

The impact of the Racial Equality Directive:
a survey of trade unions and employers
in the Member States of the European Union

Czech Republic

Sona Veverkova

DISCLAIMER: Please note that country reports of each Member State are published in the interests of transparency and for information purposes only. Any views or opinions expressed therein in no way represent those of the Fundamental Rights Agency (FRA). Country reports constitute background information used by the FRA when compiling its own studies.

1. Demographic background

Data about racial minority members, as well as on racial discrimination, are difficult to obtain in the Czech Republic (CR). For one thing, the terms “race” or “ethnic origin” are not precisely defined and, for another, any question regarding race or ethnic origin itself is considered discriminatory, therefore numerous institutions and employers avoid it. Hence the number of inhabitants that may be affected by the racial discrimination can only be determined approximately. The most significant group of inhabitants in this respect in the CR are Roma people as well as the ‘guest workers’ from Asia (most often Mongolians, Chinese, Vietnamese and the nations of the Central Asia), where the position of these racial minorities in society and on the job market shows marked differences compared to the majority population.

Deleted: Any d

Based on the Census of people, houses and flats in 2001, Roma nationality was acknowledged by almost 12,000 people, which is only 0.1 % of the population of the CR¹. This information, however, can be described as an underestimate, since a specific nationality is acknowledged by inhabitants solely based on their opinion – a number of Roma people thus reported being Czech, or another nationality. At the same time, the Report on the Situation of National Minorities in the Czech Republic published an estimate that there are 150,000–300,000 people (1.15-2.3%) who are members of the Roma minority. The Roma people were usually born and brought up in the CR, they have a command of the Czech language and are well informed about the culture and life of the majority society. They have often encountered racial discrimination since their childhood.

On the other hand, the ‘guest workers’ from Asia came in order to work in the CR (mostly in recent years). They were usually born and lived elsewhere, do not have a good command of Czech nor do they know the culture and customs of the majority. Their position is worsened by the fact that this is often a group of people abused by various intermediaries who have arranged work and the documents necessary for their stay in the CR. Due to the lack of knowledge of culture, language and often also due to their illegal migration, this group is more vulnerable than the Roma minority. This is reinforced by the fact that the communities are closed, and therefore it is difficult for public officials and people from the non-profit sector to approach them. In contrast, the provision of help for Roma people by the state or the non-profit sector is more accessible.

¹ Source: Czech Statistical Authority: Census of people, houses and flats in 2001, available at: http://www.czso.cz/sldb/sldb.nsf/i/scitani_lidu_2001, quotation of 10. 4. 2009

Deleted: 10. 4. 2009

Table 1: Foreigners (major national minorities) living in the Czech Republic

Citizenship	Numbers of foreigners
Vietnam	60,875
China	5,197
Mongolia	8,002
Kazakhstan	3,585

Source: Czech Statistical Authority, 28.2.2009

Note: The data only provides a rough picture of the number of other 'racial' groups. Data on ethnicity are not available.

2. Industrial relations background

The legislative process forming the legal framework for independent social dialogue and collective bargaining began as part of the revolutionary socio-economic changes at the start of the 1990s. The foundations of the modern history of social dialogue and collective bargaining in the Czech Republic were thus not laid until 1993, when the social partners were able to acquire their first practical experience of conducting social dialogue and negotiating collective agreements.

The main piece of legislation governing collective labour relations is Act No. 2/1991 Coll., on collective bargaining. This largely procedural act seeks to implement the material-law provisions of the Labour Code and other labour legislation.

The law recognises enterprise-level collective agreements (ELCAs), signed by the trade union body at the enterprise and the employer, and higher-level collective agreements (HLCAs), negotiated by the appropriate higher-level trade union bodies and an organisation or organisations of employers and covering a larger number of employees. The law therefore does not recognise sectoral collective agreements covering an entire sector or field of economic activity (Czech law does not even provide a satisfactory definition of an economic sector). If sectoral collective agreements are in practice mentioned, they tend to be referred to as HLCAs, regardless of the actual scope of the agreement. It follows, then, that Czech law does not recognise either intersectoral or regional collective agreements, and these types of agreement are not used in the Czech Republic.

Collective agreements in general are signed as two-party agreements between employer and trade union. As regards the employer, it is usually a legal person employing citizens in relations under labour law. Employers may also be 'natural persons', i.e. citizens who employ employees as part of their entrepreneurial activity. On the trade union side, this is usually the appropriate trade union body, or an empowered representative. But the body may also be a trade union organisation as a whole or a unit thereof, e.g. a basic trade union organisation (at an enterprise, or works) provided it possesses legal status, or also a higher-level trade union body. The appropriate trade union bodies of trade union organisations are the sole representatives of employees in collective labour relations. This means that by law only trade unions are authorised to

conduct collective bargaining on behalf of employees and to sign collective agreements, while other employee representatives such as works councils are not. This legislation reflects the trade unions' wishes.

In collective bargaining and in signing collective agreements, the trade unions act on behalf of all employees, regardless of whether they are members of a trade union organisation or not. This principle, which is still not entirely accepted and tends to be considered one of the reasons for the decline in trade union membership and for the diminished significance and authority of collective agreements, is explicitly laid down by law and applies to collective bargaining both at enterprise level and at the level of organisations of social partners.

The real impact of collective agreements has been heavily influenced by the decline over several years in the success of collective bargaining at enterprise level, especially when ELCAs tend usually to be regarded as more important than HLCAs in terms of their practical influence. This is largely thanks to the specific nature of their provisions and the number of employees they cover. There have been year-on-year falls in the number of employers at which a trade union organisation is present (this is relevant to ELCAs) and in the number of employees covered by agreements (this applies to both types of collective agreements, ECLAs and HLCAs).

3. Trade union and Employer awareness

The Racial Equality Directive 2000/43/EC under examination was finally only implemented in the CR on June 17 2009, after the completion of the research. It was only with effect from December 1 2009 that the CR introduced a specialised Equality Body, the Czech Public Defender of Rights. So we could not base our research on comparison of the status prior to and after the implementation of the Directive. That is why we focused on the general awareness of respondents concerning racial discrimination and anti-discrimination law (see below) and made an effort to find out what kinds of shift in perceptions of discrimination have recently occurred in the CR.

The Racial Equality Directive 2000/43/EC – together with a series of other EU directives related to any form of discrimination – should have been implemented in the CR (mainly) via a law on equal treatment and legal means of protection against discrimination (“anti-discrimination law”). This law aims to be a comprehensive legal norm regulating discrimination in general – it is thus not limited to the racial discrimination only, but also covers other forms of discrimination (discrimination on the grounds of sex, age, sexual orientation, etc.).²

The first draft of the above-mentioned anti-discrimination law had already been prepared in 2007. On 16 May 2008, the law was vetoed by the President of the CR (who

² With regard to the relation between the Racial Equality Directive 2000/43/EC and the upcoming law we mention only the anti-discrimination law in the text, although it does not comprise the above-mentioned Directive solely. The term “anti-discrimination law”, however, is more familiar to Czech respondents and puts them in the picture more easily.

described the proposed bill as '*redundant, disserviceable and low-quality and its impacts highly problematic*³). Therefore, in compliance with the Constitution of the CR, the anti-discrimination law must be re-approved by the Chamber of Deputies which only eventually occurred in June 2009.

Prior to the new law, Czech legislation included some provisions on discrimination in a range of legal measures: e.g. Act no. 2/1993 Coll., Charter of Fundamental Rights and Freedoms, Act no. 435/2004 Coll., on employment, Act no. 218/2002, on the service of public officials in the public administration and remuneration of these employees and other employees in the public administrative bodies (Civil Service law), Act no. 361/2003 Coll., on the service of members of security forces. Nevertheless, provisions in these legal norms are just declaratory – i.e. they do not define the term “discrimination”, or sanctions due to racial discrimination, or provide for an institution responsible for protection of individuals who encountered discrimination, etc.

The most important legal norm in the CR in terms of labour law relations, the Labour Code, must be mentioned. In Act no. 65/1965 Coll., the Labour Code in force from the end of 2006, included (in Article 1, sections 3 to 10) a definition of discrimination (direct and indirect discrimination) based on features of discrimination defined in compliance with the Racial Directive 2000/43/EC. Thus pursuant to provisions of Article 7 of the same law, an injured employee is entitled to assert his/her rights to be protected against an employer's discriminatory action. However, these provisions were left out from the new Act no. 262/2006 Coll., Labour Code, which was effective from 1 January 2007, since in the preparation of this law it had been assumed that a special legal norm (the already-mentioned anti-discrimination law) would be adopted, covering the discrimination topic. That is why the new Labour Code in its Article 17 assumes the existence of anti-discrimination regulation, even though it had not yet been approved. From the perspective of labour law, the legal regulation of discrimination was thus less favourable for employees in 2007, 2008 and 2009 than it was compared to the situation prior to the end of 2006.

The Racial Equality Directive, however, was supposed to have been implemented before May 1st 2004 when the CR joined the EU. For this non-observance of its obligations towards the European Union, at the time of our research, the European Commission was conducting four proceedings against the Czech Republic, related to insufficient implementation of the anti-discrimination directives⁴, while the Racial Equality Directive 2000/43/EC was at the stage of a formal warning notice.

³ The President of the CR put his veto on the anti-discrimination law, 16. 5. 2008; available in Czech on-line at <http://www.klaus.cz/klaus2/asp/clanek.asp?id=ahwargtnbdc7>, quotation of 10. 4. 2009.

⁴ Apart from the Racial Equality Directive 2000/43/EC, it is the Council Directive 86/378/EEC of 24 July 1986 on the implementation of equal treatment for men and women in occupational social security schemes (the proceeding is at the stage of the justified statement), Council Directive 96/97/EC of 20 December 1996, amending the Directive 86/378/EEC on the implementation of equal treatment for men and women in occupational social security schemes (the proceeding is at the stage of the justified statement) and the Council Directive 2000/78/EC of 27 November 2000, laying down the general framework for equal treatment in employment and occupation (the proceeding is at the stage of formal notice). Source: server Diskriminace.cz, available in Czech on-line at http://www.diskriminace.cz/dt-zakon/info_prijimaniaz.phtml, quotation of 10. 4. 2009

Awareness of the anti-discrimination legislation is growing in the CR, in part because of the controversial legislative process (including the President's veto) and the discussions about its necessity. It can be stated that all respondents addressed knew about the contents and the aim of the anti-discrimination legislation. Overall, however, social partners' knowledge of the given legislation depends on the level at which the partners operate. As a rule, the awareness of social partners at the national and sectoral level is higher than among social partners at the regional or enterprise level. It also depends on the capacity of the organisation (larger organisations with legal departments are better informed). In terms of individual employers, their awareness of the anti-discrimination legislation is conditioned by whether the companies have experience in employing racial minorities.

All respondents were usually well informed about anti-discrimination law issues, including protection against racial discrimination. The most detailed knowledge of the situation was represented by NGO and Regional Authority respondents. In general, employer respondents were more aware of the current situation regarding the anti-discrimination law, racial discrimination and the directive since they have experience of cooperation with ethnic minorities (and potential problems with discrimination) than the trade unions, whose members are mainly from the majority population.

Formatted: Table Contents

I monitor its development regularly (employer respondent, GUMOTEX, s. r. o., on anti-discrimination law).

I do not consider racial discrimination to be a problem in our workplace, that is why we don't pay attention to the antidiscrimination legislation. (respondent from Temporary Work Agency, STAMONT-METAL INTERNATIONAL).

Deleted:

Formatted: Expanded by 0.3 pt

Deleted: R

Formatted: Font: Italic

Formatted: Expanded by 0.3 pt

Formatted: Font: (Default) Arial, Italic

Formatted: Font: (Default) Arial, Italic

Formatted: Font: Arial, Italic

Formatted: Font: (Default) Arial

Deleted: T

Formatted: Font: (Default) Arial

Formatted: Font: (Default) Arial, Italic

Trade union respondents are also aware of the current situation on antidiscrimination issues. However, they usually strongly prefer dealing with gender issues, as part of the non-discrimination agenda:

In 2007, our trade union took part in the talks at the European level on conclusion of the Autonomous General Agreement on harassment and violence at work...

The work of the Committee for Equal Treatment, which deals with issues of equal treatment and rewarding, is also supported by our trade union. (Health Care and Social Care trade union respondent).

All the activities performed by trade unions are limited to high-level proclamations concerning equal treatment of men and women at work, discrimination in rewarding, discrimination of trade union members and also racial discrimination which are usually stated in the preliminary sections of both enterprise and higher-level collective agreements (OS KOVO trade union respondent).

The awareness of racial minority members about possibilities of protection against racial discrimination is, according to respondents, very differentiated and depends on their employees' knowledge of the Czech environment and working conditions:

I don't know whether it is influenced by any directive, they are very well aware of what they want to be informed, I was often at construction sites and saw the situation. They know what they are and what they are not entitled to... (trade union respondent, OS STAVBA)

The discriminated themselves often do not know they are discriminated. (Roma coordinator, Regional Authority of Usti Region)

These workers (Asian workers) also know working conditions of Czech employees very well, and if they feel undervalued, they are not afraid of raising a protest and even go on strike [they interrupted the production in the past].

(respondent from Temporary Work Agency, STAMONT-METAL INTERNATIONAL)

Deleted: R

Deleted: ,

4. Comments on the Equality Body

Until December 1 2009 there was no such a Body in the Czech Republic.

5. Trade union and employer policies and measures

5.1 Employers

Respondents from the employers group do not consider racial discrimination at work to be a fundamental problem. Although they occasionally encounter racial discrimination at work, they think they have sufficient means to deal with such a situation and how to help the discriminated, either by themselves or by reference to the non-profit sector or the relevant government authorities.

The only example mentioned was the case of two black nurses of African origin employed in Thomayer hospital, who reported to occasionally being the victims of racial discrimination from some patients who required to be treated only by white nurses. The employer resolved this situation by combining white and non-white nurses for each shift so that patients can be treated based on their preference and at the same time, non-white nurses are protected to some extent against potential hurt caused by patients' demonstrations of racial discrimination. However, this is probably a unique case since black employees are not common in the Czech Republic.

If racial discrimination appears, it is always in the relation between the employee versus patient... Hard-working and serious persons have no problems with racial discrimination at workplace. (employer, Thomayer hospital)

I do not consider racial discrimination as a problem in our workplace, that is why we don't pay attention to the antidiscrimination legislative. (employer, BV elektronik)

If racial discrimination occurs, it mostly concerns relations between white foreign employees of the employment agency (Ukrainians, Romanians) and the others (Vietnamese, Chinese, Mongolian) agency employees. (respondent from Temporary Work Agency, STAMONT-METAL INTERNATIONAL)

Deleted: R

Deleted: ,

There is no special policy on racial/ethnic/cultural discrimination, so no significant changes have occurred. However, certain changes did occur in this field, though not as a result of the anti-discrimination legislation. In the last two years, when the Czech Republic was going through a period of economic growth and suffering from a lack of labour force, this resulted in the import of labour by employers, or rather work agencies, even from distant non-European countries. Some employers responded to the arrival of these employees by introducing management training in how to deal with such employees. Their motivation was not to protect employees against discrimination but to avoid potential conflicts arising from mutual misunderstandings and differences in culture. However, this practice is exceptional, being utilised only by big employers and government institutions. Respondents also mentioned global companies that set forth rules for racial and ethnic equality in their codes of conduct and internal guidelines.

5.2 Trade unions

The unions usually provide legal support to their members concerning issues of labour law and occupational health and safety, which means that they are able to help in racial issues too. In legal matters, the union represents its members in lawsuits. Trade unions in CR usually deal mostly with issues of equal treatment and remuneration in general or with gender issues. Racial discrimination is not a special issue: *'Awareness of discrimination among employees is mostly shown in areas such as equal treatment at work, discrimination in remuneration, or violence and harassment at work. Racial discrimination issues remain minor'*, says a respondent from the Trade union for Health Care and Social Care - *Odborový svaz zdravotnictví a sociální péče České republiky*.

As far as collective bargaining is concerned, policies and guidance manuals published by the trade unions recommend that their organisational units include a ban of discrimination (on whatever grounds) in their collective agreements. But the provisions are usually only of a declarative nature, without a real impact. For instance, the sample collective agreement recommended to enterprises by the trade union OS STAVBA, states in section D, article 12, clause b) states:

The employer is obliged to ensure equal treatment of all the employees, as far as their working conditions, including their remuneration and other monetary payments and cash performance, special preparation and opportunities for career or another growth in the job are concerned; a differentiation, which is set out in the Labour Code or in a special legal regulation or for which there is an objective reason consisting in the type of work the employee performs and which is necessary for the performance of this work, is not considered unequal treatment.

The higher-level collective agreement concluded by the trade union OS KOVO and the Union of Employers' Associations of the CR (*Unie zaměstnavatelských svazů České*

republiky) and the Association of Apprentice Facilities (*Sdružení učňovských zařízení*) for years 2007–2008 states in chapter I, article 4: '*Rights resulting from the labour law code pertain without any limitations and discrimination.*'

6. Views on how to tackle discrimination better

In the opinion of the respondent from the non-profit sector, there is no social and political will in the CR to deal with racial and ethnic equality issues. There exist several non-profit organizations and advisory centres that (among other things) help employees' affected by discrimination. Employees in the non-profit sector and the public administration focusing on the racial minority topic point out that the adoption of the anti-discrimination law (or implementation of the European Directive above) itself will not resolve the situation: '*The anti-discrimination law is important, however, as such, it cannot eliminate discrimination.*' (Roma coordinator, Regional Authority of Usti Region)

A trade unionist from OA KOVO agrees: '*The law as such cannot improve the situation unless there is a force to claim these rights and matters, which are mentioned there, to claim them efficiently. It will not become better, a paper does not make anything better.*'

The first step must be taken by the employee who feels discriminated against. Racial discrimination can be resolved under the current legislation too, as some anti-discrimination cases⁵ proved, but the precondition for the successful fight against discrimination is that the discriminated individual must be willing to deal with his/her situation – and this is often the greatest obstacle. The following factors contribute to this situation:

- a) Individuals themselves often do not know they are discriminated against (they consider the discriminatory behaviour towards themselves to be 'standard');
- b) Discriminatory behaviour worries the employee, but he or she does not know whom to contact for assistance or how to deal with this situation;
- c) The discriminated individuals are aware of discrimination and know whom to contact but are afraid that if they make their case "public", it will worsen the situation.

In the context of the new anti-discrimination law, it is precisely the overcoming of these obstacles that is a precondition for a successful fight against discrimination at work.

Another deficiency in the CR, according to the respondents from the non-profit organizations and public authorities, is the existing approach of the supervisory bodies – Labour Offices⁶ and in particular the State Labour Inspection Office and regional inspectorates⁷ – which serve as inspection authorities in terms of labour-law relations

⁵ See Significant anti-discrimination cases in the Czech Republic in 1989–2006, available on-line http://www.diskriminace.info/do-etnicka/rozsudky_cr.pdf, quotation of 11. 4. 2009

⁶ Their activity is governed by the Act no. 435/2004 Coll., on employment.

⁷ Their activity is governed by the Act no. 251/2005 Coll., on labour inspection.

and working conditions. In case of suspicion of racial discrimination, these bodies are among the institutions which the discriminated employee can contact and file a motion. However, their existing activity is considered by the respondents from the non-profit institutions to be inconsistent and superficial – the time from the filing the motion to the inspection performed is excessively long, inspectors are often happy to make just a formal inspection and evaluation regardless of the actual condition at the workplace, etc. This is partly due to the work overload of these authorities and also to the individual approach of each inspector (inconsistency, personal aversion etc).