1976 of the Coll., the Law on Territorial Planning and Construction Code (*zákon o územním plánování a stavebním řádu*), "the Construction Code", Section 47 para 1.

<sup>100</sup> See the Construction Code, Section 60 para 3.

<sup>101</sup> See the Construction Code, Section 68 para 3.

<sup>102</sup> European Court of Human Rights, Decision on admissibility No. 38621/97.

herself of any service provided to the public, unless such measures would impose a disproportionate burden. In determining whether taking a particular measure would impose a disproportionate burden, particular attention would 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 person's activities;
- the availability of financial or other assistance with respect to the taking of the measure;
- the adequacy of an alternative provision or arrangements to accommodate the needs of the disabled person

The law presumes that individual cases have to be tested by these criteria, which have to be used by courts in cases of dispute.

*How do courts determine whether accommodation is 'reasonable' or whether it imposes a 'disproportionate burden'? What type of criteria is used (medical, occupational, educational, grants etc.)?*

So far the Czech courts have not faced the question of how to determine reasonable accommodation, because there are no provisions that can be applied in such cases. The provisions on the general duty of an employer to secure appropriate conditions for job performance are so broadly formulated that they do not allow for a determination of reasonableness or a decision on whether or not there is a disproportionate burden. The law does not state under what circumstances the conditions have to be taken into account (see above for conditions). In practice, employers prefer not to employ disabled workers and subsequently do not have to secure appropriate conditions for his/her job performance.

With regard to general accessibility standards, any newly established territorial concepts, building plans or other construction work must meet the criteria set by the above-mentioned provisions; otherwise they cannot be approved for further development or the building permit is not issued by the State Construction Administration (see above).

*How does, under national law, a failure to provide reasonable accommodation relate to the prohibition of (direct or indirect) discrimination?*

As there is no duty in the Czech legislation to provide reasonable accommodation the question cannot be discussed.

With regards to general accessibility standards, it must be stressed that the Law on Territorial Planning and Construction does not require older buildings to be adapted to newly set criteria (except when reconstructed or otherwise rebuilt), and therefore even the impact of existing provisions is limited.

### ***Minimum requirements and positive action***

- *Minimum requirements*

*When is differentiation on grounds of age 'objectively and reasonably' justified under national law? How is this test being applied?*

There are different types of justifications and different ways in which the differentiation is made:

#### **1. Directly fixed conditions of age:**

- Minimal age requirements for employment/self-employment activity:  
The Labour Code sets the general minimum age for persons entering into labour contracts as workers at fifteen years of age. If the potential worker has completed elementary education prior

to reaching the age of fifteen, they are competent to enter into a labour contract from the age of fourteen<sup>103</sup>. For specific professions, the age competency differs, with the minimum age often set at eighteen years of age and usually dependent on some material condition of performance of concrete work. In addition, certain types of employment are prohibited for workers under the age of eighteen<sup>104</sup>. The general minimal age for self-employment activity is eighteen<sup>105</sup>, but in specific cases it can differ according to special requirements for various types of self-employment activities, depending on requirements for training or entitlements necessary for proper performance of the activity.

- Advantageous conditions protecting young people from dismissal:  
Employees younger than 18 cannot be employed in a fixed-time employment contract, except when it is based on their own explicit request<sup>106</sup>.
- Employees younger than age 18 have a set length of working day and certain working conditions:  
The Labour Code sets the maximum length of a working day for workers younger than 16<sup>107</sup>, prohibits night work and work exceeding normal working hours for workers younger than 18, and requires employers to secure a medical examination of employees younger than 18 in defined circumstances<sup>108</sup>.

All these requirements are set in order to protect young people.

- Maximum age limits set for certain professions  
There are maximum age limits for very demanding professions; for example the Law on Courts and Judges (6/2002) sets the maximal age at 70 for judges. A judge's function terminates *ex lege* on the day when s/he reaches this age. Similarly, a prosecutor's post terminates on his/her 65th birthday<sup>109</sup>.

These requirements are set in order to guarantee proper conduct of duties required by the most important tasks of state administration.

## 2. Indirectly fixed conditions of age:

- Conditions of pay depend on years of experience:  
The Law on Pay (the Law No. 143/1992 of the Coll.) governs the pay of state employees, employees of state organisations and territorial self-governments. Pay is determined according to set categories and minimal pay tariffs, where employees qualify according to a combination of criteria relating to qualifications and years of experience.
- Minimal age requirements set indirectly for professions requiring a certain education and a minimal period of training:  
Indirect minimal 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, attorneys, prosecutors and many other professions. A minimum age requirement is indirectly set by the years necessary to complete the required education and training.

These requirements are justified by the state's interest in the responsible performance of certain important occupations and the state's interest in public safety.

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<sup>103</sup> The Labour Code, Section 11.

<sup>104</sup> The Labour Code, Section 167.

<sup>105</sup> See the Law No. 455/1991 of the Coll., the Law on Self-employment Activity (*o živnostenském podnikání*), Section 6.

<sup>106</sup> See the Labour Code, Section 30 para 2.

<sup>107</sup> See the Labour Code, Section 83a.

<sup>108</sup> See the Labour Code, Section 168.

<sup>109</sup> See the Law on State Prosecution, Section 21.

- Age requirements set indirectly for professions requiring a special capacity: These requirements are indirectly derived from the required capacity to perform the profession. For instance different types of services, such as the fire service, prison service or army, require a certain occupational capacity, though laws that require a certain physical, health and psychological capacity to perform the profession<sup>110</sup>.

Requirements are justified by the interests of public security.

Because the requirements are laid down in special laws, it is not possible to apply any objective justification test or challenge the criteria through the courts (see the broad definition of exceptions regarding occupational requirements in the Labour Code and the Law on Employment). To challenge the statutory requirements before the Constitutional Court would be difficult due to *non-direct applicability* status of social and economic rights set up by the Charter (see above – these rights can be claimed only within the limits of ordinary laws implementing them). These limits could be removed or changed by the legislator, but under current legislation there is almost no room for interpretation by the judiciary.

*Are any specific arrangements made in national law regarding age discrimination and occupational social security schemes? (Consider this question with reference to Article 6.2 Employment Directive).*

Occupational security schemes set the minimum period of insurance with respect to pension insurance, as defined by the Law on Pension Insurance (the Law No. 155/1995 of the Coll.) An individual's entitlement to his/her pension depends on two factors:

- completion of the minimum period of insurance
- reaching the required age.

According to the Law on Pension the minimum period of insurance is 25 years for persons retiring at the pension age (60 years old for men; for women it depends on the number of children), or at least 15 years for the age of 65. In the minimum period of insurance, a supplementary period of insurance is also included (for example study or vocational training until 26 years of age)<sup>111</sup>.

*Is compulsory retirement permitted? Are there any national provisions on retirement? Do they allow the fixing retirement ages by individual or collective labour agreements and, if so, what are the conditions?*

The law does not allow for compulsory retirement. The Law on Pensions provides for the entitlement of untimely old age pensions that are provided as either temporarily reduced or permanently reduced old age pensions. The difference is in the fact that temporarily reduced old age pensions become full old age pensions on reaching the proper retirement age, while the permanently reduced do not.

*Are mandatory retirement ages fixed in national legislation/legally binding collective agreements? At what ages? What (if any) conditions/restrictions are imposed (e.g. not before state pension age/entitlement to (full) state pension)? Are rights to protection against unfair dismissal lost upon reaching this retirement age?*

Retirement ages are fixed (at 60 for men; for women it depends on number of children). Protection against unfair dismissal applies without regard to retirement ages. The specific laws provide for *ex lege* termination of specific functions upon reaching a certain age (see above).

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<sup>110</sup> For example the Law No. 186/1992 of the Coll., the Law on Service of Members of Police of the Czech Republic (*o služebním poměru příslušníků Policie ČR*).

<sup>111</sup> See the Law on Pension Insurance, Section 29.

*Are mandatory retirement ages (widely) imposed by employers (even if apparently in agreement with employees)? At what ages? Are rights to protection against unfair dismissal lost upon reaching these retirement ages?*

There are no such practices described or recognised as common or widely applied. Protection against unfair dismissal applies without regard to retirement age.

*Are early retirement schemes promoted by the State? If so, are they justified (or might they be justified) by any of the examples provided in Article 6 of the Directive (legitimate employment policy, labour market and vocational training objectives etc)?*

No, they are not, with the exception of fixed maximum age criteria described above.

*Is selection for redundancy widely decided on age grounds?*

The selection for redundancy is influenced by consideration of age, and this is widely acknowledged by the public.

*Is there obvious evidence of age discrimination in access to training opportunities? Please do not undertake far-reaching socio-economic research here, but just mention points that are well-known already to the national experts or easily accessible (for example, existing research, national reports, reports of international organisations etc...).*

Obvious evidence of age discrimination exists in access to employment. Access to training opportunities has not been explored by any available research, and thus this issue cannot be assessed.

- **Positive action**

*Do specific measures exist in order to ensure or promote full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age, disability or sexual orientation (e.g. mandatory or voluntary quota systems, positive action programmes, financial incentive schemes, etc.)? Is the government considering adopting such measures?*

- **Mandatory quota system for workers with changed working ability status**

The duty of employers to compensate for disadvantages linked to disability is governed by a type of quota system. The quota system operates under three measures<sup>112</sup>, which are constructed as options and apply to companies with more than 25 employees (formerly 20 employees<sup>113</sup>). The three options are:

- employing a required percentage of employees (formerly 5%, reduced to 4% of employees<sup>114</sup>) with a changed working ability (see more below);
- commissioning goods or working programmes from employers who employ more than 50% employees with changed working ability;
- payments to the state budget. (The payment becomes a part of general state income without any identification of its required purpose. For example, there is no requirement to develop programmes to assist people with changed working ability.)

Employers also have a duty to report job vacancies appropriate for persons with changed working ability to employment offices.

In practice, most employers choose the third option, which is the cheapest and the most convenient for them.

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<sup>112</sup> The Law on Employment, Section 24 para 3.

<sup>113</sup> The Law No. 474/2001 – the Amendment to the Law on Employment.

<sup>114</sup> Id.

Direct state allowances to employers for employing workers with changed working ability are provided to employers, whose staff are more than 50% employees with changed working ability<sup>115</sup>. Their purpose is to compensate partially for the high expenses connected with employing disabled persons. The allowances are provided as 35% of the average wage of every employed person with changed working ability. One condition is that employers do not receive other state support for salary expenses from other state bodies<sup>116</sup>.

The described quota system is the only positive action programme in the Czech Republic that is laid down in legislation. Related provisions are contained in the Law on Employment<sup>117</sup> and detailed conditions are elaborated on in the Resolution of the Government No. 228/2000 of the Coll.

The quota system has been criticised for its poor effectiveness by organisations serving the disabled. Criticism has focused on employers' preference for making payments to the government over employing persons with changed working ability.

Besides this mandatory quota system, there is no any other legislative pattern for positive action programmes. Although there have been attempts to introduce proposals for positive action clauses to serve as a basis for consistent positive action programmes, they have never been approved. (In fact, these proposed clauses were to regulate positive measures on grounds of gender only). The system is quite scattered and covers only two important sectors.

- **Positive programmes for Roma**

Programmes for Roma are not laid down in legislation but are usually established by governmental decrees or resolutions. Though most of them are called positive measures, in reality they are social policies of an integration character (for example, they aim are to combat high long-term unemployment or solve social problems related to exclusion). The only type of programme that could perhaps be described as a positive measure is the system supporting Roma students in higher education through special state financial subsidies. Programmes for Roma are generally evaluated by the government annually.

*Are there comparable specific measures in relation to gender discrimination?*

See above the comments on the legislative basis of positive measures.

## **II. Remedies and enforcement**

### ***a. Judicial and/or administrative procedures***

*What judicial, administrative and conciliation procedures are available on the national level for the enforcement of the principle of equal treatment? Is action needed on the national level to comply with Articles 7.1 and 9.1 respectively?*

#### **1. Judicial procedures**

##### **A/ Civil Procedures**

Currently, there are only two types of procedures in which victims of discrimination can access the courts. First, a victim of discrimination can bring an action alleging infringement of personal integrity,

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<sup>115</sup> The Law on Employment, Section 24a.

<sup>116</sup> Such allowances can be also provided for supported jobs for "persons difficult to place at the labour market"- see Decree No. 35/1997 of the Coll.

<sup>117</sup> See the Law on Employment, Section 24 para 2, Section 24 para 3.

which is a tort claim (see above). Secondly, a victim can bring an action in a dispute arising from a labour contract. The Civil Procedure Code<sup>118</sup> applies in both proceedings. If it is a discrimination complaint, the reversal of burden of proof applies (for details see below).

**1. Actions on infringement of personal integrity** might cover the entire scope of 2000/43/Directive. Protection of personality is guaranteed by the Civil Code. The court's competence is defined in Section 7, paragraph 1 of the Civil Procedure Code as having decision-making capacity in disputes and other legal matters arising from civil matters. Other competencies of civil courts include general disputes and legal matters related to labour, family and business relations when according to the law they do not fall within the competency of other bodies. Civil courts have the competence to decide matters other than defined disputes when so expressly stated in the law.

**2. Actions in disputes and other matters in labour relations**, where discrimination is involved, include disputes in matters covered by labour contracts and similar relations<sup>119</sup>. It also means that the action can be invoked in disputes arising from special service relations similar to labour contracts and special professional relations where work or an activity is conducted in dependent positions. Activities conducted in a self-employment capacity or covered by the Law on Employment are not covered. Thus, job applicants or job seekers cannot invoke protection against discrimination in civil courts.

## **B/ Criminal Procedures**

The Criminal Code<sup>120</sup> 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 or violence on grounds of religion or belief. Crimes of racial hatred or violence or on the grounds of religion or belief are the object of a specific body of crimes. They are part of a group defined as crimes gravely affecting the civic cohabitation, under sections 196, 197, 198 and 198a<sup>121</sup> of the Criminal Code. These are crimes of violence against a group of inhabitants and individuals, crimes of defamation of nation, ethnic group, race, belief or persuasion, instigation of hatred against a group of persons, and restriction of the rights and liberties of a group of inhabitants or an individual. Furthermore, support and expressions for support of movements organised to suppress the rights and freedoms of others are punishable according to Sections 260 and 261<sup>122</sup> of the Criminal Code.

Additionally, there are qualified definitions of crimes that are racially motivated or based on religious hatred or belief, which are construed more strictly. They are considered variations of the general bodies of crimes. These qualified definitions of crime concern the most violent crimes affecting life, health or personal freedom (Section 219 – 235<sup>123</sup> of the Criminal Code). They include crimes of murder, bodily injury, severe bodily injury, extortion, or targeting property (Section 257 of the Criminal Code).

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<sup>118</sup> The Law No. 99/1963 of the Coll., the Code on Civil Procedure As Subsequently Amended, (*občasný soudní řád*), “the Code on Civil Procedure.”

<sup>119</sup> The Czech Republic does not have any special labour courts although the question for the need of their establishment has been discussed. Labour matters are handled by general courts. The system of general courts includes district and regional courts, upper courts and the Supreme Court that have divided material, local and functional competency. Except district courts, all the courts operate also as appellate courts. Criminal, civil, labour and other matters are distributed to individual panels of judged or sole judges according to internal division. Within individual courts, there also exists specialized panels of judges and sole judges. As for the material competency, labour matters are dealt with by district courts or regional courts (depending on a particular issue) as the courts of the first instance; higher courts serve as appellate courts.

<sup>120</sup> The Law No. 140/1961 of the Coll., the Criminal Code As Subsequently Amended (*trestní zákon*), “the Criminal Code.”

<sup>121</sup> According to the Governmental Report on Human Rights in the Czech Republic in 2002, 68 people were convicted of crimes corresponding with these categories of crimes. As the final version the 2002 Human Rights Report is not available at the time of writing, there is as yet only a draft version of the Report.

<sup>122</sup> In 2002, 80 people were convicted of these crimes.

<sup>123</sup> In 2002, 14 people were convicted of this crime.

## C/ Administrative judicial procedures

Administrative judicial procedures are probably of minor relevance to discrimination issues. Procedures are governed by the newly established Code on Administrative Court Procedure<sup>124</sup> in force since January 1<sup>st</sup>, 2003. The Code regulates judicial review of administrative decisions. The code's substantive law does not address discrimination by public bodies in their decision-making capacity. Therefore, discrimination complaints committed in the process of official decision-making are not likely to be addressed under the Code on Administrative Court Procedure.

## 2. 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 violation of obligations.

1) Bodies with the competency to protect against acts of discrimination exist under regulations governing employment and labour relations (employment offices) and the provision of goods and services (the Czech Trade Inspection). Further, when powers of other specialised inspectorates or administrative bodies do not apply, the competency to investigate acts of discrimination is vested in territorial self-governments (Misdemeanour commissions of municipal offices).

2) Employment offices, which regulate employment and labour relations, and the Czech Trade Inspection, which regulates access to goods and services, are competent to protect against discrimination within their area.

However, administrative bodies and inspectorates established in other fields, besides employment and trade inspection, that fall within the scope of Directives 2000/43/EC and 2000/78/EC, do have administrative procedures within this regard to protect against discrimination. This is mainly due to the lack of material provisions of 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).

## A/ Employment offices

Employment offices in the Czech Republic are competent to investigate and impose sanctions for employers' discriminatory acts. The Law on Employment and the Labour Code contain non-discrimination clauses. Administrative offences by employers can consist of violations of an employer's general duty not to discriminate on legally recognised grounds. The Law on Employment and the Powers of State Bodies in the Field of Employment define the competencies of employment offices<sup>125</sup>, and the Administrative Code<sup>126</sup> 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. Financial penalties ranging up to 1,000,000 CZK<sup>127</sup> (ca.31,949 EUR) can be applied. Penalties are not granted to the victims but become income for the state budget. Employment offices can also set up corrective measures and require written reports on how the proposed corrective measures have been incorporated and carried out.

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<sup>124</sup> Law No. 150/2002 of the Coll., the Code on Administrative Court Procedure (*soudní řád správní*).

<sup>125</sup> The Law No. 9/1991 of the Coll., the Law on Employment and Powers of State Bodies in the Field of Employment.

<sup>126</sup> The Law No. 71/1967 of the Coll., the Administrative Code.

<sup>127</sup> The Law No. 9/1991 of the Coll., the Law on Employment and Authority of the State Bodies in the Field of Employment (*zákon o zaměstnanosti a působnosti orgánů České republiky na úseku zaměstnanosti*), Section 9.

Since Employment offices started monitoring job advertisements, employers have refrained from including discriminatory requirements in their advertisements. Discrimination, therefore, has become further obscured and employment offices nearly unanimously state they are unable to prove discrimination by an employer. Employers now simply give other reasons for rejecting job applicants. In addition, Employment offices are not very successful in investigating discrimination in access to employment. Employment offices are all the more ineffective in detecting discrimination in promotion, working conditions and pay. Collectively they state that their chances to get information about discriminatory practices in these areas are minimal. Generally, victims refuse to bring complaints against a particular employer, especially in places where there is a high percentage of unemployment. This is primarily due to fear and distrust in the effectiveness of investigation. To address this situation, one employment office has established a special box into which individuals can anonymously place complaints.

The State Service Office has special powers over employment offices, as introduced by the Law on State Service (the Law No. 218/2002 of the Coll.). They have the power to investigate discrimination complaints by state officials. The Law on State Service<sup>128</sup> provides a non-discrimination clause. And in terms of administrative procedures, reversal of burden of proof applies<sup>129</sup>. This law is expected to be effective on 1 January 2004.

## **B/ 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 Inspection (further only “the CTI”). Procedures are governed by the Code of the Administrative Procedure (the Law No. 71/1967 of the Coll.).

Under the Law on Czech Trade Inspection, the CTI is authorised to inspect legal entities and individuals that sell or deliver products and goods in the domestic market and provide services or conduct other similar activities in the domestic market, except when the inspection power rests with another administrative authority. The Law presupposes that investigations and sanctions must always be linked to findings by the CTI’s inspectors, and does not allow for the opening of administrative proceedings in response to petitions filed and evidence produced by other legal entities and individuals. Though the CTI is required to collaborate with civic associations and use in its work any complaints, information and petitions from private citizens, it can only initiate administrative proceedings after an inspection has been conducted. The CTI is required to rely purely on their inspection results. Evidence produced by the consumer can only serve as an impulse to carry out an inspection and nothing further.

## **C/ Misdemeanour commissions of Municipal offices**

Only natural persons can be subjected to misdemeanour procedures. The material scope of misdemeanours is covered by special procedures under the Law on Misdemeanours. Acts of discrimination can be sanctioned according to the provisions on misdemeanours against civic coexistence.<sup>130</sup> 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 his adherence to a national minority, his ethnicity, race, colour, sex, sexual orientation, language, belief or religion. Similar to administrative proceedings, the complainant is not a party in this procedure (the one exception is where material damage was caused to his/her property by the misdemeanour).

Under this provision prosecuted offences of racial discrimination often consist of a denial of services. As previously mentioned above, the CTI can only impose penalties for acts of discrimination

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<sup>128</sup> See the Law on State Service (*zákon o službě státních zaměstnanců*), “the Law on State Service”, Section 82.

<sup>129</sup> See the Law on State Service, Section 204.

<sup>130</sup> See the Misdemeanours Law, Section 49.

ascertained during its checks. The rest is investigated by the Misdemeanour Commissions of Municipal offices, provided that it is reported (usually to the police).

### **3. Conciliation procedures**

Under non-discrimination laws there are no applicable specific provisions on conciliation procedures. Generally, conciliation procedures exist in the area of collective bargaining and disputes between employers and employee organisations. However, activities of trade unions with a view to combating discrimination are non-existent and conciliation procedures are not applied.

Trade unions have not attempted to include non-discrimination activities in their agenda. At the present time, their activities are primarily focused on questions of equal opportunities for women and men. In discussions on the proposed Draft Law on Protection Against Discrimination their position was negative. The largest Czech confederation of trade unions (the Czech-Moravian Confederation of Trade Unions) views the development of non-discrimination law as another attempt to reduce the material scope of matters regulated by the Labour Code. Unions criticise current trends to create special conditions for certain types of employment, which are being set up by an increasing number of special laws. For example, judges, police, volunteers, state service, the army, state attorneys and quite recently also prepared regulations of employment of medical personnel which bring difficulties in interpreting their rights. Because of considerable inconsistency, it is not always possible to decide whether certain situations are to be interpreted according to the Labour Code or according to a special law. The position of the largest Czech Trade Union confederation does not imply a negative position vis-à-vis the right to equal treatment, but it does highlight the concerns regarding a systematic approach to labour law as a whole. Some smaller trade unions, on the other hand receive the idea positively.

The Draft Law proposal on protection against discrimination is proposing a special conciliation procedure to be supervised by an independent body where agreement between the dispute parties would be attempted in appropriate situations.

#### ***b. Associations***

*Are associations and other entities with a legitimate interest in ensuring compliance with anti-discrimination law entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant? If so, how often do associations and other entities make use of this possibility and with what results?*

Neither provisions of material law nor those of procedural law recognise the possibility of public action or summary proceedings in discrimination matters. 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 gender, racial or ethnic origin, religion, conviction, disability, age or sexual orientation discrimination, a party in proceedings could be represented by a legal entity established according to a special law<sup>131</sup>, where the protection against such discrimination is part of this legal entity's activities. Trade unions can also represent their members as parties in proceedings on any matter, with the exception of business or trade disputes. The entitlement of trade unions to engage in proceedings is not limited to matters of protection against discrimination.

The provision facilitating representation by associations was introduced into Czech law through amendment No. 151/2002 and came into effect on 1 January 2003. It was introduced as part of the implementation process of Directives 2000/43/EC and 2000/78/EC. Due to its short term of applicability, it is too early to determine how often associations use this instrument.

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<sup>131</sup> The Law No. 83/1990 of the Coll., the Law on Citizens Assembly (*o sdružování občanů*).

The proposed General Law on Protection Against Discrimination does entitle associations and trade unions to initiate summary proceedings before courts in matters of protection against discrimination. This entitlement should not be dependent on the consent or other type of actions of the victim, but should be limited only to the possibility to demand an end to discrimination and a request for corrective measures.

For administrative procedures, however, it is not possible for associations to be involved in proceedings. After all, under existing administrative procedures there is not even a proper involvement of the victim.

### ***c. Time limits***

#### ***What is the situation concerning time limits?***

General time limits are specifically set for each area of law. Thus, in the areas covered by the Civil Code, statutory limitations set by the Civil Code apply and for labour matters, the time limits of the Labour Code apply. There are usually objective and subjective time limits. Objective time limits commence from the moment the decisive event takes place. Subjective time limits commence when the person concerned learned about the event. These are statutory limitations with the character of statute-barred<sup>132</sup> entitlements. For example, in matters relating to protection of personality there is a general statutory limitation of three years. If in such cases there is a right to material damages, the subjective statutory limitation is two years, the objective statutory limit is three years, and a ten year statutory limit applies where damage was caused intentionally. There are different statutory limits in criminal law and administrative law with regard to the sanctions and penalties. These limitations are not of a statute-barred character, but rather preclusive.

With regard to the labour disputes covered by the Labour Code, the general time limit for vindication of pecuniary claims is three years<sup>133</sup>. The time limit for the compensation of the damage is two years and the statutory limitation commences on the day the victim learns of the damage and who is responsible for it. The statutory limitation expires if it is not vindicated in three years and, if the damage was caused intentionally, 10 years after the damage occurs (objective statutory limitation). In cases of damage to health, there is no objective statutory limitation, only a subjective one<sup>134</sup>.

### ***d. The burden of proof***

#### ***Article 8 (Racial Equality Directive) and Article 10 (Employment Equality Directive)***

*Does the principle of the shift or easing of the burden of proof in cases of discrimination exist under national law (constitutional, civil, penal, labour and administrative)? AH: as mentioned before, if included in penal law, this would be contrary to international human rights law*

A shift of the burden of proof in discrimination cases was introduced in the Code on Civil Court Procedure through the Civil Procedure Code Amendment (Amendment No. 151/2002 of the Coll.). For labour matters, the shift of the burden of proof is applicable in cases of direct or discrimination on grounds of gender, racial or ethnic origin, religion, belief, conviction, disability, age or sexual orientation. The burden of proof is shifted in cases of direct or indirect discrimination on grounds of racial or ethnic origin in the supply of health and social care, access to education and vocational training, access to public commissions, access to membership of employer and employee organisations, access to membership of professional organisations and professional associations, and the supply of goods or services. Not included are matters related to housing. The application of the

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<sup>132</sup> The Civil Code, Section 100-114.

<sup>133</sup> Article 263 para 1 of the Labour Code.

<sup>134</sup> Article 263 para 3 of the Labour Code.

provision on the shift of the burden of proof depends on the existence of material provisions, which sometimes do not exist.

Under the Code on Civil Procedure, the shift of the burden of proof operates as a refutable presumption. Rather than “shift”, the burden of proof is construed as “reversed“. Practically however, the general rules of civil procedure do not permit petitioners to bring an action without at least providing evidence of the events he or she has described in the action. Therefore, the burden of proof in practice will most likely be “shifted” and not “reversed”. However, problems might arise where it is difficult to determine the division of burden of proof. But, such concerns could be premature at this time, as the provision has been in force only for a short time (since 1 January 2003). So far there has been only one case (a sexual harassment dispute in which a final decision has not been determined). Prior to 1 January 2003, the reversal of the burden of proof applied only to disputes on sex discrimination, but the relevant provisions were replaced by broader provisions through the amendment 151/2002 Coll., as part of the implementation process of EC Directives 2000/43/EC and 2000/78/EC.

*Are there comparable provisions in national law in relation to gender discrimination (NB this is covered by Directive 97/80/EC on the burden of proof in cases of discrimination based on sex).*

See above.

#### **e. Victimisation**

*Does protection against victimisation, as defined in Article 9 and Article 11 respectively, exist in national law?*

Protection against victimisation exists only in labour law. Under the Labour Code, the employer cannot sanction an employee or put him/her at a disadvantage because of his/her actions taken with respect to his/her lawful claims or rights. Where the labour code is not applicable, similar provisions on discrimination cover special labour or service relations, e.g. the Law on Professional Army Service and the Law on State Service. Prohibition of victimisation in the Labour Code does not apply to certain labour relations, such as those regulated by the Law on State Prosecution, the Law on Courts and Judges and the Law on Volunteer’s Service. Nor do these laws have their own provisions prohibiting victimisation.

All protection in the area of labour law is restricted to persons in a labour relationship with one employer. Protection does not apply, for example, to matters concerning access to employment or to other persons who are not employees. Prohibition of victimisation under the Labour Code or other special provisions under other specific laws do not cover cases when one employee is disadvantaged because of his/her support of another employee’s lawful claims.

#### **f. Sanctions**

*What provisions exist on the application of effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases? How do these compare to sanctions in other areas (e.g. labour law)? Do equivalent provisions already exist on the national level in other areas? Is multiple discrimination an aggravating circumstance?*

The sanctions applicable to discrimination cases can be divided into the following groups:

- **Administrative sanctions according to specific laws and according to the Law on Misdemeanours.**

Under specific laws, financial penalties are applied. The Law on Misdemeanours does allow for a wider range of sanctions. However, these sanctions are irrelevant with regard to discrimination cases.

The administrative sanctions in the area of labour law range up to 1 million CZK (*ca.31,949 EUR*). The same level of sanctions can be awarded by the Czech Trade Inspection. In respect of administrative sanctions it is not possible to consider whether these are dissuasive, effective and proportionate, as there are only a minimal number of cases where these have been applied. The administrative bodies often cite by way of an explanation that discrimination is hard to prove or that they are unable to identify cases of discrimination.

- **Criminal sanctions according to the Criminal Code**

In criminal procedures, courts can hand down penalties in the following ways: imprisonment, community work, loss of honorary titles and awards, loss of military ranks, bans on certain activity, property confiscation, financial penalties, confiscation of items, expulsion and ban on residence<sup>135</sup>. In cases concerning criminal acts related to ethnic or religious violence and hatred, punishments primarily consist of imprisonment. In cases involving skinheads or extremist attacks consisting of a lower intensity and committed by youths, the courts will assign community work.

- **Civil sanctions (claim of material damages and non-pecuniary damages)**

While material damages can generally be claimed by individuals who suffer material losses due to unlawful acts or other violation of a duty established by law or a contract, non-pecuniary damages can only be claimed when the law so expressly states. In cases where non-pecuniary damages are caused by acts of discrimination, only when provisions concerning personality protection are invoked can such damages be claimed. The amount of non-pecuniary damages awarded in such a procedure is determined by the court who takes into account the seriousness of the damage and the circumstances of the case<sup>136</sup>. The court can award non-pecuniary damages up to the amount requested by the petitioner, but the court can also award a lower amount.

At the time of writing there are only a few discrimination cases where courts have awarded non-pecuniary damages.

***g. Dissemination of information***

*What action is being taken or is planned to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?*

In the Czech Republic limited attention has been paid to the necessity of bringing laws and regulations to the general public's attention. Dissemination of information on protecting against discrimination is almost non-existent. Conservative opinion that the process of officially publishing all Czech laws in the Collection of Laws is coupled with a (fictional) belief that knowledge of legislation is fully satisfactory. And opinions change slowly.

Under the proposed General Law on protection against discrimination, public dissemination of information on the content of the anti-discrimination legislation, and the rights and duties imposed by the law, is to be vested in the proposed institution, the Centre for Equal Treatment. In addition to disseminating information, the Centre would organise and support public information campaigns and programmes to ensure a wider distribution of information to the public.

*What action is being taken or is planned to ensure - by means of information and training and where necessary by effective sanctions - that all officials and other representatives of the public authorities at every level abstain from any discriminatory speech or behaviour in the exercise of their functions?*

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<sup>135</sup> See the Criminal Code, Section 27.

<sup>136</sup> See the Civil Code, Section 13 para 3.

*The purpose of the research is not to establish whether measures are appropriate and effective, but whether or not they exist.*

No such action exists. Various disconnected activities of certain ministries - the Ministry of Labour and Social Affairs and Ministry of Interior - are focusing on educating state and self-government officials on general human rights issues and principles. They are also trying to develop effective co-operation with the non-governmental sector. For example, the Ministry of Interior offers non-governmental organisations the opportunity to register for official authorisation to provide educational programmes to governmental officials and officials of self-governments on human rights issues.

#### ***h. Social dialogue and NGOs***

*Has the government taken steps to promote dialogue with the social partners at national level? If so, what are the measures adopted and what are the results?*

Generally, a social partners dialogue exists within the framework of the so-called Council of Economic and Social Agreement, which is an institutionalised platform of social dialogue between the government, trade unions and employers. It functions as a common voluntary bargaining body of the government, employed to reach agreements on the most important issues of economic and social development. Although one measure of this mechanism is to strengthen social dialogue and share in the responsibility of drafting legislation, the Council is not active in the area of combating discrimination. One possible reason is that trade unions have traditionally have taken a very conservative position in this area.

*Has the government taken steps to promote dialogue with non-governmental organisations at national level? If so, what are the measures adopted and what are the results?*

The dialogue between non-governmental organisations and the government is of a rather disjointed character with initiatives emerging from different ministries and other state bodies. Besides the initiative of the Ministry of Labour described above, the Human Rights Council and the Department for Human Rights, both governmental bodies, have taken the most innovative approach in this area. The Council, a mechanism of collective bodies with equal, partial representation of ministry representatives and NGOs, gives expert advice to the government and proposes legislative and non-legislative measures. NGOs are also represented in number of committees established by the Council. The Committees propose necessary legislative and non-legislative measures for consideration by the Council, who can then submit it to the government. Some of the important steps taken in the area of combating discrimination have been initialised by the Human Rights Council and Department for Human Rights.

### **Chapter 3 Specialised bodies**

*Does such a body exist on the national level? Where it does, what are its resources (staff and budget), powers and duties in relation to the requirements of the Racial Equality Directive? Has it also a mandate on other grounds of discrimination?*

There is no body nor structure of bodies which possesses the competencies required by Directive 2000/43/EC. The following are several types of existing bodies:

- **Expert Consultative bodies of government (established by governmental decrees)**
  1. **The Council for Human Rights and the Council for National Minorities have secretariats within the Human Rights Department of the Office of the Government of Czech Republic, which also contains the Inter-Ministerial Commission for Roma Community Affairs with its own secretariat.**

The Councils are, as is apparent from these titles, established as expert counselling bodies to the Government on human rights and national minority issues. The Human Rights Department, with its own separate secretariats, is able to conduct surveys and publish reports. Mandated by government decrees, they make recommendations relating to discrimination issues, including recommendations on measures required to secure Czech Republic compliance with EC anti-discrimination directives. The Inter-Ministerial Commission for Roma Community Affairs works on improving the plight of the Roma minority. Currently, neither the Council nor the Human Rights Department are competent to provide independent assistance to individual victims of discrimination.

## **2. National Council of Disabled containing its own secretariat**

The National Council was also established as an expert consultative body to the Government. It was mandated by the government to make recommendations relating to rights of disabled persons, including areas of equal opportunity and equal treatment of disabled people. The Council conducts surveys and publishes reports, but is not competent to provide independent assistance to individual victims of discrimination.

- **The Public Defender of Rights (the Ombudsperson)**

The Public Defender of Rights (ombudsperson) was established by Law No. 349/1999 of the Coll., in order to protect individuals against actions by state administrations and other institutions, including self-governments acting contrary to the law. The public defender of rights can recommend corrective measures in individual cases, and when the issue in point is discrimination, the public defender can recommend corrective measures including compensation for the victim and preventive measures against future discrimination. Additionally, the public defender of rights is authorised to recommend adoption, amendment or annulment of legal regulations and internal orders. The public defender of rights must report to Parliament on his/her activities, including proposed corrective measures that have not been accomplished and recommendations for regulations and orders. He/she is also required to report to the public on his/her work and findings. When there is a significant discrimination finding and/or a matter requiring corrective measures it is expected that it be included in relevant reports. The public defender of rights is not however prevented from publishing other reports within his/her competence. The statutory role of the public defender of rights is not specifically to provide independent assistance to victims of discrimination; however, in certain cases, the performance of his/her duties may constitute such assistance.

- **The Specialist Inspectorates or Departments, within certain ministries, with investigative functions**

Specialist investigative bodies, acting under administrative procedures, carry out investigations that can be initiated by discrimination complaints. The relevant investigative bodies for cases of discrimination are enumerated above. They do not provide independent assistance to victims of discrimination. But, they are not precluded by law from generating surveys or publishing reports. In practice, however, they rarely do so. If, in the course of an investigation, discriminatory practices are discovered, inspectorates are empowered to impose sanctions on the perpetrator, and define certain corrective measures. In practice, however, their actions in discrimination cases is limited to imposing penalties on individuals. Any discovered unlawful practices have to be reported to a superior office or a supervising Ministry, with the opportunity to include recommendations on changes to relevant laws or regulations.

- **The Provision of Legal Aid in civil proceedings through the courts/chamber of advocates**

According to the Civil Procedure Code, the courts can provide legal representation in the form of legal aid<sup>137</sup> to parties in civil proceedings. Parties in the proceedings can also apply for legal aid from

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<sup>137</sup> See the Civil Procedure Code, Section 30.

the Bar Association that has its own rules of providing attorneys<sup>138</sup>. Such arrangements, however, are not adequate to meet minimum competence for an independent body to provide assistance to discrimination victims pursuing their complaints. Arrangements for legal aid are mostly limited to legal representation needs involving disputes and therefore do not satisfy the much wider need for legal aid. Furthermore, legal aid is provided on a case-by-case basis, with conditions that are difficult to satisfy (for example, the Bar Association only appoints representatives to those who prove they were repeatedly denied legal aid services and/or representation by its members<sup>139</sup>). Provisions on legal aid in court proceedings are completely inadequate as they are connected with conditions for a waiver of legal fees and there is no uniform means test to evaluate an applicant's need. Access to representation also depend on the court's consideration that it is necessary due to the applicants interest in a proper defence<sup>140</sup>. Advice and assistance in assessing the merits of a case and evaluation of these are generally not available.

*Are existing bodies addressing the issue of multiple discrimination?*

No, cases of multiple discrimination are not expressly addressed in Czech legislation.

*Where a body does not exist on the national level, are there plans to establish such a body?*

The proposal for establishing the Centre for Equal Treatment is contained in the draft proposal on the Law on protection against discrimination. According to the draft, the Centre would perform the following tasks:

- **Provide independent assistance to victims of discrimination in pursuing their discrimination complaints;**

This task would be fulfilled by the Centre which would be give the power to investigate discrimination complaints, initiate conciliation procedures with the consent of the parties concerned; and when conciliation efforts fail or when the dispute disallows for conciliation, access to courts would be permitted. In specific matters of public concern, they can initiate investigations on their own initiative.

- **Conduct independent surveys concerning discrimination;**
- **Publish independent reports and make recommendations on any issue relating to discrimination.**

There is still a very intensive debate within governmental structures about the existence, position and tasks of such a body. Positions are quite different even within the state administration structures. First, there is a view that the tasks set out in Directive 2000/43/EC are already performed by several different bodies. Defenders of the minimal state argue that there is no need for additional legislation, and that it would be sufficient to compel the various existing bodies to perform their duties more vigorously. Such positions, apparently, do not assess the situation realistically, and there is a good change these views will prevail.

Other views advocate that it would be most suitable to award adequate powers to the ombudsperson's office. This would, in their opinion, help avoid unnecessary costs involved in establishing a new body. This arrangement, however, has its weak points. The Law on Public Defender of Rights limits the powers of the public defender of rights to the selected public bodies. To award the public defender the competencies laid down in Directive 2000/43/EC would represent a vigorous change in the law as well as in the whole character of the institution.

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<sup>138</sup> The Law on Attorneys.

<sup>139</sup> See the Law on Attorneys, Section 18.

<sup>140</sup> See the Civil Procedure Code, Section 30.

Lastly, there are those views that support the establishment of a new independent body. They stress the fact that none of the existing bodies fulfil the entirety of tasks required by Directive 2000/43/EC, and that it will be almost impossible to divide the tasks through legislative amendments and cover the whole material scope required by the Directive. All existing bodies have powers covering only a small part of this scope and there are some fields where no such body exists (for example, occupations governed by special laws, housing, education and access to health.)

## Chapter 4 Compliance and implementation

### a. Screening

*Does national law provide a mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the principle of equal treatment?*

There is no such special mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the equal treatment principle. There is, however, a general mechanism for the abolition of laws, regulations and administrative provisions that are contrary to constitutional laws or the Constitution of the Czech Republic. The test is applied by the Constitutional Court only on the basis of a proposal submitted by qualified subjects. Qualified subjects consist of the President of the Czech Republic, an assemble of at least 41 Parliament Deputies or 17 Senators, the Panel of Judges on the Constitutional Court in connection with constitutional complaints and persons submitting constitutional complaints.<sup>141</sup> The complaint can be submitted by individuals who assert violations of his/her constitutionally guaranteed rights. If an individual asserts that his/her right was violated due to the application of a concrete law or legal provision, he/she can propose the abolition of that law or provision.)<sup>142</sup> Therefore this test does not guarantee the abolition of all such laws, as there is no possibility for the Constitutional Court to act upon its own initiative or upon the initiative of any person who believes that the law or provision is contrary to the constitutional order.

*Is there a mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended?*

There is no such mechanism in the Czech Republic. However, there is a rule that all agreements, contracts or rules contrary to the law are null and void. This rule, however, does not apply generally.

For example, application of this rule is limited in the Labour Code. The exceptions relate to the nullity of legal acts, including contracts performed in the area of application of the Labour Code. Legal acts are only declared null and void, when its contents are contrary to the law or are otherwise contrary to the interests of society<sup>143</sup>. On application, provisions in agreements, contracts or rules contrary to the non-discrimination clause will be declared null and void. Similarly, the Law on Collective Agreements states expressly that collective agreements are null and void in sections that are contrary to legislative provisions<sup>144</sup>.

However, this mechanism of nullity *ex lege* presents more uncertainty than others. It is never quite clear whether the concrete provision, over which the dispute has arisen, is subject to nullity or not. Only the court can determine whether the nullity applies.

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<sup>141</sup> See the Law No. 182/1993 of the Coll., the Law on the Constitutional Court (*zákon o Ústavním soudu*), “the Constitutional Court Law”, Section 64.

<sup>142</sup> See the Constitutional Court Law, Section 74.

<sup>143</sup> See the Labour Code, Section 242.

<sup>144</sup> See the Law on Collective Bargaining, Section 4.