

THE CZECH REPUBLIC

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1. National court system

The Justice system of the Czech Republic is formed by 86 District Courts, 8 Regional Courts, 2 High Courts (seated in Prague and in Olomouc), the Supreme Court, the Supreme Administrative Court and the Constitutional Court.

The Constitutional Court is located in Brno represents the highest judicial authority in the Czech Republic, however it stays out of the structure of other courts and its main activity is to protect the constitutional order and fundamental rights in the Czech Republic. The statute regulating its operations in detail, the Act on the Constitutional Court,¹ was adopted on 16 June 1993. The Constitutional Court does not form part of the system of ordinary courts. The Constitutional Court consists of 15 Justices. All members are appointed by the President with the consent of the

¹ Czech Republic/Zákon č. 182/1993 Sb., o Ústavním soudu [Act No. 182/1993 Coll., on the Constitutional Court], available at http://angl.concourt.cz/angl_verze/act.php (in English, last accessed September 12, 2009).

Senate. The Justices are appointed for a 10-year term of office, and there is no restriction on reappointment. It has jurisdiction over, *inter alia*, the following matters:

- *Abstract constitutional review of enacted norms (ex post facto or repressive control)*

Petitions Lodged as a Prerogative of Office (*ex officio*)

- Acts of Parliament or individual provision thereof - if proposed by the President or a group of either 41 Deputies or 17 Senators;
 - other enactments or individual provision thereof - if proposed by the government or a group of either 25 Deputies or 10 Senators.
- *Concrete Constitutional Review (Petitions Lodged Incidental to a Dispute)*
 - Within the context of a specific dispute, an ordinary court hearing a case, a panel of the Court when deciding a constitutional complaint, or a person in conjunction with his submission of a constitutional complaint may submit a petition to annul an Act of Parliament or another enactment.
 - *Constitutional complaints (Constitutional Review of Decisions and Official Acts)*
 - A natural or legal person submitting a complaint must claim that their constitutionally protected rights have been violated as a result of official decision, of a measure, or some other action by public authority. A constitutional complaint is inadmissible if the complainant failed to exhaust all procedural remedies afforded him by law for the protection of his rights. Citizens do not have a general right to complain of unconstitutionality (*actio popularis*). A petition to annul an Act of Parliament or other enactment may be attached only if it formed the basis of the violation;
 - A representative body of municipality or self-governing region must claim that the state has encroached upon its right to self-government.

The Supreme Court is the highest judicial body in matters that fall within the jurisdiction of courts, with the exception of matters that come under the jurisdiction of the Constitutional Court or the Supreme Administrative Court. The Supreme Court's agenda consists primarily in decision-making on extraordinary legal remedies against appellate court decisions, in appeals on complaints for the violation of law and on the recognition of rulings made by foreign courts and their enforcement within the Czech Republic, if it is required by domestic law or an international treaty. The Supreme Court monitors and analyses final enforceable decisions of the courts in both

civil and criminal proceedings and on their basis and in the interest of the uniformity of courts decision-making adopts standpoints on the courts decision-making in the matters of particular kind.

The Supreme Administrative Court of the Czech Republic, seated in Brno, is the highest judicial authority in matters falling within the competence of administrative courts. The task of administrative justice is to provide protection to individual (subjective) public rights of natural and legal persons. It is performed by administrative courts, specialised chambers within regional courts acting as administrative courts of first instance, and the Supreme Administrative Court, as the court of last instance. A special additional task, discharged by the Supreme Administrative Court, is to ensure the unity and legality of the decisional practice of regional courts and administrative authorities. The principal instrument for achieving this objective is the causational complaint: the Supreme Administrative Court is entitled to hear causational complaints challenging final decisions of regional courts in matters of administrative justice, in which complainants seek the annulment of an administrative decision, incl. e.g. decisions in asylum matters. This type of judicial protection against unlawful administrative decisions is supplemented by protection against inaction by an administrative authority (failure to act) and protection against unlawful interference by an administrative authority. The competence of the Supreme Administrative Court comprises also electoral matters (the validity of elections and voting, electoral registers etc.), issues of local referenda, as well as the registration and dissolution of political parties and movements. The Supreme Administrative Court is finally called upon to decide positive as well as negative conflicts of competence between administrative authorities and/or territorial or professional self-governing bodies.

The judges of the Supreme Court together with the judges of the Supreme Administrative Court decide in positive and negative conflicts on jurisdiction and on subject-matter competence where parties to such a conflict are the courts acting in the civil proceedings and the administrative courts or the courts and the bodies of executive power and municipal, interest or vocational self-administration. In the questions of jurisdiction, a special tribunal composed of three judges of the Supreme Court and three from the Supreme Administrative Court decide. This tribunal hears and decides above mentioned cases in the premises of the Supreme Administrative Court.

The jurisdiction of the civil courts is set out in general terms in Section 7 Subsection 1 of the Civil Procedure Code. This provision identifies individual types of private-law disputes, such as disputes arising from civil-law, family, labour and business relations. Czech civil procedure does

not make any distinction with regard to jurisdiction on the basis of cause. Specific types of case are not, therefore, heard by specialised courts designated for that purpose and forming part of the judicial system. In principle, therefore, the ordinary court is competent in all private-law cases.

In general, the civil courts are responsible for adjudicating on claims for damages brought about by discriminatory acts. In cases of discrimination by public authorities, the administrative courts have jurisdiction pursuant to Section 4 Administrative Procedure Code.

In the discrimination cases there if the applicant is unsuccessful he has a right to appeal the judgment from the regional court to the high court in 15 days. The basis for the appeal could be some formal insufficiencies of the proceedings (lack of impartiality, wrong composition of the court etc.) as well flaws in the proceedings, which might have negative impact on the justness of the decision, the court did not considered the facts of evidence presented by the applicant, if the court of first instance has not examined all evidence needed to proof the decisive facts, if the court of instance came to wrong conclusion on facts based on examined evidence, if new evidence appeared which has not been examined yet, if the decision of the court of first instance is based on flaw legal assessment of the matter.² The appellate court might dismiss the appeal, confirm the decision of the court of the first instance, repeal the decision and return the case to the court of first instance, to take new decision in the case.³ In exceptional cases of special crucial legal importance the judgments in force might be appealed to the Supreme Court as an extraordinary remedy.⁴

Judges are appointed to their office for an unlimited term by the President of the Republic. They assume their duties upon taking the oath of office. Any citizen who has a character beyond reproach and a university legal education may be appointed a judge. Further qualifications and procedures shall be provided for by statute. In making their decisions, judges are bound by statutes and treaties which form a part of the legal order; they are authorized to judge whether enactments other than statutes are in conformity with statutes or with such treaties. Should a court come to the conclusion that a statute which should be applied in the resolution of a matter is in conflict with the constitutional order, it shall submit the matter to the Constitutional Court.

The Public Defender of Rights (Ombudsman) is an independent, non-judicial, authority, appointed by the Parliament with the aim to counteract discrimination and promote equal rights.

² Czech Republic/*Občanský soudní řád* [Civil Procedure Code], (14.12.1963), Section 205.

³ Czech Republic/*Občanský soudní řád* [Civil Procedure Code], (14.12.1963), Sections 201 – 277.

⁴ Czech Republic/*Občanský soudní řád* [Civil Procedure Code], (14.12.1963), Sections 236 – 243d).

Discriminated individuals can file a complaint to the Ombudsman who can choose what cases to represent a discriminated individual in court proceedings free-of-charge for the individual.

2. Restrictions regarding access to justice

In regard to antidiscrimination, no special limits for accessing courts in discrimination cases exist. However, there are some general issues potentially undermining the right of access. One of these issues is the unclear position of the new Antidiscrimination Act to other laws, which encompass provisions on discrimination, *in concreto* whether the Antidiscrimination Act has to be considered as *lex specialis* or *lex generalis* in relation to the other laws. This is of practical relevance, as previously legal provisions on discrimination were rather scattered. Even though the Antidiscrimination Act is supposed to be *lex generalis* and thus unifying law, it amends only some of the laws containing special provisions on discrimination. Other relevant laws remain unchanged in order to unify the legal framework on protection against discrimination. Thus there continues to be lack of clarity on provisions of the various laws, which produces legal uncertainty, potentially hampering the access to courts in discrimination cases.

The considerable length of legal proceedings is also problematic as well as the financial cost, which is very de-motivating for the victims, because they do not want to tangle in a long litigation, moreover, usually with an uncertain result. The Czech legal system then also provides very few options how to solve possible disputes regarding discrimination without legal proceedings (e.g. mediation, etc.). Moreover, victims of discrimination often do not know about these options. These factors lead often to situations, when the victims of discrimination rather suffer violations of their rights instead of defending themselves.

Furthermore, Section 10 Antidiscrimination Act, providing the right of access in discrimination cases, remains for the victims of discrimination one of relatively few options which legal instruments to use to protect their rights. The victims are enabled to initiate proceedings against discriminatory behaviour, but in general there is no special (legal) action to protection against discrimination. In many cases of discrimination it would also be desirable to reach settlement without legal proceedings. However, the Antidiscrimination Act does not offer an alternative dispute settlement and there is only a draft law on mediation in preparation. Thus even in this area the current antidiscrimination legislation does not facilitate access to justice for victims of discrimination.

3. Length of judicial proceedings

The length of proceedings is in general a well-known and long-lasting problem in the Czech Republic and the European Court of Human Rights adjudged several times the Czech Republic for the infringement of Art. 6 (1) ECHR.⁵

Analysis of the complaints brought against Czech courts, complaints regarding the length of proceedings clearly dominate - in 2008 more than 65 per cent of all complaints against Czech courts were complaints concerning length of proceedings, in 2006 and 2007 the number was over 70 per cent. However, these numbers cover cases in all fields of law, not only the fields of *acquis* relevant to this study.

The problem of lengthy proceedings does not concern only courts, but also the Czech Ministry of Justice even in handling compensation claims concerning infringements of the right to timely resolution of disputes.⁶ The claimants have subsequently to bring an action before the civil courts in order to obtain redress. However, even such subsequent proceedings before courts concerning such claims for compensations take in average nearly 2 years.

More representative are therefore numbers of proceedings on protection of personality, which was until the entry into force of the Antidiscrimination Act the main mechanism assuring the general judicial protection in discrimination matters. The average length of proceedings on protection of personality, until a decision of a first instance court is reached, has been in 2008 21 months and 13 days. However, it has to be remarked, that there are sometimes strong regional differences. For example in 2007 the average duration in South Moravia region has been 3 years 7 months, whereas in Western Bohemia region only 10 months.

⁵ In 2008, the European Court of Human Rights found against the Czech Republic in 10 cases, which concerned violation of Art. 6 (1) ECHR; cf. the governmental report on the state of human rights in the Czech Republic in the year 2008 Czech Republic/Vláda ČR, *Zpráva o stavu lidských práv v České republice v roce 2008*, available at <http://www.otevrenaspolecnost.cz/download/files/zprava-lp-2008.pdf> (in Czech, last accessed September 15, 2009).

⁶ The Czech Ministry of Justice has to handle the claim within 6 months. However, in 75 per cent of claims the handling takes longer. Cf. the graphic chart on the total numbers of claims and claims handled by the Ministry with delay, available at http://www.llp.cz/files/file/k%20tiskovka%C3%A1m/graf_zadosti%20o%20odskodneni.pdf (in Czech, last accessed September 10, 2009).

4. Are procedures concluded within a reasonable time?

The length of proceedings is a structural and well-known problem of Czech legal system. The efforts to address the problem do not show any considerable success.

5. Does provision exist for speedy resolution of particular cases?

No special expedited procedures in the field of antidiscrimination legislation exist under Czech legislation.

There are general means available, which provide for an expedite procedure for in civil and administrative proceedings. Section 56 Administrative Procedure Code lays down submissions and suits, which the court has to handle preferentially. In civil matters, the Court may issue a decision without ordering an oral hearing, if the decision can be issued on the basis of documentation and the parties do not object (Section 115a Civil Procedure Code).

Sections 172ff. Civil Procedure Code provides the possibility to issue a payment order, electronic payment order, European payment order or Bill or Cheque payment order. This expedited procedure is possible for civil suits concerning pecuniary claims, when the court will order the respondent to pay the claimed amount and process costs within 15 days from delivery without conducting an oral hearing. For the electronic payment order, the claimed amount must not exceed 1.000.000,-CZK and a secured electronic signature has to be used. In the case of an objection of the respondent, the court must call for a hearing.

There are other situations, in which the courts have to as quickly as possible. For example in cases of detention of an alien, a judicial review of the decision on detention might be claimed.⁷ Pursuant to Section 200 u Subsection 1 of the Civil Procedure Code, the court is obliged to handle the claim preferentially and as quickly as possible. In the same way the court is obliged to determine, whether a parental consent is needed in case of adoption (Section 180 a Subsection 4 Civil Procedure Code).

⁷ Czech Republic/*Občanský soudní řád* [Civil Procedure Code], (14.12.1963), Section 200 o).

Moreover, under the Czech legislation, a mean⁸ is available in order to expedite lengthy proceedings, satisfying standards of the European Court of Human Rights on effective remedies within the meaning of Articles 6 (1) and 13 ECHR.⁹ In case a certain procedural step is not issued within the term allowed, the party may file the so called ‘motion on determination of term for taking a procedural step’,¹⁰ for example for ordination of a hearing. This motion is a request in writing that the higher authority having jurisdiction in the matter shall determine time limit for the lower court, which causes the delay, to take the procedural step. Czech courts, however, do not use this possibility often. In 2008, only 36 out of 260 motions were recognized by courts as substantiated.

6. Is it possible to waive the right of access to a judicial body?

No special legal provisions exist under the Czech law concerning waiving the right of access to a judicial body in discrimination cases or in cases concerning the free movement of persons. Thus general principles of the Czech legal order concerning waiving right to access to a judicial body are applicable.

The right of access to a judicial body is guaranteed on constitutional level by Section 36 Subsection 1 and Subsection 2 of the Czech Charter of Fundamental Rights and Freedoms. On the constitutional level, Section 1 of the Charter of Fundamental Rights and Freedoms provides, that ‘... fundamental rights and basic freedoms are inherent, inalienable and not subject to prescription and repeal.’ Legal literature suggests that even the right of access to courts pursuant to Section 36 Charter is a procedural right, it is also covered by Section 1 Charter, and that the meaning of the word ‘inalienable’ in Section 1 is that the fundamental rights and freedoms can not be subject to the disposition. Thus it might be suggested that is not possible to waive the right of access to courts abstractly and *pro futuro*.

⁸ Other two means are available, which are, however, not being considered by the European Court of Human Rights as an effective remedy: 1. Complaint about delay, Sections 164 – 174 Act No. 6/2002 Coll., on Courts and Judges; 2. Constitutional complaint pursuant to Section 72 Subsection 1 a) Act No. 182/1993 Coll., the Constitutional Court Act.

⁹ It is the *Zákon č. 7/2009 Sb.* [Law No. 7/2009 Coll.], which made this mean satisfying with effectiveness standards as formulated by the European Court on Human Rights. For more details on the problem see the report of NGO Liga lidských práv (2009) *Soudní průtahy: preventivní a kompenzační prostředky nápravy*, pp. 9.

¹⁰ Czech Republic/*Zákon č. 6/2002 Sb., o soudech a soudcích* [Act No. 6/2002 Coll., on Courts and Judges], Sections 174 a). Cf. also the decision of High Administrative Court: Czech Republic/Nejvyšší správní soud/21 Cul 3/2004 Sb. (12. 1. 2005).

However, there is no clear answer on the question, whether the constitutionally guaranteed right of access can be waived, as this question has been widely neglected in Czech legal literature or jurisprudence.¹¹

On the statutory level, in civil and administrative proceedings it is possible to waive a right to appeal a decision once the decision was passed (Section 207 Civil Procedure Code). Once the right of appeal was waived, it is not possible to continue in the proceedings and it is also not possible to lodge a constitutional complaint to the Constitutional Court.¹²

7. Access to non-judicial procedures

Regarding access to non-judicial procedures in discrimination cases, the authority of Czech Public Defender of Rights (Ombudsman) can be mentioned. The Ombudsman activities shall cover all grounds of discrimination stipulated by the Antidiscrimination Act.¹³ He/she exercises observance of the Act, provides guidance to alleged victims of discrimination (in filling proposals to commence proceedings), provides advice in response to questions regarding discrimination, carries out independent research and informs the public.

The Office of the Public Defender of Rights of the Czech Republic was established in January 2001 by the Statute of the Public Defender of Rights. The Statute is based on the Act on the Public Defender of Rights. The Office of the Public Defender of Rights was established to fulfill the tasks related to professional, organizational and technical support of the activities of the Public Defender of Rights.

The Head of the Office who chairs the Office acts as a statutory body of the office. The Head of the Office and undertakes all of his activities in compliance with the directions and instructions of the Public Defender of Rights. The Office has the following divisions: Secretarial Division of the Defender and the Deputy Defender, Division of General Competencies, Division of

¹¹ Personal interview on September 15, 2009, with JUDr. Michal Bartoň, Ph.D. from the Palacky University in Olomouc, Department of Constitutional Law.

¹² Cf. Ústavní soud ČR/Usnesení IV. ÚS 645/05 (13.10.2005).

¹³ Pursuant to Section 1 Subsection 5 and Section 21 b) Public Defender of Rights Act (*Zákon č. 349/1999 Sb., o veřejném ochránci práv* [Act No. 349/1999 Coll., Public Defender of Rights Act], available at http://portal.gov.cz/wps/portal/_s.155/701?number1=349%2F1999&number2=&name=&text= [in Czech, last accessed September 10, 2009]).

Administrative and Filing Services and Division of Internal Administration. Administration of the budget of the Office is governed by binding regulations.¹⁴

The Public Defender of Rights works to defend persons in relation to the actions of authorities should such actions be inconsistent with the law, in contradiction to the principles of a democratic legal state and good administration, and also in the event of inaction by these authorities, thereby contributing to the defense of fundamental rights and freedoms. There are no direct means or mechanisms for enforcement at the Defender's disposal. The Defender requests that the state administration body responsible for malpractice or error to remedy the situation and ultimately passes the matter on to government if the remedy is not provided. The Defender cannot change or replace the decision of the state administration body concerned, but it can instruct the supervisory bodies to apply their power to ensure remedy of the situation. If the authority does not fulfil the obligation the Defender may inform a superior authority or, if there is no such authority, the Government and also inform the public; including the disclosure of the names and surnames of persons authorised to act on behalf of the authority.

The Defender is, with the knowledge of those responsible for the authorities concerned, authorized to enter all areas of the authority concerned even without prior warning in order to carry out an investigation involving the Consultation of files, Interviewing of employees, Interviewing of persons without the presence of third parties. The authorities concerned are obliged to provide the services within set time limits; mainly provision of information and explanations, provision of files and other written materials, communication of a written point of view as to the facts of the case and legal matters, provision of evidence on the request of the Defender. The Defender is authorized to be present at interviews and the provision of evidence by authorities to put questions to the attendees. All state administration bodies and persons conducting public administration are, within the scope of their competence, obliged to provide all aid requested by the Defender in the performance of the Defender's investigation.

If during the course of his investigations the Defender does not discover any violations of law or other misdemeanour, the Appellant and the authority concerned shall be informed in writing. If during the course of his investigations the Defender does discover violations of the law or other

¹⁴ Především zákon č. 219/2000 Sb. o majetku České republiky a jejím vystupování v právních vztazích, ve znění pozdějších předpisů, 320/2001 Sb., o finanční kontrole ve veřejné správě a o změně některých zákonů, 62/2001 Sb. o hospodaření složek státu a státních organizací s majetkem státu [Mainly stipulated by the Provisions of Act No. 219/2000 Coll. on the Property of the Czech Republic and its Representation in Legal Relations, Act No. 320/2001 Coll. on Financial Supervision and Ministry of Finance Decree No. 62/2001 Coll. on Administration of Budget of State Structural Components and on State Organisations Adminstrating the Property of the State]

misdemeanours, the authority concerned will be invited to provide a reaction on such discoveries within 30 days. Should the authority concerned respond to above stating that it has carried out or is in the process of carrying out corrective measures, and the Defender considers these measures to be sufficient, the Appellant and authority concerned shall be informed of the decision. In all other cases the Defender will, following receipt of the reaction, or should the time limit expire without reaction, inform the Appellant and authority concerned alike of his final decision; part of this decision will be a proposal for corrective measures to be taken. The Defender may propose mainly the following corrective measures: opening of a procedure to review a decision, action or procedures taken by the authority, should it be possible to open such a procedure by virtue of office, instigation of measures to prevent non-action, instigation of disciplinary or similar action, instigation of prosecution for a criminal act, offence or other administrative wrong, the provision of damage compensation or the claim of damage compensation. The authority is obliged to inform the Defender within 30 days of the receipt of the final decision of the corrective measures that have been taken. However, the Defender can neither issue a decision in a case nor he has direct means of enforcement at his disposal. He/she also does not possess the power to change judgments or decisions of public authorities. The Czech Ombudsman can request the body of state administration responsible for malpractice or error to remedy the situation. Should the relevant body fail to provide remedy, the Defender may eventually pass the matter to the Government. Therefore, the individual complaint procedure addressed to the Ombudsman can not be regarded as a non-judicial procedure enabling to obtain redress.

No alternative dispute resolution such as mediation was perceived by the relevant laws neither is provided for by Anti-Discrimination Act in cases of discrimination. Arbitration is a widely-used dispute resolution procedure. However, not all matters in dispute are amenable to arbitration. Pursuant to Section 2 of the Act on Arbitration Procedure,¹⁵ arbitration for a dispute is given, if parties thereof could settle the matter in dispute by the means of court settlement pursuant to Section 99 Civil Procedure Code.¹⁶ There are administrative procedures available as protection against discrimination. Specific public bodies might within their competence launch and administrative proceeding and impose a fine based on individual complaint. These are for example Labour Inspectorates, which have a competence to inspect employers also in relation to

¹⁵ Czech Republic/*Zákon č. 216/1994 Sb., o rozhodčím řízení a o výkonu rozhodčích nálezů* [Act No. 216/1994 Coll., on Arbitration Procedure and Enforcement of Arbitration Awards], available at http://portal.gov.cz/wps/portal/_s.155/701?number1=216%2F1994&number2=&name=&text= (in Czech, last accessed September 11, 2009).

¹⁶ Czech Republic/*Občanský soudní řád* [Civil Procedure Code], (14.12.1963), Section 99 Subsection 1 provides, that 'the parties to the dispute can end proceedings by court settlement, if the nature of the matter in dispute allows it.'

unequal treatment. Consumers might turn to Czech Commerce Inspection and Czech School Inspection inspects cases of discrimination in education. The victims of discrimination might achieve only to remedy the illegal situation and to stop the discrimination. The victims cannot be granted compensation for material or immaterial damage through this means and have to turn to the civil court with their claims.

8. Legal aid

The party who establishes lack of sufficient means may at his or her own request be exempted from judicial fees by the decision of the presiding judge. If, however, the court concludes that the proposal patently cannot be successful, it shall deny such request. The court shall rescind the granted exemption at any point during the proceedings, even retroactively, if before the conclusion of the proceedings by a final decision it transpires that the party's circumstances do not, or did not, warrant the granting of exemption.

However, the fact that legal aid is not assured automatically for all cases of discrimination and that legal aid does not cover all costs involved has the effect that the right to a fair proceeding in discrimination cases is limited in Czech Republic. Another possibility of legal aid is provided in the Act on Legal Profession. The legal aid may be granted to an applicant who addressed the Czech Bar Association and claimed that he or she was not able to find a lawyer.

Legal regulation of free legal aid is currently provided in Czech legislative system, but is rather unsystematic and is not sufficient for adequate legal certainty for subjects in need. The draft Law on Free Legal Aid is currently being prepared, the purpose of which is to ensure access to legal assistance for anyone who cannot, for financial reasons, is not able to ensure legal aid and thus efficiently provide his rights.

As far as the anti-discrimination field is concerned, the procedural role of NGOs in the Czech Republic in discrimination procedures remains limited. On the other hand, it can be concluded that there are many non-governmental organizations that have significant activities in the field of anti - discrimination¹⁷ (from the monitoring role, to the legal representation of individuals who have become victims of discrimination).

¹⁷ There are many active NGOs in the field of protection against racial and ethnic discrimination, such as Counselling Centre for Citizenship, Civil and Human Rights, Zřvůle práva (Despotism of the Law), Environmental Law Service, the League of Human Rights, People in Need, the Association of Civil consultancy, Rome, IQ Roma

Existing legislation allows, either explicitly or in effect, the active involvement of NGOs in discrimination procedures. Anybody, including a non-governmental organization may give impulse to the initiation of administrative proceedings and the addressed state body must consider the initiation of administrative proceedings and inform the person submitting the impulse whether a formal administrative proceedings will be carried out or not. NGOs, only on the basis of the full power from the victim, can submit complaints against inappropriate behaviour of administrative officials and against all steps of the administrative body if the law does not provide for any other means of protection.¹⁸

According to the Code of Civil Procedure,¹⁹ Administrative Procedure Code,²⁰ and Law on the protection of consumers²¹ in matters of protection against discrimination a participant can be represented by associations founded under the Law on Association of Citizens,²² if they included the protection against discrimination in the statutes listed as an activity. The Act on the protection of consumers allows such associations to bring an action to the court for an injunction on the infringement in the matter of protection of the rights of consumers and to participate in such proceedings.

NGOs have been trying to use existing instruments to combat discrimination in practice. On the other hand, frequently their effort is hindered by the fear of the victims, lack of evidence, or the length and expense of court proceedings. This often leads to the fact that discriminatory cases ultimately are not dealt with in legal proceedings. Important in this connection is that a special body to promote equal treatment has not been legally established so far (as defined in Article 13 of Directive).

There are currently only a relatively small number of non-governmental organizations²³ functioning as independent bodies and carrying out all or most of the functions laid down in Directive 2000/43/EC. However, they suffer from a lack of funding and their activities are

service, ICOS Český Krumlov - Centre for Social Services and the Centre for the protection of human rights, the Iuridicum Remedium, Czech Helsinki Committee, Romodrom etc.

¹⁸ See Section 175 and 2/3 of Act No. 500/2004 Coll., Administrative Code, as amended [Zákon č. 500/2004 Sb., správní řád]. A complaint can be submitted only by the person directly affected by the administrative body's action in the individual case. Therefore, the NGO can submit a complaint only on the basis of the full power.

¹⁹ See Section 26/3 of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended. Participants in matters of protection against racial or ethnic discrimination may be represented in proceeding by the association arising from the special legislation (Act No. 83/1990 Coll., Law on Association of Citizen, as amended), which targets the activities to protection against such discrimination and it is stated in the statutes.

²⁰ See Section 35/4, of Act No. 150/2002 Coll., the Administrative Procedure Code, as amended.

²¹ See Section 25/2, of Act No. 634/1992 Coll., the Law on the protection of consumers, as amended

²² Act No. 83/1990 Coll., The Law on association of Citizens, as amended.

²³ Presumably there are less than 20 subjects. (Source: Report on options for action to eliminate discrimination, available at http://diskriminace.info/do-etnicka/zprava_o_moznostech_opatreni.pdf, available only in Czech).

therefore very limited. Currently, many NGOs are due to the lack of funds unable to carry out direct assistance or legal representation in judicial proceedings to victims of discrimination on the ground of racial or ethnic origin. Funding for legal aid and representation in discrimination cases are mainly obtained from the EU grants. State funding sources are available primarily in the field of social services in general. Some campaigns against racism were also funded from the State budget.²⁴

The draft anti-discrimination law²⁵ contains, inter alia, legal means of protection in individual cases. Protection of victims of discrimination through legal persons (NGOs) is defined in Section 11 of the Act. It should be noted that the range of their activities is limited to providing information on legal assistance, assistance in drafting proposals, respectively submission to the initiation of administrative proceedings. In this regard it is not a provision that would change the applicable law of the Czech Republic, since information about the possibility of a legal defence can be brought by anyone in the Czech Republic, as well as submission to the initiation of administrative proceedings to the competent authority. It must be said that the President of the Republic vetoed this Anti-discrimination Act in May 2008.

Currently existing legislation allows (in matters of protection against discrimination) individuals to be represented by legal persons (NGOs), which have the legitimate interest in contributing to the fight against discrimination listed in their statutes²⁶ and who were established on the basis of special legislation.²⁷ The Czech Republic, however, did not transpose the provisions of Article 7/2, which allows States to establish the so-called *actio popularis* (the action in the public interest) i.e. an action to protect the rights, where the claimant is not the person directly affected by interference with rights. Neither does the proposed Anti-discrimination Act include an entitlement for NGOs (or any other entity) to lodge such an action.

Czech NGOs, which are active in the field of protection against racial and ethnic discrimination, contribute to improving the effectiveness of legislation in this area.

NGOs, however, developed considerable activity directed in particular to the aim of meeting the obligations of the Czech Republic from the Directive. They actively contribute to raising awareness and educating people about issues of racial and ethnic discrimination. The NGOs use

²⁴ See e.g. <http://www.vlada.cz/assets/urad-vlady/dotace/vyzva.pdf> (opened on 6 March 2009, available only in Czech language).

²⁵ Parliament Draft No.253., see <http://www.psp.cz/sqw/historie.sqw?o=5&t=253>. (opened on 2 March 2009, available only in Czech language).

²⁶ See Section 26/3 of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended.

²⁷ See Act No. 83/1990 Coll., The Law on association of Citizens, as amended.

media work in particular to highlight individual cases of discrimination and their own knowledge and results gained from their practical and analytical work. In this way the NGOs effect (either directly or indirectly) the government policies. Many NGOs also actively lobby during the legislative process.²⁸ Most NGOs are providing direct support to victims of discrimination, particularly in the form of legal advice, a few of them are dealing with legal matters to defend victims of discrimination in courts, some are also trying to find other solutions for disputes in the field of discrimination.

One of the problematic factors which limit the practical operation of the non-governmental sector in protection of victims of discrimination is also the lack of funds. The problem is also of course the lack of legislation concerning the legal means of protection against discrimination, in particular the fact that an NGO or no one else can bring the so-called *actio popularis* - action in the public interest to the court. Furthermore, there is a legal gap in finding a non-judicial solution in the field of discrimination (e.g. in the form of mediation) and the problem of very limited legal aid provided by the State. The Czech Republic has not adopted a general legal aid act yet (the issue is partly covered for the cross-border disputes, but not for the disputes within the Czech Republic).

Information from NGOs for victims of discrimination is relatively accessible. NGOs are using different methods of presentation of their activities (e.g. leaflets, information campaigns, websites, information lines, etc.) and they are trying to reach the wider public and promote their services to victims of discrimination.²⁹ Active approach of victims is also important. NGOs are developing a major effort towards this, to strengthen the commitment of victims of discrimination to solve their cases. Providing effective assistance to victims of discrimination by NGOs in the

²⁸ See for example, the opinion of NGOs on a draft law on equal treatment and legal means of protection against discrimination (Anti-Discrimination Act), published in September 2007, available at http://www.responsibility.cz/fileadmin/downloads/download_prac/Stanovisko_Antidiskriminace_do_PSP_final.pdf (opened on 2 March 2009, available only in Czech language) or a press release from October 20, 2008, in which 61 NGOs call upon the Parliaments of the Czech Republic to promote Anti-Discrimination Act, available at <http://www.profem.cz/clanky/?x=2126658> (opened on 2 March 2009, available only in Czech language) or amendment to the government draft Anti-discrimination Act, published in October 2007, available at http://www.responsibility.cz/fileadmin/downloads/download_prac/Pozmenovaci_navrh_ADZ.pdf (opened on 2 March 2009, available only in Czech language), Opinion of NGOs on antidiscrimination Act (Parliamentary Print No. 253), published in January 2008, available at http://www.responsibility.cz/fileadmin/downloads/download_prac/Stanovisko_antidiskriminacni_zakon2.pdf (opened on 4 March 2009, available only in Czech language).

²⁹ See for example Counselling Centre for Citizenship, Civil and Human Rights and its website - <http://www.diskriminace.info>, ICOS Český Krumlov, o. s - Centre for Social Services, http://www.css.krumlov.cz/DOC/113_Bezplatne_pravni_poradenstvi_vcetne_zastupovani_-_informacni_letak.pdf. The Consumers Defence Association and its website inform about operation of anti-discrimination phone line - <http://www.spotrebitel.info/diskriminace/>, association Romea and its website - <http://www.antidiskriminace.romea.cz/> etc.

Czech Republic is limited by the fact that organizations do not have the opportunity to bring an action for the benefit of victims, who are afraid to start the litigation by themselves (for various reasons). Furthermore, there is a problem with the financing of projects aimed at providing support and assistance to victims of discrimination, which leads to the fact that many NGOs are currently forced to restrict their activities in this area.³⁰ In practice, this can result in very limited access of the discrimination victims to direct assistance provided by NGOs, in particular with regard to the legal representation in court proceedings.³¹

As regards the number of NGOs assisting the victims of discrimination on the grounds of race or ethnic origin, there are dozens of them. Not all of them, however, offer legal advice to victims of discrimination, and there are currently very few entities that can represent the victims in judicial proceedings (for reasons that are often linked to lack of funds). In general, however, it could be said that victims of discrimination based on race or ethnic origin may find (if they have a real interest) and obtain the assistance from experienced NGOs. Problematic in this context is the fact that many victims of discrimination are afraid to initiate litigation, both because of the complexity of the dispute and because of their poor social status - they cannot bear to pay the costs in the event that the dispute will not be successful.³²

It can be observed that compared with the previous period (2006-2008) there has been a decrease in financial resources provided to non-governmental organizations, which of course, significantly affects the possibility of providing advice and assistance to the discrimination victims. Many projects undertaken by non-governmental organizations to support victims of discrimination on the grounds of race or ethnic origin have been completed and were not replaced by others.³³ NGOs, which in the context of their completed projects provided advice and assistance (including representation of victims in judicial proceedings), continue in their activities, but their assistance

³⁰ See Counselling Centre for Citizenship, Civil and Human Rights and its website – information about completed projects -<http://www.diskriminace.info/dr-projekty/>, information about the end of the anti-discrimination phone line <http://www.antidiskriminace.romea.cz/view.php?navezvlanku=ukonceni-provozu-antidiskriminacni-linky&cislocelanku=2008070001>, information ICOS Český Krumlov, o. s - Centre for Social Services about the end of free internet Counselling centre. (Opened on 9 March 2009, available only in Czech language). See: <http://www.css.krumlov.cz/index.php?page=page&pid=154>.

³¹ Representing victims of discrimination before a court was provided in the past by such NGOs as ICOS Český Krumlov, o. s - Centre for Social Services or Jihočeská rozvojová - Citizens Centre. Based on the request referred to these NGOs, it was found that they do not currently provide this service (in particular due to lack of funds).

³² See Opinion of NGOs on a draft Anti-discrimination Act, published in September 2007. Available on: http://www.responsibility.cz/fileadmin/downloads/download_prac/Stanovisko_Antidiskriminace_do_PSP_final.pdf (opened on 4 March 2009, available only in Czech language).

³³ Important source of funding for NGOs in this area has become programs such as the Transition Facility, which in 2005 was earmarked for the 781 227 €. This call was designed to strengthen the activities of NGOs in implementing anti-discrimination law and anti-discrimination acquis. See <http://www.nros.cz/programy-nros/programy-nros/transition-facility/podporene-projekty> (opened on 6 March 2009, available only in Czech language).

is limited only to the provision of relevant information. The legal assistance and representation in discrimination cases is not institutionalised in the Czech Republic. There is no public body regularly funding legal representation or legal counselling to victims of discrimination. There is no legal aid body established by the Czech state and the Legal Aid Act has not been adopted yet. NGOs seek support for their work from various donors, in particular EU grants and foreign foundations.

Moreover, the anti-discrimination provisions are an ordinary part of collective agreements in the Czech Republic. Most of the collective agreements usually undertake contracting parties not to discriminate against any employee on grounds of sex, race, religion, political opinions, and membership of trade unions, nationality, social origin, age and nationality but they do not specify any other rights or obligations concerning discrimination.

In theory, trade unions provide legal assistance to victims of discrimination on the ground of all reasons for their members. In practice the trade unions rather deal with issues of discrimination in respect of equal treatment between men and women than for reasons of discrimination based on the ground of racial and ethnic origin. It is not usual that the trade unions are involved in litigation to such an extent as NGOs. The reason may be that in cases of discrimination in labour law relations victims are in more vulnerable position and they are afraid of litigation more than others. From further evidence³⁴ one can say that the trade authorities are often unable to obtain redress for the failure to fulfil obligations of collective agreements, since the proceedings before the intermediary or the arbitrators are lengthy and often ineffective and the Labour Offices have refused to make these matters subject to their control scope.

Promotion of equal treatment is part of the daily activities of trade unions; the social dialogue takes place at different levels (enterprise, sectoral, national and international). Regarding the social dialogue, at national level in the Czech Republic in the Council of Economic and Social Agreement (s.-c. Tripartism), in addition to participating government, there are two large employers confederations that participate in the social dialogue, namely the Confederation of Industry of the Czech Republic and the Confederation of Employers and business associations of the Czech Republic; the trade unions social partners are Czech-Moravian Confederation of Trade Unions and the Association of independent trade unions. However, the Tripartism deals with

³⁴ E.g. from the knowledge of the Association for the development of collective bargaining and labour-law relations, see <http://www.volny.cz/aky/>, (opened on 14 March 2009, available only in Czech language.).

issues of equal treatment occasionally, indirectly and at a general level.³⁵ This is probably due to the different positions of the different social partners on the adoption of anti-discrimination legislation. For example, employers openly speak against the adoption of anti-discrimination law,³⁶ while trade unions promote its adoption.³⁷

The Labour Code notably regulates principles of collective bargaining³⁸. The Act also regulates collective agreements and other forms of social dialogue (for example right to information and to discussion etc.). The Act says *inter alia* that an employer is obliged to inform the trade union on measures taken to ensure equal treatment of employees and to avoid discrimination.³⁹ Trade unions are authorized to act in labour relations, including collective bargaining under the conditions laid down by law or negotiated in the collective agreement. Another relevant legislation that governs collective bargaining between trade unions and employers (with a potential collaboration of the State) is an Act on collective bargaining.⁴⁰ The Act sets out the validity and effectiveness of collective agreements, procedures of their adoption, methods of resolving disputes etc. It distinguishes between s. c. “company” and “higher degree”⁴¹ collective agreements.

In collective agreements can be regulated only such labour claims which the Labour Code or other labour legislation expressly allows. Laws do not determine the mandatory content of collective agreements. This brings to the contracting parties certain flexibility in the collective bargaining. If it transpires that due to the existence of certain provisions in collective agreements, there has been direct or indirect discrimination, only an employer will be obliged to justify the non-discriminatory nature of such measures.

³⁵ E.g. there was a discussion in connection with the adoption of the new Labour Code at its 55th plenary meeting of the Council of Economic and Social Agreement which was held on 20 June 2005, on a draft law (part of the point was, *inter alia*, was dedicated to the issue of respect for the principle of equality and non-discrimination, that provides for the adoption of the anti-discrimination law). In the discussion, however, already have anti-discrimination issue in more detail, failed. Discussion was closed by stating that the social partners are crucial in the conflict on the draft Labour Code. Cf. Records from the 55th plenary meeting of the Tripartism available <http://www.socialndialog.cz/cz/infoservis/rhsd/index.php>, (opened on 16 March 2009, available only in Czech language).

³⁶ See Opinion of the Association of Industry and Trade on the proposal for a Council Directive establishing a principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation of 9. September 2008. See: <http://www.socialndialog.cz/cz/dynamic/archiv.php?artcat=8> (opened on 13 March 2009, available only in Czech language).

³⁷ See e.g. interview with Dušan Martinek of ČMKOS of 31 January 2007, available at <http://zpravodaj.feminismus.cz/cisla.shtml?x=1963086> (opened on 13 March 2009, available only in Czech language).

³⁸ Act No. 262/2006 Coll., Labour Code, as amended.

³⁹ See Section 287 of Act No. 262/2006 Coll., Labour Code, as amended.

⁴⁰ Act No. 2/1991 Coll., on collective bargaining, as amended.

⁴¹ The agreement concluded between the senior trade union body and employers' organizations.

9. Forms of satisfaction available to a vindicated party

Compensation in discrimination cases is awarded according to the new Anti-discrimination Act.⁴² The Act guarantees right to compensation of immaterial damage in cases of discrimination or unequal treatment, in which significant harm was caused to good reputation or dignity or social status of the person as a result of discrimination. The compensation of the immaterial damages is available only if the court does not consider cessation of the discrimination, reinstate of the consequences of the discrimination or appropriate satisfaction sufficient. As far as civil remedies are concerned, the most elaborated protection against discrimination.

Prior to the new Antidiscrimination Act came into force on 1 September 2009, the only form of judicial remedy was available according to the provisions of the Civil Code.⁴³ According to Sec. 11 of the Civil Code, any natural person has the right to protection of his/her personality, including human dignity. The person is able to claim, under Sec. 13, a cessation of unlawful interferences, reparation of damage and an appropriate satisfaction. Indeed, an appropriate satisfaction refers to an immaterial (moral) injury; it may include apologies but also a payment of an amount of money.

Generally the jurisprudence of the Czech courts on compensation of moral injury is inconsistent. Specifically in the area of compensation of a moral injury caused by discrimination there are just a few decisions (there are no statistical data available on number of the cases, the analysis is based on 10 cases known to the reporter). Moreover the court might award a financial compensation of moral injury only if other forms of remedy e.g. cessation of the discrimination, remedy of the consequences of the discrimination or appropriate satisfaction are not satisfactory because significant harm was caused to good reputation or dignity or social status of the person as a result of discrimination. In 2002 the High Court issued a decision stating that discrimination is such severe interference with human dignity that appropriate satisfaction can not be considered as adequate remedy of the moral injury suffered and adequate remedy requires financial compensation. The amount of the compensation is decided on case by case basis by the competent court in the matter. In defining the amount of the compensation the court is obliged to

⁴² Czech Republic/*Antidiskriminační zákon* [Antidiscrimination Act] (23.4.2008), Section 10.

⁴³ Zákon č. 40/1964 Sb., občanský zákoník, ve znění pozdějších předpisů [Act No. 40/1964 Coll., Civil Code, as amended by later laws].

take into consideration the severity of the injury and the circumstances of the violation.⁴⁴ The criteria for establishing the amount has to be specific and revisable. The Court might take into consideration the intensity, nature and form of the illegal interference, the character and scope of the violated personal integrity, the duration and scope of impact of molar injury on the social status and realization of the victim in society. It is not clear whether the compensation for immoral damage might have punitive effect in the Czech legal doctrine. Some experts recognize the punitive effect in cases of intentional violation.

10. Adequacy of compensation

There have been very few cases so far of compensation for discrimination. In those cases in which the compensation was granted the compensation was rather low comparing to amount of compensation for the moral injury in other cases and with little potential for deterrent effect. The amounts granted as compensation are rather inconsistent.

The most common amount of the compensation in the selected discrimination cases was 50 000 CZK (approximately 1920 EUR), whereas in public defamation cases the amount could be as high as 300 000 CZK (approximately 11 540 EUR). On the other hand, the amount of compensation to the relatives of deceased person is set up by Civil Code as 240 000 CZK (approximately 9230 EUR).⁴⁵ The level of compensation appears relatively low also in relation to the possible deterrent effect. The level of compensation also appears low especially in cases of discrimination if business company or public institutions is liable for the discrimination.

11. Rules relating to the payment of legal costs

The payment of legal costs is regulated in the Civil Procedure Code.⁴⁶ The court decides on obligation to pay the costs of the proceedings based on the success in the matter and liability for the costs. As a rule the unsuccessful party in the proceeding bears the costs of the proceedings (some part of the costs might be borne by the party, which is liable for the costs or if the costs are consequence of *vis maior* related to such party). Some exceptions apply to disadvantaged parties.

⁴⁴ Czech Republic/*Antidiskriminační zákon* [Antidiscrimination Act] (23.4.2008), Section 10.

⁴⁵ Czech Republic/*Občanský zákoník* [Civil Code] (26.02.1964), Section 444.

⁴⁶ Czech Republic/*Občanský soudní řád* [Civil Procedure Code], (14.12.1963), Sections 137-151a.

In the case of partial success, the court may divide the costs between both parties or rule not to grant costs to any party of the dispute.

The party who establishes lack of sufficient means may at his or her own request be exempted from judicial fees by the decision of the presiding judge. If, however, the court concludes that the proposal patently cannot be successful, it shall deny such request. The court shall rescind the granted exemption at any point during the proceedings, even retroactively, if before the conclusion of the proceedings by a final decision it transpires that the party's circumstances do not, or did not, warrant the granting of exemption. When disadvantaged parties are exempted from paying the court fees and in case the court appoints a legal representative to the party as a form of legal aid, the state bears the cost. But even disadvantaged party, which was exempted from paying the court fees and granted free legal representation if not successful in the matter is obliged to pay the costs of the other party including the fee and costs of the legal representative of the other party as well as the lost income of the other party, which might be very high.

12. Rules on burden of proof

A reverse burden of proof is stipulated in the Civil Law Procedure Code in the discrimination in the employment cases, in the discrimination in the health and social care cases, access to education and vocational training, consumer care, membership in trade unions etc.⁴⁷ There is also an interesting finding of the Constitutional Court in the issue of reverse burden of proof in discrimination cases. It had been published already in 2006 (under No. 419/2006 Coll.), but still very relevant in the recent discussions. The reverse of the burden of proof had been challenged before the Constitutional Court as a principle which contravenes to the principle of equality of the parties. The Court stated that the principle of reverse burden of proof does not contravene the principle of equality of the parties, because the unequal position of the parties is objectively and reasonably justified.

The statistical data and testing should be in principle admitted as a means of proof in discrimination cases in courts. But the Constitutional Court said in its Decision that it is not competent to use the statistical data (*D.H. and Others*; the case was also submitted to the

⁴⁷⁴⁷ See Sec. 133a Act No. 99/1963 Coll., Civil Procedure Act, as amended [Zákon č. 99/1963 Sb., Občanský soudní řád].

European Court of Human Rights). An interesting study on the use of statistical data in general was published by Council for Citizenship.⁴⁸

⁴⁸ See http://www.diskriminace.info/dt-publikace/diskriminace_jeji_hodnoceni_a_dokazovani_prostrednictvim_statistickych_udaju.pdf (Czech only, opened on March 12, 2009).