

## **Religion and Discrimination Law in the Czech Republic (2011)**

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### **I. Historical, Cultural and Social Background**

(1) Approach of the Czech law to religious discrimination before incorporation of ECHR to Czech legal system (1991) and entry of Czech Republic to European Union (2004).

Many human rights were ignored in former Czechoslovakia during the communist dictatorship 1948–1989. The public life was subordinated to interest of ruling Marxist-Leninist ideology. Religions were only partially tolerated, under the atheist rule in all spheres. They were as “instrument” of defeated so called “exploiting class society” determined to extinction. The religious discrimination in favor of atheist world view concerned all religions.

On 17<sup>th</sup> November 1989, the 50<sup>th</sup> anniversary of the closure of the Czech universities by the Nazis, communist police brutally interrupted the students’ commemorative procession in Prague. The events, later called “the Velvet Revolution,” were followed by all of Czechoslovakia. During several weeks the revolution removed the totalitarian communist regime. On 28<sup>th</sup> November 1989 Federal Assembly abolished constitutional article about leading role of the Communist Party in the State. The 10<sup>th</sup> of December 1989 may be called the day of upheaval. On that day, the last communist president appointed a non-communist government. The following day he resigned. The new government voted for a policy of legal continuity and of value discontinuity between the new and old regimes. It opened the door to the renewal of democracy and real introducing of human rights to the Czechoslovak legal order.

The process of implementation of human rights to the Czechoslovak legal order including prohibition of religious discrimination was influenced by United Nations Universal Declaration of Human Rights from 10<sup>th</sup> December 1948, and especially by two international covenants opened by UN on 16<sup>th</sup> December 1966, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. The socialist Czechoslovakia ratified both Covenants on 23<sup>rd</sup> December 1975, but in that time they had no constitutionally guaranteed precedence before the laws. Their ratification was only a propagandist misleading of international public. First after the “Velvet revolution” they were transformed to the inner legal order. As the most important source of the new constitutional law in the Czech and Slovak Federal Republic (CSFR) was prepared the **Charter of Fundamental Rights and Freedoms** from 9<sup>th</sup> January 1991, published as an enclosure to the federal Constitutional

Act no. 23/1991 Coll. The proper text of the Act proclaimed precedence of the international agreements on human rights and basic freedoms ratified by Czechoslovakia before the laws.

The Charter of Fundamental Rights and Freedoms uses almost the same words as the Universal Declaration of Human Rights from 10<sup>th</sup> December 1948, and both Covenants from 16<sup>th</sup> December 1966. It was influenced by the European Convention on Human Rights (ECHR) from 1950, which was signed by CSFR only some weeks later (on 21<sup>st</sup> February 1991) and ratified in 1992.

In the time of dissolution of Czechoslovakia to 1<sup>st</sup> January 1993 the Charter was accepted by the Constitution of the Czech Republic, Act No. 1/1993 Coll., as a part of the Czech constitutional order and was published under No. 2/1993 Coll.

Charter of Fundamental Rights and Freedoms reads in its Art. 3 sec. 1:

„Everyone is guaranteed the enjoyment of his/her fundamental rights and freedoms without regard to gender, race, color of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.“ It is clear this article copies the ECHR, art. 14; it is only a little more detailed. It prohibits discrimination from the reason of “faith and religion”.

Summary:

(a) Prior to incorporation of the ECHR to the Czech law and entry of the Czech Republic into the European Community the protection against discrimination was founded on constitutional provisions of the proper Charter of Fundamental Rights and Freedoms, transformed from UN Covenants and ECHR, including the ‘equality’ and ‘religious freedom’.

(b) The rationale for this approach was both ‘equality’ and ‘religious freedom’.

(c) There were no special political debates on inclusion of religious freedom to the law. The understanding of unity of human rights and freedoms was supported by effort to negate the lack of freedoms in the precedent communist regime and to quickly accept the provisions of international documents on human rights. Religions agreed in this process.

(2) The effect of UN instruments on religious discrimination, and Article 14 ECHR, on the Czech law.

As it is above explained, both UN instruments and ECHR were incorporated in Charter of Fundamental Rights and Freedoms. Thanks to the new and original introduction of the provisions of the field of religious and other discrimination to the Czech law there has not been contradiction between these instruments and the Czech law.

(3) Government’s view on the EU Directives 2000/43/EC and 2000/78/EC when they were in draft form.

The Czech Republic entered to EU on 1<sup>st</sup> May 2004. It is the reason, why it had not direct deal on the EU Directives 2000. But some of the Directive clauses affected the Czech legislature even before 2004.

„Anti-discrimination clauses (sometimes enumerative, sometimes open-ended) can be found in various ordinary laws governing employment and labor relations ... During the period 2003-2004, the definitions of discrimination required by the Racial Equality and

Employment Equality Directives were inserted into various laws, namely the Law on Employment<sup>1</sup> and the Law on Service by Members of the Security Services.<sup>2</sup> ...<sup>3</sup> Then the Czech legal system of protection against discrimination was completed by **Anti-discrimination Act No. 198/2009 Coll.**, which came into effect from 01.09.2009. The debate on Anti-discrimination bill was provided on the level of parliamentary discussions. As far as the authors of this report are aware, the religions did not participate on these discussions.

## II. The Duty not to Discriminate: The Prohibition against Discrimination

(1) Authority, which is charged with oversight of religious discrimination. Its appointment and functions.

The Anti-discrimination Act awarded the role of anti-discrimination body to the Public Defender of Rights (Czech ombudsman) in its Art. 13, which came into force on 01.12.2009.

The office of the Public Defender of Rights has already been constituted by the Act No. 349/1999 Coll., which came in force on 28. 02. 2000, indeed.

The Public Defender of Rights as the Czech Republic's anti-discrimination body is awarded responsibility on all grounds covered by the Equality Directives, inclusive religious discrimination. He has already been vested with competence to supervise fairness in state administration, places of detention and institutional care.

The Public Defender of Rights is elected by the Chamber of Deputies of the Czech Parliament for periods of six years, and is responsible to this Chamber. Candidates are proposed by the Czech president and Senate. The body is funded from the state budget, through its own independent budget line.

The Public Defender of Rights should provide independent assistance to victims of discrimination, undertake research, publish independent reports and exchange information with anti-discrimination bodies in other EU Member States.<sup>4</sup>

The Public Defender of Rights is an independent institution, accountable directly to the Chamber of Deputies of the Parliament.<sup>5</sup> Religions have no role at its work.

(2) The key instruments or sources of law on religious discrimination. The key elements of this law. Civil and criminal prohibitions. Definition of religion. Non-religious belief.

*On the Constitutional level:*

The Charter of Fundamental Rights and Freedoms, Art. 3/1

*On the civil, labor and administrative law level:*

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<sup>1</sup> Law no. 435/2004 Coll., on Employment.

<sup>2</sup> Law no. 361/2003 Coll., on Service by Members of the Security Services.

<sup>3</sup> BOUČKOVÁ, Pavla, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC*, Country Report 2009, Czech Republic, European Network of Legal Experts in the Non-discrimination Field, available on <http://www.non-discrimination.net/countries/czech-republic>, p. 5.

<sup>4</sup> Act No. 349/1999 Coll., on Public Defender of Rights, Art. 21 b, and Anti-discrimination Act No. 198/2009 Coll., Art. 13.

<sup>5</sup> See BOUČKOVÁ, Pavla, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC*, p. 82–83.

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Act No. 200/1990 Coll., Misdemeanours Act, Art. 32, 49

Act No. 634/1992 Coll., on Consumer Protection, Art. 6

Act No. 221/1999 Coll., on Service by Members of the Armed Forces, Art. 2/3

Act No. 3/2002 Coll., on Churches and Religious Societies, Art. 2/5

Act No. 218/2002 Coll., on Service by State Administration Officials and on Remuneration of these Officials and other Employees, Art. 80/2

Act No. 361/2003 Coll., on Service by Members of the Security Services, Art. 77/2

Act No. 435/2004 Coll., on Employment, Art. 4/2

Act No. 561/2004 Coll., School Act, Art. 2/1

Act No. 262/2006 Coll., Labor Code, Art. 16/1

Act No. 198/2009 Coll., Anti-discrimination Act, Art. 2/3

All of these acts contain grounds for non-discrimination. Almost all of them use the terms of protection of all inhabitants of the Republic with special mention of faith or religion. Labor Code contains general equality clause (right to equal treatment and prohibition of discrimination applies to all employees).

*On the criminal law level:*

Act No. 40/2009 Coll., Criminal Code, especially its provisions according to the offences of Restriction of Freedom of Religion (Art. 176), Incitement of Hatred to a Group of Persons or Restriction of their Rights and Liberties (Art. 356), Genocide (Art. 400), Assault against Humanity (Art. 401), Apartheid and Discrimination of a Group of People (Art. 402), Founding, Support and Propagation of a Movement Aiming at Oppressing of Human Rights and Liberties (Art. 403), Expression of Affection for a Movement Aiming at Oppressing of Human Rights and Liberties (Art. 404), Denial, Casting Doubts on, Conniving and Justifying of Genocide (Art. 405), Persecution of Inhabitants (Art. 413). The notion “religion” is not defined in the Czech legal system. But the notion “religions” (Churches and Religious Societies) is defined in the Act No. 3/2002 Coll., on Churches and Religious Societies in such a way: “Church and Religious Society is a voluntary association of persons with its own structure, bodies, internal regulations, religious rituals, and manifestations of faith, founded with aim to confess certain religious faith, public or private, and especially with it connected assembling, worship, teaching, and spiritual service.”

According to the Charter of Fundamental Rights and Freedoms, the same position as religion has a non-denominationalism. In reality it is position of a majority. This position has the same protection as a religious belief.

(3) The fields in which the prohibition is operative: employment, the provision of goods and services, education, housing, and public authorities.

The prohibition of discrimination is operative in all above mentioned fields.

“The Czech anti-discrimination provisions implementing the directives cover labor relations, including employment and working conditions, dismissals and pay, membership and involvement in an organization of workers or employers, in both the public and private sectors. They also cover access to employment (job recruitment, re-qualification etc.), on all grounds included in the EU anti-discrimination directives – sex, race and ethnicity, religion, disability (state of health), age and sexual orientation.

The Anti-discrimination Law also covers labor relations to which Labor Law does not apply, such as those of judges, state attorneys, parliament deputies and others. Other

areas covered by the Anti-discrimination Law include membership of organizations whose members carry on a particular profession, self-employment, vocational training, and education at all levels. The Anti-discrimination Law also provides protection with respect to access to health, housing, social security, social advantages and access to goods and services.”<sup>6</sup>

(4) What does the prohibition cover. What defences or other justifications are available.

The Czech Anti-Discrimination Act defines direct and indirect discrimination, harassment, sexual harassment, victimization, instruction to discriminate, incitement to discriminate. The Czech legal system provides for civil, criminal and administrative enforcement. The victim can obtain financial compensation for non-material damages in civil disputes. The criminal prosecution concerns the extreme cases of discrimination. Administrative enforcement consists of sanctioning misdemeanors and administrative offences.

(5) What case-law has developed on these matters.

As far as the authors of this report are aware, there has not yet been decided any case concerning discrimination in religion or faith.

### **III. The Right to Distinguish or Differentiate: Exceptions to the General Prohibition**

(1) On what grounds does the law permit different treatment.

The Anti-discrimination Act permits different treatment on grounds of age (eg minimal age, professional experience or seniority in service for access to employment), different age for retirement of men and women, different treatment to women from the reason of their pregnancy and motherhood. Under specific conditions there is different treatment in cases of employers, who are churches and religious societies.

(2) Who may discriminate.

The Anti-discrimination Act, Art. 6/4, contains following provision:

“A different treatment applied in cases of right to employment, access to employment or vocation in cases of dependent work in churches or religious societies, where from the character of such work or the circumstances in which they are carried out, the religious belief, faith or world view constitutes substantial, justified and legitimate occupational requirement with respect to the ethics of the church or religious assembly.”

The employers have no duty to respect non-discrimination provisions on ground of gender in case of individual contracts with self-employed people.

The case-law in such in the area of exceptions has not yet been developed.

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<sup>6</sup> European Network of Legal Experts in the Non-discrimination Field, Czech Republic, Material Scope, available on <http://www.non-discrimination.net/content/material-scope-14>.