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## **Summary of legislation implementing**

### ***Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation with respect to sexual orientation in the Czech Republic***

Edited version 8 November 2006

This summary was written in 2005 at the request of Kees Waaldijk & Matteo Bonini-Baraldi, when they were writing their book *Sexual orientation discrimination in the European Union: national laws and the Employment Equality Directive* (The Hague: T.M.C. Asser Press, 2006), and has been published (including a 2006 Postscript) on the website of the E.M. Meijers Institute of Legal Studies of the Universiteit Leiden; see [www.emmeijers.nl/experts](http://www.emmeijers.nl/experts).

For this summary the template of the book *Sexual orientation discrimination in the European Union* has been used, although for some items of that template no information could be given. These empty paragraphs are marked with an asterisk.

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## **1 General legal situation**

The purpose of this text is to give an overview of legislation in the Czech Republic related to the above-mentioned directive. It contains a summary of the legislation already in force, points out the gaps in the Czech legal order, and at the same time it introduces proposed legislative measures, which are likely to be adopted.

### **1.1 Constitutional protection against discrimination**

The general clause on equality is expressed in Article 3 paragraph 1 of the Charter of Fundamental Rights and Freedoms<sup>2</sup> which states that:

*“Fundamental rights and freedoms are guaranteed to all regardless of sex, race, colour of skin, language, belief and religion, political or other conviction, national or social origin, membership of a national or ethnic minority, property, birth or other status”.*

Sexual orientation, however, is not explicitly mentioned as one of the grounds for discrimination. In such a case, the wording “other status” would have to be used.

### **1.2 General principles and concepts of equality**

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### **1.3 Division of legislative powers relating to discrimination in employment**

According to *Act No. 2/1969 Coll., on the Establishment of Ministries and Other Central Organs of State Administration of the Czech Republic*, the Ministry of Labour and Social Affairs is the central body of state administration for labour-law relations, employment, social affairs, etc.

### **1.4 Basic structure of employment law**

*Act No. 435/2004 Coll., on Employment* – regulates legal relationships concerning access to employment (before the conclusion of a labour contract).<sup>3</sup>

*Act No. 65/1965 Coll., Labour Code* – regulates legal relations between employers and employees after the conclusion of employment contract.<sup>4</sup>

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<sup>2</sup> The Charter of Fundamental Rights and Freedoms was adopted in 1992. According to Art. 112 of the Constitution of the Czech Republic, it is a part of the so-called “constitutional order”, which consists of the Constitution, the Charter of Fundamental Rights and Freedoms and constitutional laws adopted according to the Constitution of the Czech Republic and some constitutional laws adopted before its adoption.

<sup>3</sup> The law entered into force on October 1, 2004. So far, there are no amendments concerning equal treatment.

<sup>4</sup> See also the Postscript at the end of this Summary. The law entered into force on January 1, 1966. There were two amendments implementing the principle on equal treatment and the ban on discrimination. Amendment No. 155/2000 Coll., laid down the principle of equal treatment for all employees, and the ban on discrimination on grounds of sexual orientation (among other reasons, of course). This piece of legislation outlawed any conduct of an employer, which is not directly discriminating, but is in its consequences, and it also named exceptions that are not considered discrimination. This act of law (effective as of January 1, 2001), however, implements the directives covering equal treatment of men and women, which basically ban

*Act No. 1/1992 Coll., on Wages, on Remuneration for the on-call duty and on Average earnings* – regulates wages of employees in the private sector.<sup>5</sup>

*Act No. 143/1992 Coll., on Salary, and on Remuneration for the on-call duty in Institutions fully funded from the State Budget and some other Institutions and Bodies* – relates to wages of employees in public sector.

*Act No. 221/1999 Coll., on Regular Soldiers* – deals with the conditions of the service relationship of regular soldiers.<sup>6</sup>

*Act No. 2/1991 Coll., on Collective Bargaining* – covers negotiations between trade unions and employers, sometimes with the assistance of the government.

*Act No. 218/2002 Coll., on Civil Servants Service in Administration Authorities, and the Remuneration of these Servants and other Employees of Administrative Authorities (the Service Act)* – will cover the legal relationships of employees who exercise state administration in public authorities as a service which the Czech Republic provides for the public. However, the entry into force of this act is being postponed regularly, the current date will resume as from 1 January 2007.

*Act No. 154/1994 Coll., on the Security Information Service* – regulates the service relationship of members of the Security Information Service. After the new *Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces* comes into effect (as from 1 January 2007) the statute will be partly abolished.

*Act No. 186/1992 Coll., on the Service Relationship of Members of Czech Police* – covers service relationships of members of the Czech Police. This act will also be abolished by the new *Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces* (as mentioned above). The statute itself does not contain provisions banning discrimination but in some cases, provisions from the Labour Code concerning the concept of equal treatment, the ban on discrimination, incitement to discriminate and legal remedies can be used (reference in § 155 – the application of provisions of the Labour Code).

*Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces* – this legal instrument is not in force yet (see above). It regulates legal relationships of members of security forces, i.e. Czech Police, Fire Brigade, members of Customs Administration, Prison Service, Security Information Service and the Office for Foreign Affairs and Information.

*Act No. 119/1992 Coll., on Mission Allowances* – regulates the provision of compensation of expenses from business trips.

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discrimination on grounds of sex. The other amendment, No. 46/2004 Coll., implements the Directive, and entered into force on March 1, 2004.

<sup>5</sup> This law, however, is one of those that the new Labour Code (Act No. 262/2006 Coll.) abolishes. Its provisions are incorporated in the new law.

<sup>6</sup> The law entered into force on December 1, 1999.

### **1.5 Provisions on sexual orientation discrimination in employment or occupation**

*Act No. 65/1965 Coll., Labour Code* – on grounds of sexual orientation, this act forbids direct and indirect discrimination, as well as harassment and sexual harassment (§ 1). Provisions on sexual orientation discrimination were adopted by two acts of Parliament: Act No. 155/2000 Coll., amending the Labour Code (effective as of 1 January 2001) and Act No. 46/2004, amending the Labour Code (effective as of 1 March 2004). The ban on discrimination also applies for Act No. 186/1992 Coll., on the Service Relationship of Members of Czech Police.<sup>7</sup>

*Act No. 435/2004 Coll., on Employment* – bans sexual orientation discrimination in a very similar wording to that of the Labour Code (see above).

*Act No. 221/1999 Coll., on Regular Soldiers* – contains a general clause on anti-discrimination (sexual orientation is one of the grounds mentioned) and equal treatment (§ 2 paragraph 3 bans behaviour, which is not discriminatory directly but is in its consequences; incitement to discriminate is considered to be discrimination as well). Acts No. 155/2000 Coll. (effective as of 1 January 2001) and Act No. 254/2002 Coll. (effective as of 28 June 2002) implemented the amendment.

*Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces* – admission for a service relationship cannot be denied to a citizen on grounds of sexual orientation (§ 16 par. 4). Direct and indirect discrimination, as well as harassment and sexual harassment are banned in service relationships. Harassment and sexual harassment are defined as a form of discrimination. Incitement or instruction to discriminate or raising pressure leading to discrimination are also considered discrimination.

*Act No. 218/2002 Coll., the Service Act* – § 80 paragraph 2 bans discrimination on grounds of sexual orientation in service relationships, which are covered by the Service Act. It also bans such conduct, which is not discriminatory directly but is in its consequences.

### **1.6 Important case law precedents on sexual orientation discrimination in employment or occupation**

There are no case law precedents.

### **1.7 Provisions on discrimination in employment or occupation that do not (yet) cover sexual orientation**

*Act No. 312/2002 Coll., on Officers of regional autonomous administrative units* – contains a provision which bans discrimination on grounds of sex in the admission for employment relationships and in the appointment of chief officers. Although this act does not have a general provision against discrimination on various grounds, employment relationships of officers from

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<sup>7</sup> Act No. 155/2000 amended act No. 186/1992. This amendment introduces the applicability of provisions of Labour Law for the purposes of the service relationship of members of Czech Police in the scope of provisions covering equal treatment and non-discrimination, i.e. discrimination (on grounds of sexual orientation as well). Entry into force of Act No. 155/2000: January 1, 2001.

regional autonomous administrative units are regulated by the labour code, where sexual orientation discrimination is fully covered.

Other acts indicated in chapter 0.1.4 that do not have provisions on discrimination covering sexual orientation are: *Act No. 2/1991 Coll., on Collective Bargaining*; *Act No. 1/1992 Coll., on Wages*; *Act No. 154/1994 Coll., on the Security Information Service*; *Act No. 186/1992 Coll., on the Service Relationship of Members of Czech Police*; *Act No. 143/1992 Coll., on Salary*; and *Act No. 119/1992 Coll., on Mission Allowances*.

Note: The above-mentioned measures of law cover specific areas of employment law. The general and therefore most important measure is the Labour Code, which is fully in compliance with the directive.

### **1.8 Provisions on sexual orientation discrimination in other fields than employment and occupation**

*Act No. 200/1990 Coll., on Violations*<sup>8</sup> – states in § 49 paragraph 1 (a part called “Violations of civic coexistence”) that: “A violation is committed by a person who (...) causes loss to another person for reason of his/her (...) sexual orientation.” For such conduct, a fine can be imposed of up to 5.000 CZK (paragraph 2).

*Act No. 99/1963 Coll., on Civil Procedure* – § 26 paragraph 3 regulates the representation of a participant in proceedings who is seeking judicial protection because of alleged discrimination (on grounds of sexual orientation). Such a participant may be represented by a legal person based upon a specific statute (*Act No. 83/1990 Coll., on the Association of Citizens*) whose activities include the protection against discrimination.

*Act No. 150/2002 Coll., Administrative Judicial Procedure* – according to § 35 paragraph 4, a participant in proceedings who seeks judicial protection because of alleged discrimination (on grounds of sexual orientation) *by an administrative body* may also be represented by a legal person (as mentioned above).

*Act No. 561/2004 Coll., on Pre-school, Basic, Secondary, Tertiary, Professional and Other Education (the Education Act)* – regulates conditions for education in the above mentioned school facilities, defines the rights and obligations of natural and legal persons in education and determines the competence of authorities executing state administration and autonomy in education. One of the basic principles in education is the principle of equal access of all citizens of the Czech Republic or other member states of the European Union to education, without any discrimination based on specific reasons. Sexual orientation is not expressed as one of the reasons – the statute only covers any “other status of a citizen”. § 30 paragraph 1 lays down an obligation for the school director to issue school regulations that will cover conditions for the protection of children from acts of discrimination or violence.

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<sup>8</sup> A violation is an act based on fault that violates or jeopardises an interest of society and is explicitly described as a violation in the Act on Violations - § 2 paragraph 1.

*Act No. 627/2004 Coll., on the European Company*<sup>9</sup> – regulates in § 50 paragraph 4 the rights of a member of a Negotiating Committee (a body representing employees of the European Company). Such a member has a right to protection from discrimination to the extent laid out in the Labour Code.

*Act No. 198/2002 Coll., on Voluntary Service*<sup>10</sup>. When admitting a person to voluntary service, an organisation must apply the principle of equal treatment.

## **2 The prohibition of discrimination required by the Directive**

### **2.1 Instrument(s) used to implement the Directive**

The directive was implemented by means of amending existing statutes.

### **2.2 Concept of sexual orientation (art. 1 Directive)**

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### **2.3 Direct discrimination (art. 2(2)(a) Directive)**

*Act No. 65/1965 Coll., Labour Code: “Direct discrimination shall be taken to occur where an employee is, has been or would be treated less or more favourably than another employee on specified grounds of discrimination (§ 1 paragraph 4).”*<sup>11</sup>

*Act No. 435/2004 Coll., on Employment* – § 4 paragraph 5 uses a similar definition. Also, it explicitly mentions the fact that different treatment must take place in a *comparable situation*.

*Act No. 221/1999 Coll., on Regular Soldiers* – does not contain an exact definition of direct discrimination.

*Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces* – defines direct discrimination (see above – the Labour Code, Act on Employment), plus contains a clause eliminating this definition “for the purposes of this act”: “For the purposes of this act, conduct by which a member was, is or would be treated less favourably than another member in a comparable situation on grounds specified in paragraph 2, shall be regarded as direct discrimination.”<sup>12</sup>

*Act No. 218/2002 Coll., the Service Act* – does not contain an exact definition of direct discrimination.

### **2.4 Indirect discrimination (art. 2(2)(b) Directive)**

*Act No. 65/1965 Coll., Labour Code* – defines indirect discrimination as any “conduct or omission where an apparently neutral decision, distinction or

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<sup>9</sup> A European Company is one of the corporations recognised by the Czech Commercial Code (Act No. 513/1991 Coll.). It is a legal person created for the purposes of undertaking business.

<sup>10</sup> Voluntary service is an activity whereby a volunteer provides help to the unemployed, socially weak and disabled, seniors, members of national minorities, prisoners, drug addicts and persons suffering from domestic violence. Such a person may also help with childcare or provide help to families in their leisure time. A volunteer may also help with the implementation of development projects and in the framework of activities, programs or projects of international (non)governmental organisations and institutions.

<sup>11</sup> § 1 paragraph 6.

<sup>12</sup> § 77 paragraph 3.

*promotion on the part of the employer advantages or disadvantages an employee at the benefit or expense of another as a result of the grounds of discrimination specified.”<sup>13</sup>*

*Act No. 435/2004 Coll., on Employment* – contains a definition similar to the one in the Labour Code.<sup>14</sup>

*Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces* – restricts indirect discrimination “for the purposes of this statute”: indirect discrimination is considered as conduct that is apparently non-discriminatory but which disadvantages a member in comparison with another member on the basis of specific reasons.<sup>15</sup>

*Act No. 221/1999 Coll., on Regular Soldiers* and *Act No. 218/2002 Coll., the Service Act* – ban conduct that does not discriminate directly, but does in its consequences (i.e. indirect discrimination).

## **2.5 Prohibition and concept of harassment (art. 2(3) Directive)**

*Act No. 65/1965 Coll., Labour Code* – states that harassment means behaviour that is perceived by the employee concerned as unwelcome, inappropriate or insulting and the intent or consequences of which lead to denigration of the person or to the creation of an unfriendly, humiliating or unsettling work environment, or which may justifiably be perceived as grounds for a decision that will influence the performance of rights and obligations in labour relations.<sup>16</sup>

Outside the scope of the directive, the Czech Labour Code distinguishes sexual harassment,<sup>17</sup> which is understood as any conduct of a sexual nature in any form that again is perceived as unwelcome etc.

Both sexual harassment and harassment are regarded as discrimination.<sup>18</sup>

*Act No. 140/1961 Coll., Penal Code* – defines a category of crime named as “Trading with people”. Making, hiring, hiding, detaining or exposing someone for the purposes of sexual intercourse or other forms of sexual harassment or abuse can be punished by imprisonment for up to 10 years.<sup>19</sup>

*Act No. 221/1999 Coll., on Regular Soldiers* – the service relationship cannot be abused to the detriment or denigration of another soldier. Denigration means undesirable sexual behaviour and all forms of harassment that result in the soldier’s denigration and create intimidating, unfriendly, humiliating or insulting atmospheres.<sup>20</sup>

*Instructions No. 28 275/2000-22 of the Czech Ministry of Education, Youth and Sport, for preventing and dealing with bullying among school pupils and the*

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<sup>13</sup> § 1 paragraph 7.

<sup>14</sup> § 4 paragraph 6.

<sup>15</sup> § 77 paragraph 4.

<sup>16</sup> § 1 paragraph 8.

<sup>17</sup> § 1 paragraph 9.

<sup>18</sup> § 1 paragraph 10.

<sup>19</sup> § 232a.

<sup>20</sup> § 2 paragraph 4.

*destruction of school property* – defines bullying and states that it may even constitute a form of sexual harassment or abuse.

*Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces* – considers harassment and sexual harassment as a form of discrimination.<sup>21</sup>

*Act No. 218/2002 Coll., the Service Act* – forbids abusing the performance of rights and obligations under the service relationship to the detriment or denigration of another civil servant or to the detriment of others.<sup>22</sup>

*Act No. 435/2004 Coll., on Employment* – contains a definition of harassment and sexual harassment, which is similar to that in the Labour Code. Again, harassment is considered as a form of discrimination.<sup>23</sup>

## **2.6 Instruction to discriminate (art. 2(4) Directive)**

The Czech legal order currently defines only incitement to discriminate (not instruction to discriminate).

*Act No. 65/1965 Coll., Labour Code, Act No. 435/2004 Coll., on Employment, Act No. 221/1999 Coll., on Regular Soldiers* and *Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces* – consider conduct that includes incitement and encouraging or causing pressure leading to discrimination as discrimination. The provisions of the Labour Code also apply for *Act No. 186/1992 Coll., on the Service Relationship of Members of Czech Police*.

## **2.7 Material scope of applicability of the prohibition (art. 3 Directive)**

The material scope of the directive includes:

*Act No. 65/1965 Coll., Labour Code; Act No. 2/1991 Coll., on Collective Bargaining; Act No. 1/1992 Coll., on Wages; Act No. 435/2004 Coll., on Employment; Act No. 221/1999 Coll., on Regular Soldiers; Act No. 154/1994 Coll., on the Security Information Service; Act No. 186/1992 Coll., on the Service Relationship of Members of Czech Police; Act No. 119/1992 Coll., on Mission Allowances; Act No. 218/2002 Coll., on Civil Servants Service in Administration Authorities, and the Remuneration of these Servants and other Employees of Administration Authorities (the Service Act); Act No. 83/1990 Coll., on Unincorporated Associations; and Act No. 198/2002 Coll., on Voluntary Service.*

## **3 What forms of conduct in the field of employment are prohibited as sexual orientation discrimination?**

### **3.1 Discrimination on grounds of a person's actual or assumed heterosexual, homosexual or bisexual preference or behaviour**

Not explicitly mentioned in the law.

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<sup>21</sup> § 77 paragraph 2.

<sup>22</sup> § 80 paragraph 3.

<sup>23</sup> § 4.

**3.2        *Discrimination on grounds of a person's coming out with, or not hiding, his or her sexual orientation***

Not explicitly mentioned in the law.

**3.3        *Discrimination between same-sex partners and different-sex partners***

Different treatment of same-sex and different-sex partners is not regarded as discriminatory. Different-sex couples enjoy the benefits and duties which the law<sup>24</sup> provides and imposes. Recently, a new law on Registered Partnership was adopted.<sup>25</sup> However, the status of same-sex partners is still lower than that of married couples. Only a small number of rights<sup>26</sup> and obligations<sup>27</sup> typical for marriage are granted to registered partners. No rights on child care are part of this law. Generally speaking, the first step regarding partnership rights has been taken but there are still other steps to take.

**3.4        *Discrimination on grounds of a person's association with gay/lesbian/bisexual/heterosexual individuals, events or organisations***

The law does not protect against this form of discrimination.

**3.5        *Discrimination against groups, organisations, events or information of/for/on lesbians, gays or bisexuals***

The law does not protect against this form of discrimination.

**3.6        *Discrimination on grounds of a person's refusal to answer, or answering inaccurately, a question about sexual orientation***

According to *Act No. 435/2004 Coll., on Employment*<sup>28</sup> – an employer is not entitled to query information regarding sexual orientation during job interview.

**3.7        *Discrimination on grounds of a person's previous criminal record due to a conviction for a homosexual offence without heterosexual equivalent***

The law does not protect against this form of discrimination.

**3.8        *Harassment***

See paragraph 2.5 above.

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<sup>24</sup> According to the Czech Family Code (Act No. 94/1963 Coll.) only different sex couples are eligible for marriage.

<sup>25</sup> Act No. 115/2006 Coll., in force as of 1 July 2006.

<sup>26</sup> The partners are considered next of kin for the purposes of penal law and civil law, they have the right to refuse testimony against each other in penal and tax procedures, they are legal heirs in case of intestacy and also have a right to receive information on the health condition of a partner.

<sup>27</sup> The partners have a mutual duty to support and maintain.

<sup>28</sup> § 12 paragraph 2.

## **4 Exceptions to the prohibition of discrimination**

### **4.1 Objectively justified indirect disadvantages (art. 2(2)(b)(i) Directive)**

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### **4.2 Measures necessary for public security, for the protection of rights of others, etc. (art. 2(5) Directive)**

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### **4.3 Social security and similar payments (art. 3(3) Directive)**

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### **4.4 Occupational requirements (art. 4(1) Directive)**

*Act No. 65/1965 Coll., Labour Code* – differential treatment is not regarded as discriminatory if the nature of the work activities or the circumstances justify such a reason as a genuine and determining requirement in performing the work that the employee is to carry out. The objective followed by such an exception must be legitimate and the requirement proportionate.<sup>29</sup>

*Act No. 221/1999 Coll., on Regular Soldiers* – discrimination is not regarded in such cases where there is a material reason for differential treatment. Such a reason lies in the nature of the service that the soldier is executing, and is necessary for the performance of the service.<sup>30</sup>

*Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces* – a procedure is not regarded as discriminatory where a security force can demonstrate that there is a material reason arising from the conditions or requirements for the performance of the service and which is indispensable for the performance of such service. Again, the objective must be justifiable and the requirement commensurate.<sup>31</sup>

*Act No. 198/2002 Coll., on Voluntary Service* – the delegating organisation is obliged to apply the principle of equal treatment when choosing volunteers, with the exception of a case where the nature of the voluntary service does not allow to do so.<sup>32</sup>

### **4.5 Loyalty to the organisation's ethos based on religion or belief (art. 4(2) Directive)**

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### **4.6 Positive action (art. 7(1) Directive)**

*Act No. 65/1965 Coll., Labour Code* – Measures taken by the employer are not regarded as discriminatory where these have been designed to ensure the equal representation of men and women in recruitment, vocational training and with regard to promotion where such measures are justified by the unequal representation of men and women at the working place. The employer's procedures shall not, however, be to the disadvantage of an employee of the

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<sup>29</sup> § 1 paragraph 5.

<sup>30</sup> § 2 paragraph 3.

<sup>31</sup> § 77 paragraph 7.

<sup>32</sup> § 7 paragraph 6.

opposite sex whose qualities are greater than those of other employees recruited at the same time.

*Act No. 435/2004 Coll., on Employment* – introduces the concept of state politics of employment in the Czech Republic, which also includes provisions in support of equal treatment of men and women regardless of their racial or ethnic origin or disability. Some other groups whose position in the labour market is complicated are also supported.<sup>33</sup> The state bodies performing state administration of the state politics of employment are The Ministry of Labour and Social Affairs and Local Employment Offices. Their task is to adopt provisions in support of the achievement of equal treatment of men and women and persons belonging to the above-mentioned specific groups.

Provisions set by the law are also not regarded as discriminatory where their objective is to precede or compensate disadvantages that stem from a person's affiliation to a certain group (e.g. gays and lesbians).<sup>34</sup>

#### **4.7 Exceptions beyond the Directive**

The Act No. 65/1965 Coll., Labour Code contains one exception at the end of § 1 paragraph 3. Paragraph 3 lays down the principle of equal treatment and at the same time does not consider differences set by the Labour Code or special legal regulation as unequal treatment. Such a regulation, though, is not more closely specified.<sup>35</sup>

## **5 Remedies and enforcement**

### **5.1 Basic structure of enforcement of employment law**

Constitutional protection: The *Charter of fundamental rights and freedoms*<sup>36</sup> states in article 36 paragraph 1 that: "Everyone has the right to seek judicial protection of his right from an independent and impartial court and at given cases from a different body".

The grounds of civil judicial protection are laid down in *Act No. 99/1963, on Civil Procedure*. According to § 3, civil procedure is one of the guarantees of the rule of law and at the same time it serves to strengthen and develop it. Everyone is entitled to seek the judicial protection of his or her violated right.

In cases of sexual orientation discrimination in employment, an employee has a right to demand that he or she is not subjected to the breach of their rights, that the consequences are remedied and that he or she receives commensurate redress.<sup>37</sup> Also, if the employee's dignity or position in the workplace has been substantially humiliated, she or he is entitled to financial compensation for non-material loss.<sup>38</sup>

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<sup>33</sup> § 2 paragraph 1.

<sup>34</sup> § 4 paragraph 4.

<sup>35</sup> § 1 paragraph 4, also applicable for Act No. 186/1992 Coll., on the Service Relationship of Members of Czech Police.

<sup>36</sup> Act No. 2/1993 Coll.

<sup>37</sup> Act No. 65/1965 Coll., Labour Code, § 7 paragraph 4.

<sup>38</sup> *ibid*, paragraph 5.

In the service relationships of members of security forces,<sup>39</sup> the service relationship of officers in the state administration,<sup>40</sup> the service relationship of regular soldiers,<sup>41</sup> and the rights of persons who have been subjected to unequal treatment or discrimination are regulated accordingly.

In other areas apart from employment, where sexual orientation discrimination is not yet covered, a person must use the provisions of the *Civil Code*.<sup>42</sup> A natural person is entitled to the protection of her or his personality, particularly life and health, civic honour and human dignity, as well as privacy, reputation and expression of personal character.<sup>43</sup> A natural person particularly has a right to claim that she or he is not subjected to violations of his or her rights, that consequences of such violations are remedied and that she or he receives commensurate redress. Also, if the natural person's dignity in society was substantially humiliated, he or she has a right to compensation for non-material loss (it is up to the court to determine the amount).<sup>44</sup>

Courts also provide protection to natural and legal persons within the framework of administrative judiciary. This area is regulated by the *Judicial Administrative Procedure*.<sup>45</sup>

## **5.2 Specific and/or general enforcement bodies**

In the area of employment, specific enforcement bodies are regional Labour Inspectorates. The competence of the Labour Inspectorates is regulated by the *Law on Labour Inspection (No. 251/2005 Coll.)*, which came into force on 1 July 2005.

Regional Labour Inspectorates are entitled to control the observance of labour law regulations covering rights and duties in labour law relations, including regulations covering wages, with the exception of regulations covering employment. The competence of the inspectorates applies to employers and their employees, natural and legal persons – employed persons not employing anyone, legal persons conducting the function of a school or a school facility, prisons and natural and legal persons performing artistic, cultural, sports or advertising activity with children.

The Law on Labour Inspection covers violations and administrative torts in the area of equal treatment. A breach of the ban on discrimination or a breach of the principle of equal treatment by a natural person is regarded as a violation and may result in the imposition of a fine up to 400.000 CZK.<sup>46</sup> A breach of the ban on discrimination or a breach of the principle of equal treatment by a legal person is regarded as an administrative tort and also may result in imposing a fine up to 400.000 CZK.<sup>47</sup>

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<sup>39</sup> Act No. 361/2003 Coll., on Service Relationship of Members of Security Forces.

<sup>40</sup> Act No. 218/2002 Coll., Service Act.

<sup>41</sup> Act No. 221/1999 Coll., on Regular Soldiers.

<sup>42</sup> Act No. 40/1964 Coll.

<sup>43</sup> *ibid*, paragraph 11.

<sup>44</sup> *ibid*, paragraph 13.

<sup>45</sup> Act No. 150/2002 Coll.

<sup>46</sup> § 11 of the Law on Labour Inspection.

<sup>47</sup> § 24 of the Law on Labour Inspection.

In the area of employment, the observance of duties laid down by the *Act on Employment (No. 435/2004 Coll.)* is monitored by local Labour Offices. A breach of the ban on discrimination or the principle of equal treatment laid down by the Act on Employment is defined as a violation (natural persons) or administrative tort (legal persons) and results in the imposition of a fine up to 1.000.000 CZK.<sup>48</sup>

Act No. 349/1999 Coll., on *the Public Defender of Rights*, established the Public Defender of Rights. The main role of the ombudsman is to ensure the protection of rights and legitimate interests mainly in the areas in which the citizens or other entities and subjects encounter the offices of state administration. The Czech ombudsman only has powers in the sphere of public law, its office deals with cases of wrong state administration, protects persons from the conduct of authorities which is against the law, against the principles of rule of law or the principles of good administration, and also protects persons from inactivity of authorities. Therefore, if discrimination does not fall within the scope of the power of the Public Defender of Rights (and it rarely does), he is not entitled to deal with such a case.

The Public Defender of Rights has no direct means or mechanisms of enforcement at his/her disposal. The ombudsman requests the body of state administration responsible for malpractice or error to remedy the situation. Should the relevant body fail to provide a remedy the ombudsman may eventually pass the matter onto the government. The role of the Defender cannot be perceived as changing or replacing the decisions of the relevant body of state administration rather as instructing the above bodies to apply their own supervisory and correctional sanction-imposing legitimate authority and power to ensure the remedying of the situation.

### **5.3 Civil, penal, administrative, advisory and/or conciliatory procedures (art. 9(1) Directive)**

See above chapter 0.5.1.

### **5.4 Civil, penal and/or administrative sanctions (art. 17 Directive)**

Civil and administrative sanctions – see chapter 0.5.1 and 0.1.8 (*Act on Violations*).

Penal sanctions punishing discrimination mostly cover only discrimination on the grounds of race, ethnicity, political or other thinking, sex, religion or belief. There are no penal sanctions for discriminatory conduct based on sexual orientation.

### **5.5 Natural and legal persons to whom sanctions may be applied**

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### **5.6 Awareness among law enforcers of sexual orientation issues**

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### **5.7 Standing for interest groups (art. 9(2) Directive)**

The person's right to be represented by a legal person was created by a specific statute (*Act No. 83/1990, on Association of Citizens*); such activities

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<sup>48</sup> see § 139 and 140 of the Act on Employment.

include the protection against discrimination which is laid down in Act No. 99/1963 Coll., on *Civil Procedure*,<sup>49</sup> Act No. 150/2002 Coll., *Judicial Administrative Code*<sup>50</sup> and Act No. 634/1992 Coll., on *the Protection of Consumers*.<sup>51</sup>

### **5.8 Burden of proof of discrimination (art. 10 Directive)**

A shift of the burden of proof is covered by these regulations:

*Act No. 99/1963 Coll., on Civil Procedure* – in employment matters, courts treat allegations of direct or indirect discrimination on grounds of sexual orientation as proven, unless proceedings prove the contrary.<sup>52</sup> Also, there is a provision shifting the burden of proof in other areas than employment (health care, social care, education, goods and services etc.) but unfortunately, only on grounds of racial or ethnic origin.

The Ministry of Labour and Social Affairs keeps a record of breaches of labour-law regulations as a result of discrimination since the 3<sup>rd</sup> quarter of 2004. According to that record, there has been only one case of sexual orientation discrimination reported by a local Labour Office (1<sup>st</sup> quarter of 2005, indirect sexual orientation of a male person in the area of access to employment).

*Act No. 221/1999 Coll., on Regular Soldiers, Act No. 186/1992 Coll., on the Service Relationship of Members of Czech Police, Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces and Act No. 218/2002 Coll., Service Act* also include provisions on shifting the burden of proof. Naturally, these are limited by the scope of each statute and applicable for the proceedings conducted under its provisions. However, the burden of proof will only be shifted in cases of alleged discrimination on grounds of sex, nationality and/or race.

### **5.9 Burden of proof of sexual orientation**

*Act No. 99/1963 Coll., on Civil Procedure* – see above.

### **5.10 Victimisation (art. 11 Directive)**

Constitutional protection: The *Charter of Fundamental Rights and Freedoms*<sup>53</sup> states that “Nobody may suffer the curtailment of their rights for enforcing their fundamental rights and freedoms.”

Statutory protection: *Labour Code*,<sup>54</sup> *Act on Regular Soldiers*,<sup>55</sup> *Service Act*<sup>56</sup> and *the Act on the Service Relationship of Members of Security Forces*<sup>57</sup> – Employer/service body/security body may not discriminate against his/her/its

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<sup>49</sup> §26 paragraph 3.

<sup>50</sup> § 35 paragraph 4.

<sup>51</sup> An association, among whose objectives is the protection of the consumer, is entitled to file an action to refraining unlawful action in a matter on the protection of the rights of consumers.

<sup>52</sup> § 133a.

<sup>53</sup> Article 3 paragraph 3.

<sup>54</sup> § 7 par. 3

<sup>55</sup> § 2 par. 6

<sup>56</sup> § 80 par. 4

<sup>57</sup> § 77 par. 10

employee/soldier/member for enforcing his/her rights stemming from the employment/service relationship.

## **6 Discriminatory laws and provisions still in force**

Act No. 103/2005 Coll., on *Health Eligibility for Military Active Service*, contains a list of mental disorders and disorders of behaviour. One of them is provision No. F 66: Mental and behavioural disorders connected with sexual development and orientation. Although there is an explicit sentence that sexual orientation itself is not regarded as a disorder, the above-mentioned provision No. F 66 might be easily abused.

Regulation of the Ministry of Finance No. 89/2003 Coll., on *Requirements on Health Eligibility of Members of Customs Administration*, contains a similar list of disorders as mentioned above. This regulation again contains a provision No. F 66: Mental and behavioural disorders (sexual development and orientation). In this case, however, there is not a clause proclaiming that sexual orientation itself is not regarded as disorder.

*Regulation of the Ministry of Health No. 55/2000 Coll., amending the regulation that adopts a list of sanitary services*: Chapter 309 – sexology – contains a diagnostic method that can also be used for determining of sexual orientation.

## **Postscript**

On 1 January 2006, the new Labour Code, Act No. 262/2006 Coll., entered into force. This has a significant impact on the protection against discrimination in the Czech Republic in the field of labour law. The new Labour Code bans discrimination in a general way only. In § 16 paragraph 2, it states that "(...) the terms direct discrimination, indirect discrimination, harassment, sexual harassment, victimisation, instruction to discriminate and incitement, and the cases in which different treatment is acceptable, are defined in special legislation." This "special legislation" was supposed to be the Antidiscrimination Bill (see below). However, this bill was not approved by the Czech Parliament and did not become a law. So, the new Labour Code does not contain a list of grounds of discrimination, which again was a part of the Antidiscrimination Bill.

An important legislative measure in combating discrimination could have been the *proposed Act on Legal Means for the Protection Against Discrimination and on Equal Treatment (Antidiscrimination Bill)* and the *proposed legislation amending some acts in connection with the adoption of the Act on Legal Means for the Protection Against Discrimination and on Equal Treatment*.

However, after more than a year of parliamentary debates, the bill was not adopted.

The subject matter of the law was approved by the Government of the Czech Republic on 22 September 2003 (resolution No. 931). The proposal itself, in a version subdivided into sections, was approved by the government on 1 December 2003 (resolution No. 1193). The government submitted the

proposal to the Chamber of Deputies of the Parliament of the Czech Republic on the 21 January 2005. The two proposals were posted to the Members of Parliament as prints no. 866 and 867. The legislation against discrimination was approved by the Chamber of Deputies on the first reading on the 10 February 2005 and referred for consideration to the Constitution and Legal Committee, Committee for Petitions and Permanent Commission for Family and Equal Opportunities. The Chamber of Deputies has approved of the bill, however, the Upper Chamber of Parliament (the Senate), did not. The Chamber of Deputies did not find the necessary majority of votes in favour of the bill (in order to vote down the veto of the Senate). Thus, on the 23rd of May 2006, the bill was rejected.

The proposal on legislation against discrimination was based on the following principles:

- It covered the whole area of protection against discrimination in one legal instrument (it is implementing not only Directive 2000/78/EC, but also Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin – hereafter “racial directive”)
- It suggested that the Public Defender of Rights (Ombudsman) is in charge of the execution of jurisdiction according to article 13 of the racial directive (providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination, publishing independent reports and making recommendations on issues relating to discrimination).
- It also broadened the protection above the framework of the two directives by introducing new legal instruments – mediation and “*actio popularis*” – in the event that there occurs a case of discrimination of an unspecified number of persons. The right to demand that a person refrain from discriminating also belongs to a legal person established for the purposes of the protection against discrimination, so long as that person has the protection against discrimination expressed in its constitution (i.e. a qualified unincorporated association).