

# Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Czech Republic

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# Executive summary

## Implementation of Employment Directive 2000/78/EC

- [1]. The transposition of Employment Directive 2000/78/EC is not yet finished and its implementation is therefore inadequate. The Anti-discrimination Act<sup>1</sup> (Antidiskriminační zákon) has not yet been adopted, although an attempt has been made to pass it; another draft is now being debated in the Parliament. The Anti-discrimination Act would not only provide a necessary definition of the relevant terms found in the existing anti-discrimination legislation and ensure the remedies against discrimination, it would also cover the whole area of prohibition of discrimination and supplement the currently rather diffuse legislation.
- [2]. The prohibition of discrimination in labour law and employment is quite detailed compared to other parts of the legal system. The Employment Act (Zákon o zaměstnanosti)<sup>2</sup> defines the basic terms (direct and indirect legislation), establishes certain remedies and explicitly prohibits both direct and indirect discrimination on the basis of sexual orientation. The Labour Code (Zákoník práce)<sup>3</sup> is not detailed, but still prohibits discrimination in labour relations; employers are inter alia obliged to ensure equal treatment with all employees in terms of working conditions, remuneration for work and the provision of other financial benefits vocational training and opportunities for functional or other promotion in employment. The Employment Directive 2000/78/EC is also transposed in the Czech legal system with regard to the other areas mentioned in the Racial Equality Directive 2000/43/EC, but there are problems with the general law regulating the prohibition of discrimination as such.

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<sup>1</sup> Vládní návrh zákona o rovném zacházení a ochraně před diskriminací (Draft Law on Equal Treatment and Protection Against Discrimination – Antidiscrimination Act). The Draft is being debated in the Chamber of Deputies (Lower House of the Parliament) under No. 253, the draft is available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=253&CT1=0> (Czech only) (opened on February 19, 2008).

<sup>2</sup> Zákon č. 435/2004 Sb., o zaměstnanosti (Act No. 435/2004 Coll., Employment Act), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=435%2F2004&number2=&name=&text](http://portal.gov.cz/wps/portal/_s.155/701?number1=435%2F2004&number2=&name=&text) = (Czech only) (opened on February 19, 2008).

<sup>3</sup> Zákon č. 262/2006 Sb., zákoník práce (Act No. 262/2006 Coll., Labour Code), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=262%2F2006&number2=&name=&text](http://portal.gov.cz/wps/portal/_s.155/701?number1=262%2F2006&number2=&name=&text) = (Czech only) (opened on February 19, 2008).

## Freedom of movement

- [3]. As regards freedom of movement, there is no discrimination between heterosexual and lesbian, gay, bisexual and transgender (LGBT) people (EU citizens or third country nationals). The term ‘spouse’ as it is used in the Aliens’ Act (Zákon o pobytu cizinců)<sup>4</sup> also covers people who are registered partners within the meaning of the Act on Registered Partnership (Zákon o registrovaném partnerství),<sup>5</sup> i.e. same-sex partners (the law provides that the sections of the Aliens’ Act which apply to ‘marriage’, ‘spouse’, ‘child’ also apply to people who have contracted a registered partnership). There is no obstacle in the issuing of visas or residence permits to registered partners whose registered partnership was concluded (validly) abroad (no procedure is stipulated for the recognition of registered partnerships, the Aliens’ Act is applied to partners in a registered partnership and a marriage in the same way).

## Asylum and subsidiary protection

- [4]. Czech law provides for persecution on the grounds of sexual orientation as a ground for obtaining refugee status. The definition of refugee also covers persecution by non-state agents, combined with *de facto* state unwillingness, indifference or inability to protect an individual from non-state persecution.
- [5]. If an individual seeks international protection, the procedure on international protection is always followed (regardless of the illegality of his/her stay in the country etc.; the application is inadmissible if the individual is an EU citizen or where provisions of the Dublin Regulation apply). If there are reasons for granting protection pursuant to the Asylum Act (Azylový zákon)<sup>6</sup> then protection is granted (in the form of either asylum or subsidiary protection).

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<sup>4</sup> Zákon č. 326/1999 Sb., o pobytu cizinců (Act No. 326/1999 Coll., Aliens Act), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=326%2F1999&number2=&name=&text](http://portal.gov.cz/wps/portal/_s.155/701?number1=326%2F1999&number2=&name=&text) = (Czech only) (opened on February 19, 2008).

<sup>5</sup> Zákon č. 115/2006 Sb., o registrovaném partnerství (Act. No. 115/2006 Coll., on Registered Partnership), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=115%2F2006&number2=&name=&text](http://portal.gov.cz/wps/portal/_s.155/701?number1=115%2F2006&number2=&name=&text) = (Czech only) (opened on February 19, 2008).

<sup>6</sup> Zákon č. 325/1999 Sb., o azylu (Act No. 325/1999 Coll., Asylum Act), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=325%2F1999&number2=&name=&text](http://portal.gov.cz/wps/portal/_s.155/701?number1=325%2F1999&number2=&name=&text) = (Czech only) (opened on February 19, 2008).

- [6]. Czech law provides for the possibility of family reunification for the spouses and registered partners of individuals granted asylum or subsidiary protection (i.e. includes registered same-sex partners)

## Family reunification

- [7]. Family reunification is ensured for same-sex registered partners and spouses of third country nationals (where both partners/spouses are third country nationals). The registered partnership is recognised by the Aliens' Act only if there is a certificate testifying to the registered partnership. Partners who live in a stable and durable relationship without registering it are not recognised as partners for the purpose of the Aliens' Act. The right to family reunification is connected to the long-term residence permit (national temporary status) or higher status (national permanent residence status) of the sponsor. The law stipulates the period necessary for the exercise of the right to family reunification as being 15 months from the beginning of the stay in the country. Partners (same-sex or different sex) who live in a stable and durable relationship without registering it or marrying would nevertheless most probably be granted a different type of visa pursuant to the provisions of the Aliens' Act (which allows for a visa for 'another reason').

## Freedom of assembly

- [8]. Freedom of assembly is guaranteed for all people irrespective of their sexual orientation. Homophobic demonstrations may be banned by law.

## Hate speech and criminal law

- [9]. There is no crime of hate speech in the Criminal Code (Trestní zákon)<sup>7</sup> of the Czech Republic. In contrast to crimes committed on the grounds of race, ethnic group, nationality, political opinion, religion, etc., the Criminal Code does not impose higher punishment for crimes committed for homophobic motives, which are not an aggravating circumstance.

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<sup>7</sup> Zákon č. 140/1961 Sb., trestní zákon (Act. No. 140/1961 Coll., Criminal Code), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=140%2F1961&number2=&name=&text](http://portal.gov.cz/wps/portal/_s.155/701?number1=140%2F1961&number2=&name=&text) = (Czech only) (opened on February 19, 2008).

## Transgender issues

- [10]. All legislation discussed in detail in the study is also applicable to transgender people. The legislation described is either based on the principle of non-discrimination on the grounds of sexual orientation or is applicable equally to same-sex partnership and heterosexual marriage. Czech legislation does not differentiate between LGBT people and most probably applies to all of them. As there is no case law on the matter and the terms are not defined in the laws, it is not possible to say whether transgender discrimination is likely to be classified as discrimination on the grounds of gender or of sexual orientation.
- [11]. There is a problem due to the fact that the Anti-discrimination Code has not yet been adopted. There is a highly unsatisfactory situation in relation to the prohibition of discrimination in several areas of law with which this study does not deal in detail (health care etc.) and it is unsatisfactory for both grounds – sexual orientation and gender. So the situation of transgender people is unsatisfactory in many areas of law where discrimination is not explicitly prohibited. There is nevertheless a general prohibition of discrimination in the Constitution (Ústava)<sup>8</sup> (Sec. 3 of the Charter of Human Rights (Listina základních práv a svobod)<sup>9</sup>, but it is too general so that it cannot be said that the Czech laws are in compliance with the *acquis*.
- [12]. The law provides for the possibility of sex change. Surgery is performed on transsexuals at the request of the individual concerned, following approval by a commission. The activity of these commissions is not regulated by law, nor even by any standards. There is no possibility of appeal against the decision of the commission.

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<sup>8</sup> Zák. č. 1/1993 Sb., Ústava České Republiky (Act No. 1/1993 Coll., Constitution of the Czech Republic), available at [http://www.hrad.cz/en/ustava\\_cr/index.shtml](http://www.hrad.cz/en/ustava_cr/index.shtml) (opened on February 19, 2008).

<sup>9</sup> Usnesení předsednictva ČNR č. 2/2003 Sb., o vyhlášení Listiny základních práv a svobod jako součásti ústavního pořádku (Resolution of the Presidium of the Czech National Council No. 2/2003 Coll., on the declaration of the Charter of Fundamental Rights and Basic Freedoms as a part of the constitutional order of the Czech Republic), available at [http://angl.concourt.cz/angl\\_verze/rights.php](http://angl.concourt.cz/angl_verze/rights.php) (opened on February 19, 2008).

## Miscellaneous

- [13]. Civil society, mainly NGOs, are active and there are also a number of websites which provide information by and to the LGBT community.

## Good practices

- [14]. The Working Group on the Issue of Sexual Minorities (Pracovní skupina pro otázky sexuálních menšin) which was established by the Minister of Human Rights and Minorities (Ministryně pro lidská práva a národnostní menšiny) on the occasion of the European Year of Equal Opportunities made a detailed analysis of the situation of lesbian, gay, bisexual and transgender minorities in the Czech Republic. The report gives recommendations which are structured according to the relevant laws and may be used easily by politicians.
- [15]. Czech legislation on freedom of movement and family reunification provides for full equality of treatment of LGBT and other people.

## A. Implementation of Employment Directive 2000/78/EC

- [16]. The Employment Directive 2000/78/EC was transposed into the Czech legislation by several laws, mainly the Labour Code (Zákoník práce) and the Employment Act (Zákon o zaměstnanosti).
- [17]. The prohibition of discrimination in labour and employment law is quite detailed. The basic provisions are found in a new Labour Code which was adopted in 2006. According to the provisions of the Labour Code, employers are obliged to ensure equal treatment for all employees regarding working conditions, remuneration for work and the provision of other financial benefits vocational training and opportunities for functional or other promotion in employment (Sec. 16 (1) Labour Code). The Code explicitly prohibits discrimination (any discrimination in labour relations is prohibited, Sec. 16 (2) Labour Code) and stipulates that the relevant terms, such as direct and indirect discrimination, victimisation, inciting discrimination, harassment or sexual harassment, are to be defined by a special law, the Anti-discrimination Act. The Anti-discrimination Act has not yet been adopted (see below) and therefore the terms are not defined for the purposes of the Labour Code. The transposition of the prohibition of discrimination into labour law is not satisfactory and this will only be remedied once the Anti-discrimination Act is adopted.
- [18]. The Labour Code also states that legal remedies against discrimination are to be defined by the Anti-discrimination Act, which has not yet been adopted, and therefore the remedies are not stipulated by law (see below).
- [19]. Very detailed provision on non-discrimination can also be found in the Employment Act . Sec. 4 stipulates an obligation to treat individuals exercising the right of employment equally, it prohibits both direct and indirect discrimination on the grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, language, health, age, religion, matrimony or marital status or obligations to a family, membership of political parties or movements, trade unions or unions of employers. The Employment Act defines direct and indirect discrimination and also stipulates what the person discriminated against may claim. Sec. 12 of the Employment Act prohibits the employer from asking employees for information on *inter alia* sexual orientation.

- [20]. There is a shift in the burden of proof in civil cases where a party alleges discrimination on the grounds of sexual orientation (Sec. 133a (1) of the Civil Procedure Code (Občanský soudní řád)<sup>10</sup>. The allegations that the party has been directly or indirectly discriminated against on the grounds of his/her sex, racial or ethnic origin, religion, belief, world view, disability, age or sexual orientation, shall be deemed proved by the court in labour matters, unless the opposite transpires during the proceedings (facts bearing on the issue of discrimination are considered to be proved unless proven otherwise). The shifting of the burden of proof has been challenged before the Constitutional Court (Ústavní soud) as a principle which contravenes the principle of equality of the parties. The finding of the Constitutional Court was published under No. 419/2006 Coll., the court stated that the principle of reversing the 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.<sup>11</sup>
- [21]. A person who claims to have been discriminated against on the grounds of (*inter alia*) his/her sexual orientation can also be represented by a civil society organisation (pursuant to the provisions of the Code of Administrative Procedure, (Soudní řád správní)<sup>12</sup> Sec. 35 (4) and the Civil Procedure Code (Občanský soudní řád), Sec. 26 (3)); the civil society organisation must have stipulated in its statutes the possibility of representing a person before a court. The transposition of Art. 9 (2) of the Employment Directive is ensured by these provisions. The civil society organisations may be engaged by or act on behalf of the persons in court. This possibility is explicitly stipulated for court procedures. The possibility representation in court of an individual by any natural person or corporate body is basically limited (only attorneys – and notaries and patent attorneys to some extent – can act without limits), so this is why the exception was stipulated explicitly. The possibility to be engaged by or to act on behalf of an individual in administrative proceedings predating the court proceedings is not limited, therefore there was no need to stipulate the possibility explicitly. The transposition is in compliance

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<sup>10</sup> Zákon č. 40/1964 Sb., Občanský soudní řád (Act No. 40/1964 Coll., Civil Procedural Code), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=40%2F1964&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=40%2F1964&number2=&name=&text=) (Czech only) (opened on February 19, 2008).

<sup>11</sup> See also [http://www.vlada.cz/assets/cs/rvk/rlp/dokumenty/zpravy/Report\\_on\\_the\\_State\\_of\\_Human\\_Rights\\_in\\_the\\_CZ\\_in\\_2006\\_EN.pdf](http://www.vlada.cz/assets/cs/rvk/rlp/dokumenty/zpravy/Report_on_the_State_of_Human_Rights_in_the_CZ_in_2006_EN.pdf) (opened on February 19, 2008)..

<sup>12</sup> Zákon č. 150/2002 Sb., Soudní řád správní (Act. No. 150/2002 Coll., Code of Administrative Procedure), available on [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=150%2F2002&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=150%2F2002&number2=&name=&text=) (Czech only) (opened on February 19, 2008).

with the Directive; there is no information available about problems with the implementation of this article.

- [22]. The central register of civil society organisations does not include the area of specialisation of the organisation and it is therefore not possible to give the number of organisations which deal with the issue of discrimination. There is no need for authorisation (e.g. from the state) in order to act on behalf of an individual, the only requirement is the explicit establishment in the organisation's statutes of the possibility to act in the matter of discrimination. There are at least two organisations which can act in the matter of discrimination on grounds of sexual orientation.
- [23]. There is currently (January 2008) no Anti-discrimination Act as such in the Czech legal system, although it has been proposed twice in recent years. The latest draft is now being debated in Parliament (Government Draft Law No. 253, delivered to Parliament on 07.07.2007). The anti-discrimination legislation is rather diffuse, dispersed among different pieces of legislation; the most detailed is the anti-discrimination legislation regarding employment issues (see below).
- [24]. The fact that there is no Anti-discrimination Act has been widely criticised. For example, by the Committee on the Elimination of All Forms of Discrimination against Women (Final recommendations of CEDAW to the Third Periodic Report of the Czech Republic on the Implementation of Commitments Arising from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)), the Committee on the Elimination of Racial Discrimination (Final recommendations of the CERD to the Fifth Periodic Report of the Czech Republic on the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)).
- [25]. The Draft of the Anti-discrimination Act contains general provisions on the prohibition of discrimination and, without the adoption of this law, the transposition of Directive 2000/78/EC will not be complete and Czech law would not be in compliance with the Directive.
- [26]. The available statistics do not contain many cases of discrimination in the labour market on grounds of sexual orientation. Most of the statistical data are also not available publicly; the author of the report submitted a request for statistics to the *Ministerstvo spravedlnosti* [Ministry of Justice] and the Office of the Public Defender of Rights (Kancelář Veřejného ochránce práv). According to the information provided by the Office of the Public Defender of Rights there were no cases of discrimination held by the Office. The Ministry does not keep

statistics. There was one recent case of discrimination on the grounds of sexual orientation (beginning of 2007). The Report on the State of Human Rights in the Czech Republic in 2006 reports a case of discrimination at work on the grounds of sexual orientation: ‘In 2006, Czech courts dealt with the first case of discrimination on the grounds of sexual orientation. The plaintiff, Mr. L.S., alleged that he had been discriminated against due to his sexual orientation when he was not hired as a masseur. The court upheld his case in January 2007 and ordered the defendant to issue an apology and to pay CZK 70,000 in damages (approx. 2,700 Euro).’<sup>13</sup>

- [27]. The situation can be illustrated by the findings of research conducted by Ivo Procházka in 2003: *Discrimination against lesbian women, gay men and bisexuals in the Czech Republic*.<sup>14</sup> Of 267 respondents, 31 (12 per cent of the sample) stated they were seriously discriminated against in their jobs because of their sexual orientation, or they at least considered it probable. Ten respondents (four per cent of the sample) stated that they were refused a job because of their sexual orientation. Another eight (three per cent) stated it was very probable. Thirteen respondents (five per cent of the sample) claimed they were fired because of their sexual orientation. Almost one third of the respondents always hide their sexual orientation in matters relating to their employment.
- [28]. Although the issue of discrimination in labour law and employment is regulated in detail in comparison to other aspects of legislation, it is still not satisfactory. The Employment Directive has not been transposed fully as the anti-discrimination law has not yet been adopted.
- [29]. The Employment Directive 2000/78/EC has been transposed into the Czech legal system not only in relation to employment, but also regarding the other areas mentioned in the Racial Equality Directive 2000/43/EC. But the transposition is not complete, either in terms of all the areas mentioned by the Directive or for all the grounds covered by it. There are several laws which stipulate the prohibition of discrimination, e.g. the Consumer Protection Act (Zákon o ochraně

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<sup>13</sup> Available at [http://www.vlada.cz/assets/cs/rvk/rlp/dokumenty/zpravy/Report\\_on\\_the\\_State\\_of\\_Human\\_Rights\\_in\\_the\\_CZ\\_in\\_2006\\_EN.pdf](http://www.vlada.cz/assets/cs/rvk/rlp/dokumenty/zpravy/Report_on_the_State_of_Human_Rights_in_the_CZ_in_2006_EN.pdf) (opened on February 19, 2008).

<sup>14</sup> Available at [http://gay.iniciativa.cz/download/diskriminace\\_en.pdf](http://gay.iniciativa.cz/download/diskriminace_en.pdf) (opened on February 19, 2008).

spotřebitele),<sup>15</sup> which prohibits discrimination as such, but does not list the grounds for discrimination, the Education Act (Školský zákon),<sup>16</sup> which prohibits discrimination on a number of grounds, but does not include sexual orientation, The Act on Professional Soldiers (Zákon o vojácích z povolání)<sup>17</sup>, the Act on the Service Relationship of Members of the Security Corps (Zákon o služebním poměru bezpečnostních sborů)<sup>18</sup> and the Act on the Service of Public Servants (Služební zákon)<sup>19</sup> explicitly prohibit discrimination *inter alia* on the grounds of sexual orientation, but laws on health care, for example, do not include any provisions on the prohibition of discrimination.

- [30]. The legislation is rather diffuse, dispersed among different pieces of legislation, often unsatisfactory and a general framework is needed.
- [31]. There is no equality body or special Ombudsman against Discrimination on the grounds of Sexual Orientation. The Office of the Ombudsman (Public Defender of Rights) of the Czech Republic, a general ombudsman, was established in January 2001 by the Statute of the Public Defender of Rights (Statut kanceláře Veřejného ochránce práv). The Statute is based on the Act on the Public Defender of Rights (Zákon o Veřejném ochránci práv).<sup>20</sup> The main role of the ombudsman is to ensure the protection of rights and legitimate interests mainly in the areas in which citizens and other entities encounter the offices of state administration. There are no direct means or mechanisms for enforcement at the Ombudsman's disposal. The Ombudsman requests that the state administration body

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<sup>15</sup> Zák. č. 634/1992 Coll., o ochraně spotřebitele (Act No. 634/1992 Coll., Consumer Protection Act (Sec. 6), available on [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=634%2F1992&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=634%2F1992&number2=&name=&text=) (Czech only) (opened on February 19, 2008).

<sup>16</sup> Zák. č. 561/2004 Sb., školský zákon (Act No. 561/2004 Coll., Education Act (Sec. 2), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=561%2F2004&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=561%2F2004&number2=&name=&text=) (Czech only) (opened on February 19, 2008)

<sup>17</sup> Zák. č. 221/1999 Sb., o vojácích z povolání (Act No. 221/1999 Coll., Act on Professional Soldiers), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=221%2F1999&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=221%2F1999&number2=&name=&text=) (Czech only) (opened on February 19, 2008).

<sup>18</sup> Zák. č. 361/2003 Sb., o služebním poměru bezpečnostních sborů (Act no. 361/2003 Coll., Act on Service Relationships of Members of the Service Corps), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=361%2F2003&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=361%2F2003&number2=&name=&text=) (Czech only) (opened on February 19, 2008).

<sup>19</sup> Zák. č. 218/2002 Sb., Služební zákon (Act no. 218/2002 Coll., Act on Service of Public Servants), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=218%2F2002&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=218%2F2002&number2=&name=&text=) (Czech only) (opened on February 19, 2008).

<sup>20</sup> Zák. č. 349/1999 Sb., o Veřejném ochránci práv (Act No. 349/1999 Coll., on the Public Defender of Rights), available at <http://www.ochrance.cz/en/ombudsman/obecne.php> (opened on February 19, 2008)..

responsible for malpractice or error to remedy the situation and ultimately passes the matter on to government if the remedy is not provided. The Ombudsman 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. The author of the report submitted a request for statistics to the Office of the Public Defender of Rights but, according to the information provided, no cases of discrimination on grounds of sexual orientation are held by the Office.

## B. Freedom of movement

- [32]. Directive 2004/38/EC of 29.04.2004 was transposed into Czech law mainly by the amendments to the Aliens' Act (Zákon o pobytu cizinců). Most of the provisions of Directive 2004/38/EC were covered by Act No. 161/2006 Coll. amending the Aliens' Act and other transposing laws were adopted in 2007. The Aliens' Act focuses on the position of foreigners in general; it provides for the legal position of third country nationals and also for the legal position of EU citizens. The law is divided into sections on entry, residence and departure. One part of the law contains provisions only on the residence of EU citizens and their family members (Secs. 87a – 87aa), but their position is also reflected in other provisions of the law. The Act on Registered Partnership (Zákon o registrovaném partnerství) was adopted in 2006 and the relevant changes in the Aliens' Act were made in December 2007 (in force since January 2008).
- [33]. Section 180f of the Aliens' Act provides that the norms which apply to 'marriage', 'spouse' and 'child' also apply to partners who have contracted a registered partnership. Therefore wherever the law uses the term 'marriage', 'spouse' or 'child', it applies non-discriminatorily also to registered partnerships. The registration of a partnership is restricted to same-sex partners. The registered partnership is recognised by the Aliens' Act only if there is a certificate of registered partnership. Partners who live in a stable and durable relationship without registering are not recognised as partners for the purpose of the Aliens' Act. Family reunification of registered partners is therefore possible for the spouse, children (including children of the spouse) and certain other people as defined by the Aliens' Act (essentially the nuclear family).
- [34]. The legal definition of a family member of an EU citizen is established in the Alien's Act in Sec. 15a. For the purposes of the Alien's Act, a 'family member of an EU citizen' is (1) a spouse, (2) a parent, if the EU citizen is younger than 21 years of age and dependent on his/her parent, and lives in the same household, (3) a child under 21 years of age or such a child of a spouse of an EU citizen, (4) a dependent direct relative in the ascending or descending line, or such a relative of the spouse of the EU citizen. (5) If the purpose of the stay in the Czech Republic is to study then only the spouse and dependent children are taken into account. The provisions on family members also apply to (6) a foreigner who is a relative of an EU citizen and fulfils certain criteria (condition of living with the EU citizen, health reasons etc.), (7) a person who is living in a stable relationship similar to a family relationship with an EU citizen and lives in the same household, (8) a family member of the Czech citizen.

Family reunification is therefore possible for a spouse, children of the EU citizen under 21 years of age and also such children of the partner and for others if the conditions of the law are fulfilled.

- [35]. Family members who are registered partners of EU citizens do benefit from the right to move and reside within the territory of the Member States.
- [36]. Family members of EU citizens who are themselves EU citizens have the right of entry under the same conditions as EU citizens; entry can be denied under certain circumstances. The family member also has the right of residence; if he/she intends to reside in the Czech Republic with the EU citizen for more than three months he/she may apply for a temporary residence permit (right of residence for more than three months in accordance with Directive 2004/38/EC). The request for a temporary residence permit can be rejected or withdrawn under certain conditions; the law also contains provisions on retention of the right of residence by family members in the event of death, departure or divorce). Permanent residence permits (right of permanent residence in accordance with Directive 2004/38/EC) are issued by the alien's police departments, a special branch of the police, which deals with aliens, to the family member of an EU citizen under certain circumstances (length of the stay etc.). The law also contains provisions on marriages of convenience (refusal to issue or termination of the residence permit in such a case). The family member can be subject to expulsion under very special conditions of the Aliens' Act. A decision on expulsion can be issued only if its consequence does not have a negative impact on the private or family life of the person concerned; protection against expulsion is in compliance with Art. 28 of Directive 2004/38/EC. No exit visa or equivalent formality is imposed on foreigners. According to the Employment Act, citizens of other EU Member States and their family members have an equal position with Czech citizens in access to employment and access to public employment services, including registration in order to seek work etc.
- [37]. The family member of an EU citizen who is himself/herself a third country national has the same rights as described above; there are only small differences in accordance with the relevant *acquis*. The right of entry for third country nationals may be subject to visa obligations (if the partner who is a third country national needs a visa and does not possess one, he/she can also apply for the visa on entering the Czech Republic, the time limit for issuing the visa is up to 14 days). Another difference between the position of the family members who are third country nationals and family members who are EU citizens is the obligation to apply for a temporary residence permit if the third

country family member intends to reside in the Czech Republic with the EU citizen for more than three months.

- [38]. The temporary residence permits and permanent residence permits for family members are issued by the Aliens' Police, a special branch of the police, which deals with aliens, in an administrative procedure; the Administrative Proceedings Act (Soudní řád správní) is applied. Appeal to a court is possible. The law does not provide for free legal aid for the administrative procedure; free legal aid is available for court proceedings under certain circumstances defined in the law (means tests etc.).
- [39]. The number of family members who were themselves EU citizens was 6,181 in 2004 and there were 2,955 family members of citizens of the Czech Republic. The number of EU citizens residing in the Czech Republic in 2004 was 82,714 and there were also 168,435 third country nationals. In 2005 the number of family members who were EU citizens was 7,827 and there were 13,841 family members of citizens of the Czech Republic. The number of EU citizens residing in the Czech Republic in 2005 was 82,574 and there were 185,517 third country nationals. In 2006 the number of family members who were EU citizens was 8,416 and there were 23,216 family members of citizens of the Czech Republic. The number of EU citizens residing in the Czech Republic in 2006 was 94,032 and there were 212,857 third country nationals. However, the statistics does not differentiate between applications for a residence permit for the reason of family reunification for registered partners and for married partners, nor does it distinguish between residence permits granted for the reason of family reunification for registered partners and for married partners. The requested statistical data are not available. The author of the report (1) looked at the website of the *Český statistický úřad* [Czech Statistical Office] ([www.czso.cz](http://www.czso.cz), opened on February 19, 2008), then (2) submitted a request to the Statistical Office and (3) submitted a request to the Aliens Police. The Statistical Office responded by an email, the Aliens Police only by phone.
- [40]. There is no case law on this matter available as the change in the law in favour of registered partnership was only implemented relatively recently.

## C. Asylum and subsidiary protection

- [41]. The Czech Republic ratified the Geneva Convention relating to the Status of Refugees in 1991. The Convention is incorporated into the Asylum Act, (Zákon o azylu), which regulates the conditions for providing international protection (asylum and subsidiary protection), the procedure on international protection, the rights and duties of those seeking international protection and the rights and duties of recognised refugees (persons granted asylum) and those granted subsidiary protection. The Asylum Act provides for international protection in the form of asylum for the reasons given by the Geneva Convention, i.e. a well-founded fear of being persecuted on the grounds of race, sex, religion, nationality, membership of a particular social group or for holding a certain political opinion (Sec. 12, this provision also embodies the right to asylum formulated at the constitutional level and also provides for one more ground not included in the Geneva Convention but stipulated in Directive 2004/83/EC: the ground of ‘gender’) and also for other reasons, such as family reunification (Sec. 13) and humanitarian reasons (Sec. 14). The Act also provides for international protection in the form of subsidiary protection, generally on the grounds contained in Directive 2004/83/EC; subsidiary protection can also be issued to family members. The ‘qualification’ Directive (2004/83/EC) was transposed into Czech law by Act No. 165/2006, which amended the Asylum Act. The term ‘registered partnership’ was amended by Act No. 379/2007 Coll., and has been in force since January 2008.
- [42]. The definition of refugee covers non-state persecution, combined with state unwillingness, indifference or inability to protect a person from non-state persecution. Persecution means serious violation of human rights as well as any measures resulting in mental constraint or other similar treatment if carried out, supported or tolerated by state authorities or parties or organisations controlling the state or a considerable part of its territory; the notion of persecution thus includes acts by private individuals if the state, parties or organisations – including international organisations – controlling the state or a considerable part of its territory are unable to ensure protection; in addition, the law provides for the alternative of the internal protection (Art. 8 of the Directive 2004/83/EC) (Sec. 2 (8) Asylum Act).
- [43]. Persecution on grounds of sexual orientation is accepted as a ground for obtaining asylum. The Asylum Act itself does not define the terms of the definition of refugee; therefore the definition of the term ‘particular social group’ cannot be found there. The key is in the interpretation by the *Ministerstvo vnitra* [Ministry of Interior]

(adjudicating body) and the interpretation in the courts of appeal decisions (*Nejvyšší správní soud* [Supreme Administrative Court]). The Ministry of Interior has issued several decisions since 2005 where the well-founded fear of being persecuted on the grounds of sexual orientation was recognised as a reason for granting asylum and several applicants were granted asylum. The Supreme Administrative Court also accepts the sexual orientation as a reason for obtaining asylum and applies it as such in its decisions.<sup>21</sup> Relevant case law from the Ministry of Interior is not publicly available, only decisions by the Supreme Administrative Court, the highest court of appeal for administrative issues, are available on the website of the court.<sup>22</sup>

- [44]. If an individual seeks international protection, the procedure on international protection is always followed (regardless of the illegality of his/her stay in the country etc.; the application is inadmissible if the individual is an EU citizen or where provisions of the Dublin Regulation apply). If there are grounds for granting protection pursuant to the Asylum Act then protection is granted (in the form of either asylum or subsidiary protection).
- [45]. No statistics are available. The statistics show only the number of persons granted asylum for the reason of membership of a particular social group in general, the reason of sexual orientation is not disaggregated. The author of the report (1) looked at the website of the Czech Statistical Office ([www.czso.cz](http://www.czso.cz)), then (2) submitted a request to the Czech Statistical Office and (3) submitted (via phone and via email) a request to the Ministry of Interior which deals with asylum cases. The relevant department of the Ministry of Interior provided the requested information by phone and also replied via email on 10.03.2008. The author of the report is aware of at least two people who were granted asylum for the reason of sexual orientation from her former practice; but as it is not an official source, nor even an informal source, the number is not mentioned in the statistics in the Annex of this report as a official data.
- [46]. The Asylum Act provides for family reunification (asylum for the purpose of family reunification, Sec. 13 and subsidiary protection for the purpose of family reunification, Sec. 14b). Both provisions are discretionary, the adjudicating body has the discretion to issue the decision or not. Protection may be granted in case of special

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<sup>21</sup> Decision of Supreme Administrative Court of 05.10.2006, No. 2 Azs 66/2006-52, [www.nssoud.cz](http://www.nssoud.cz), Decision of Supreme Administrative Court of 23.11.2007, No. 5 Azs 50/2007-71, [www.nssoud.cz](http://www.nssoud.cz) (opened at February 19, 2008).

<sup>22</sup> <http://www.nssoud.cz/en/decisions.php>. [this link does not appear to work] yes, I had the same problem for last week, but it works again. It is a reliable source and has been unavailable only temporarily

consideration even if the criteria of Sec. 12 of the Asylum Act are not fulfilled. The legal definition of a family member of a recognised refugee or person with subsidiary protection is provided by the Asylum Act in Sec. 13 (14b). The definition of the term ‘family members’ encompasses: (1) a spouse or a partner; (2) an unmarried child under 18 years of age; (3) a parent of a refugee under 18 years of age; and (4) an adult person responsible for a child under 18 years of age who is not accompanied by a statutory representative (i.e. by a parent etc.). The law requires a pre-existing partnership (prior to the granting of asylum or subsidiary protection status by the Czech Republic, not prior to entry to the Czech Republic).

- [47]. The term ‘partner’ is defined in the Asylum Act in Sec. 2 (13) as a person who can prove that he/she entered into a registered partnership; registered partnership is a certified stable relationship of same-sex partners.
- [48]. The decision on international protection is issued in an administrative procedure by the department (odbor azylové a migrační politiky, the Department of Asylum and Migration Policy, a special department which deals with the issue of asylum/international protection) of the Ministry of Interior; remedy in court is possible.
- [49]. The family members of refugees are also entitled to family reunification under the Aliens’ Act (i.e. if they do not lodge an application in accordance with the Asylum Act). (1) a child of a refugee who is under 18 and (2) a spouse or a partner of a refugee (the condition of the existence of the marriage/partnership before entry into the Czech Republic is applied here) are entitled to a long-term residence permit (Sec. 42a (5) (b, c) Aliens’ Act) or a permanent residence permit (Sec. 66 (1) (a) subs. 1, 2 Aliens’ Act). There is no discretion in the decision-making process in this case.
- [50]. Relevant case law of the Ministry of Interior is not publicly available, only decisions by the Supreme Administrative Court, the highest court of appeal for administrative issues, are available on the website of the court.<sup>23</sup> There is no case law available regarding the family reunification of partners in registered partnerships, as registered partnership has only recently been implemented into the respective law.
- [51]. There are no statistics available; the above-mentioned efforts to obtain statistics on the number of people granted asylum or subsidiary

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<sup>23</sup> <http://www.nssoud.cz/en/decisions.php> (opened at February 19, 2008).. *[this link does not appear to work] it does work again*

protection also apply to the statistics on family members of those people.

## D. Family reunification

- [52]. Family reunification according to Council Directive 2003/86/EC is transposed by the Aliens' Act. Section 180f of the Aliens' Act stipulates that the norms which apply to 'marriage', 'spouse' and 'child' also apply to the partners who have contracted a registered partnership. Therefore wherever the law uses the term 'marriage', 'spouse' and 'child', it also applies non-discriminatorily to registered partnerships. The registration of a partnership is restricted to same-sex partners. The registered partnership of third country nationals is recognised by the Aliens' Act only if there is a certificate testifying to the registered partnership. Partners who live in a stable and durable relationship without registering their partnership are not recognised as partners for the purpose of the Aliens' Act. Partners (same sex or different sex) who live in a stable and durable relationship without registering/marriage would nevertheless obtain a different type of visa pursuant to the provisions of the Aliens' Act (which allows for a visa for 'another reason').
- [53]. If both partners are third country nationals they cannot register pursuant to the provisions of the Act on Registered Partnership. The Act limits the possibility of registering partnerships to those where at least one of the partners is a citizen of the Czech Republic. However, if the partnership is registered in another country, the law allows them to benefit from the right to family reunification.
- [54]. The right to family reunification is connected to the long-term residence permit (national temporary status) or higher status (national permanent residence status) of the sponsor. The law stipulates the period necessary for exercise of the right to family reunification as being 15 months from the beginning of the stay in the country. The family members who can be issued a long term residence permit for the reason of family reunification are: (1) the spouse of the sponsor (including same-sex sponsor); there is an age requirement of 20 years of age for both spouses set out in the Act, (2) the minor children of the sponsor and the minor children of the spouse of the sponsor, (3) the adult children of the sponsor or of the spouse of the sponsor, but adults are granted a residence permit only under the condition of dependency on the sponsor, (4) the minor children adopted by the sponsor and by his/her spouse, (5) a third country national who is a single person older than 65 years or (6) a third country national who is unable to provide for his/her own needs on account of his/her state of health.
- [55]. The right to family reunification is guaranteed provided that the sponsor has been resident in the Czech Republic for at least 15

months. The sponsor must hold a long-term or permanent residence permit at the time of submitting the application for family reunification. Prior residence is not required for the family members listed above in (4), (5) and (6).

- [56]. The law also recognises the possibility of issuing a permanent residence permit without the partner's or even the sponsor's prior residence in the Czech Republic. This is the so-called permanent residence permit for humanitarian purposes; or for other reasons that are worthy of consideration; or if the residence of the alien concerned is in the interests of the Czech Republic, but it is not *stricto sensu* family reunification in accordance with the Directive.
- [57]. There is no case law available on family reunification for registered partners, as registered partnership was only implemented into the respective law in December 2007.
- [58]. There are no statistics available, as registered partnership was only implemented into the respective law in December 2007.

## E. Freedom of assembly

- [59]. Freedom of assembly is guaranteed at the constitutional level. The Constitution (Ústava ČR) guarantees the right to peaceful assembly (Art. 19). It also stipulates that the right may be limited by law in the case of assemblies held in public places, if measures are involved which are essential in a democratic society to protect the rights and freedoms of others, public order, health, morality, property or the security of the State. However, an assembly shall not be made dependent on permission by an organ of public administration. There are no limitations on freedom of assembly for lesbian, gay, bisexual and transgender (LGBT) people; the law does not differentiate between the reasons for assembly, nor does it make any distinction between the people who announce or notify an assembly.
- [60]. The freedom of assembly is implemented by the Assembly Act.<sup>24</sup> The state may legally restrict meetings that promote hatred and intolerance, advocate the suppression of individual or political rights or jeopardise the safety of participants. The law requires an announcement or notification (not a permit) for demonstrations.
- [61]. The law stipulates that an assembly may be banned (1) before it lawfully begins, once the assembly has been notified, if it is obvious from the notification to the authorities that: the reason for the assembly is to deny or restrict the political or personal rights of citizens for *inter alia* the reason of their nationality, gender, race, social status (Sec. 10 (1) a) Assembly Act); the reason of an assembly is to violate laws or the Constitution (Sec. 10 (1) c) Assembly Act), or for other reasons stipulated by the law; the two above-mentioned reasons may be used for restricting homophobic demonstrations. The reason of sexual orientation is not explicitly mentioned by the law, therefore the reason must be found by an interpretation of the laws, e.g. the reason of human dignity stipulated in the Constitution (Art. 10 (1) in connection with Sec. 10 (1) c) Assembly Act. As there have not been any homophobic demonstrations, the possibility of banning a demonstration/assembly has never been used and it is hard to predict what reason the authorities would use. The assembly may also be banned (2) after it has already lawfully begun if the assembly departs significantly from the reasons which the organiser notified to the authorities and there are at the same time circumstances which justifies a ban pursuant to the provisions of Sec. 10 (1) Assembly Act,

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<sup>24</sup> Zák. č. 84/1990 Sb., o právu shromažďovacím (Act No. 84/1990 Coll., On the Right of Assembly), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=84%2F1990&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=84%2F1990&number2=&name=&text=) (Czech only) (opened on February 19, 2008).

as mentioned above. Again, as there have not been any homophobic demonstrations, the possibility of banning a demonstration/assembly has never been used and it is hard to predict what reason the authorities would use. The ban is imposed either by the respective municipal authority or by the Police. There are no homophobic demonstrations, nor are there gay pride parades. The author of the report submitted a request for information to the Ministry of Interior, but they do not keep such information. Another request was submitted to *Gay a lesbická liga* [Gay and Lesbian League], a civil society organisation. According to information provided by a member of the League, there have not been any homophobic demonstrations or gay prides in recent years (as there are not many organisations which deal with the issue, this particular organisation would most probably be aware of any such demonstration). The author of the report also asked a civil society organisation which mainly monitors neo-Nazi demonstrations (Tolerance and Civil Society) (Tolerance a občanská společnost), but it was also unaware of any homophobic demonstrations. There probably were demonstrations which focused, for example, on the issue of ‘protection of the family’, mainly when the law on registered partnership was in the process of adoption, but none of them was openly homophobic. If demonstrations are disturbed by third parties, the police protect the demonstrators (if the demonstration is peaceful and does not disrupt or threaten public order, health, morality etc.). There have been problems with neo-Nazi demonstrations because the organisers did not notify the real purpose of the demonstration (such a demonstration may be dissolved) and there have also been some counter-demonstrations. The police do not interfere with spontaneous, peaceful demonstrations.

## F. Criminal law

- [62]. There are no hate crimes on the grounds of sexual orientation as such defined by the Criminal Code (Trestní zákon) of the Czech Republic. In contrast to crimes committed on the grounds of race, ethnic group, nationality, political opinion, religion etc. the Criminal Code does not make homophobic motives an aggravating circumstance for sentencing. Crimes committed with this motivation are punished according to the punishment stipulated for the relevant crime (serious injury, murder etc.).
- [63]. The draft of a new Criminal Code is being debated in the government;<sup>25</sup> the regulation of crimes committed on the grounds of sexual orientation is proposed to be the same as in the current legislation, i.e. it is not proposed to make homophobic motive an aggravating circumstance.
- [64]. The Criminal Code contains a provision on the crime of ‘incitement to national and racial hatred’ (Sec. 198a). The provision stipulates that a person who publicly incites hatred of another nation, ethnic group, race, religion, class or another group of people or publicly incites the restriction of their rights and freedoms shall be sentenced to a term of imprisonment of up to two years. The punishment is higher if the crime is committed through use of the press, film, radio or TV broadcasting, a publicly accessible computer network or a similarly effective method or if the person actively participates in activities of groups, organisations or associations which promote discrimination, violence or racial, ethnic or religious hatred. The Criminal Code also punishes preparation of a crime, the attempt to commit a crime, the organising of a crime and instigating/abetting and assisting/aiding a crime. This definition of a crime is not in fact the definition of a hate crime as such, but it is the only one which can be considered as being close to such a crime. One of the recommendations given by the Working Group on the Issue of Sexual Minorities (Pracovní skupina pro otázky sexuálních menšin) in its report *Analysis of the situation of lesbian, gay, bisexual and transgender minorities in the Czech Republic* stipulates that the Minister of Justice should make an

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<sup>25</sup> If the draft law is passed by the government, it is then submitted to the Parliament. The draft will be debated in the Chamber of Deputies (Lower House of Parliament), if the draft is adopted by the Chamber of Deputies, it will be submitted to the Senate (Upper House of Parliament). A draft supported by both Houses of Parliament must be signed by the President. It should be noted that the text can still be changed by the Chamber of Deputies or by the Senate.

amendment to the Criminal Code which would cover hate crimes on the grounds of sexual orientation.

- [65]. Even though the Criminal Code does not explicitly include hate crimes, this does not mean that conduct aimed at the LGBT community remains unpunished. There are crimes which, for example, cover the issue of violence against persons etc. and these provisions are used to punish the perpetrators. However, the ground of sexual orientation is not explicitly mentioned by the law nor is it counted as an aggravating circumstance. There are also other crimes which may be counted as crimes which might have impact on the LGBT community, e.g. the crime of ‘support for and propaganda of movements aimed at suppressing human rights and freedoms’. This crime punishes a person who supports or propagates a movement which aims to suppress the rights and freedoms of individuals, or which promotes national, racial, class or religious hatred or hatred of another group (such a person may be sentenced to a term of imprisonment of one to five years; the law stipulates aggravating circumstances such as perpetration of the crime through use of the press (print), film, radio or TV broadcasting, or some other similarly efficient means; membership of an organised group; perpetration of such an act during a state of emergency or a state of war).
- [66]. As there are no hate crimes recognised by the law, there are no statistics available on hate crimes. According to the available decisions the above-mentioned provision 198a of the Criminal Code has not been used in a manner relevant to this analysis. Because there have been no cases which would need the provision to be interpreted, either positively or negatively, for the reasons of sexual orientation, the potential for its use remains unknown. It can only be guessed that the problem of criminal offences on the grounds of sexual orientation does exist. The situation may be illustrated by the findings of research conducted by Ivo Procházka in 2003, *Discrimination of lesbian women, gay men and bisexuals in the Czech Republic*, where some respondents experienced physical violence or verbal abuse or harassment on the grounds of their sexual orientation (they did not report it to the police in most cases).<sup>26</sup>
- [67]. There is a minor offence which is defined as an act against a person on the grounds of sexual orientation in the Minor Offences Act (Zákon o přestupcích):<sup>27</sup> a minor offence against civil coexistence (Sec. 49). A

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<sup>26</sup> [http://gay.iniciativa.cz/download/diskriminace\\_en.pdf](http://gay.iniciativa.cz/download/diskriminace_en.pdf), (opened on February 19, 2008), pp. 18-20.

<sup>27</sup> Zák. č. 200/1990 Sb., o přestupcích (Act. No. 200/1990 Coll., Minor Offences Act), available at

person, who harms/damages someone on the grounds of (...) sexual orientation can be punished by a fine of up to 5,000 CZK (approx. 200 Euro). This section is used only in cases of very low severity; more serious crimes are generally punishable pursuant to the provisions of the Criminal Code.

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<http://portal.gov.cz/wps/portal/s.155/701?number1=200%2F1990&number2=&name=&text>  
= (Czech only), (opened on February 19, 2008).

## G. Transgender issues

- [68]. The discrimination of transgender people may be dealt with as discrimination on the grounds of gender, i.e. the prohibition of discrimination against trans people (especially transsexuals) may be covered by the prohibition of discrimination on the ground of 'gender' in the relevant laws (as ruled by the European Court of Justice (ECJ) in *P v. S and Cornwall County Council* for transsexual people). There is also the possibility of subsuming discrimination against transgender people under the provisions on discrimination on the grounds of 'sexual orientation'. The provisions in the above-mentioned laws define the prohibition of discrimination as prohibition of discrimination for several grounds and the grounds are explicitly stipulated there: the ground of 'gender' always appears in the same provision as the ground of 'sexual orientation'. The notions of 'gender' and 'sexual orientation' also cover the category of transpersons. As there is no case law on the matter nor are the terms defined in the laws it is not possible to say whether transgender discrimination is classified as discrimination on the grounds of gender or of sexual orientation.
- [69]. There is a significant problem with the fact that the Anti-discrimination Act (Antidiskriminační zákon) has not yet been adopted. There is a highly unsatisfactory situation regarding the prohibition of discrimination in several areas of law (health care etc.) and it is unsatisfactory for both grounds – sexual orientation and gender. There is, nevertheless, a general ban on discrimination in the Constitution (Sec. 3 of the Charter of Human Rights), but it is too general so that it cannot be said that Czech laws are in compliance with the *acquis*.
- [70]. As yet there is no Anti-discrimination Act as such in the Czech legal system, although such an act has been proposed twice in recent years. The latest draft is now being debated in Parliament (Government Draft Law No. 253, delivered to Parliament on 07.07.2007). The anti-discrimination legislation is rather diffuse (at least ten different acts); the most detailed is the legislation regarding employment issues. In fact, there is no law which uses the word 'transgender' and it is not even mentioned in the explanatory reports to the draft laws.
- [71]. All the legislation discussed in this report is also applicable to transgender people. The legislation described above is either based on the principle of non-discrimination on the grounds of sexual orientation or applicable to same-sex partnership or opposite-sex marriage (e.g. family reunification). Czech legislation does not differentiate between LGBT people and is most probably applied to all

of them (there is, unfortunately, no definition of LGBT people in the laws and there is no case law to support or disprove this opinion). The gaps described above in relation to the situation of the LGBT community in general also apply to transgender people.

- [72]. The law provides for the possibility of sex change. The Health Care Act<sup>28</sup> stipulates that surgery on transsexuals is performed at the request of the individual concerned, following approval by a commission. The commission is composed of five people: a lawyer, two physicians specialising in this field and two physicians who do not participate in the surgery. The activity of these commissions is not regulated by law, nor even by any standards. There is no possibility of appeal against the decisions of these commissions. The commissions do work satisfactorily according to the available information.<sup>29</sup>
- [73]. A transgender person may change his/her name in accordance with the Act on the Registry Office<sup>30</sup>. The Registry Office allows for a name change upon the request of the person concerned and upon provision of a certificate from the medical centre where the sex change takes place. The law stipulates that the office shall allow a 'neutral' name and surname (Sec. 72). The law stipulates the condition of either citizenship or permanent residence for the possibility of a name change. There is also a general clause about the possibility of a name change for serious reasons.
- [74]. There are no problems with new documents (birth certificate etc.), but there could be problems with the continuation of the legal identity of a person who undergoes sex-change surgery.<sup>31</sup> A number of laws use a 'birth number', a number which identifies the person to whom it was assigned. The birth number consists of nine or ten numbers (e.g. 885713/xxxx), where the first pair of numbers denotes the year of birth, the second pair denotes the month and the gender and the third pair the day of birth; the four 'x's are numbers which identify the individual. The Act on Inhabitancies Evidence<sup>32</sup> allows for a change

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<sup>28</sup> Zák. č. 20/1966 Sb., o péči o zdraví lidu (Act. No. 20/1966 Coll., Health Care Act), available at [http://portal.gov.cz/wps/portal/\\_s.155/701?number1=20%2F1966&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=20%2F1966&number2=&name=&text=) (Czech only), (opened on February 19, 2008).

<sup>29</sup> See *Analýza situace lesbické, gay, bisexuální a transgender menšiny v ČR* [Analysis of the situation of the lesbian, gay, bisexual and transgender minority in the Czech Republic]

<sup>30</sup> Zák. č. 301/2000 Sb., o matrikách, jménu a příjmení (Act. No. 301/2000 Coll., Act on Registry Office), available at

[http://portal.gov.cz/wps/portal/\\_s.155/701?number1=301%2F2000&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=301%2F2000&number2=&name=&text=)

= (Czech only), (opened on February 19, 2008).

<sup>31</sup> Further information is available at

[http://www.vlada.cz/assets/cs/rvk/rfp/PracSk\\_sex\\_mensin/Analysis\\_EN.pdf](http://www.vlada.cz/assets/cs/rvk/rfp/PracSk_sex_mensin/Analysis_EN.pdf)), (opened ON February 19, 2008)..

<sup>32</sup> Zák. č. 133/2000 Sb., o evidence občanů a rodných číslech (Act. No. 133/2000 Coll., Act on

of the birth number (Sec. 17 (2) only if the individual's gender has changed). However, as the number is often used for loans and mortgages and also by some institutions to identify an individual, he/she must prove the continuity of his/her legal identity (and disclose his/her sensitive personal data). The possibility of the introduction of a neutral register was discussed by the government in 2005 (Government Decision No. 340 of 23.03.2005), but there has not yet been any follow-up. Official statistics on people who have changed sex are not available.

- [75]. Transsexuals are accorded the right to marry a person of their previous sex. Their legal status is determined on the basis of their new sex.
- [76]. There is no case law on this matter. There was a case which was made public of a woman (MtF) who was refused a job in the Czech Army for the reason of her changed sex, but she did not take the claim to court.<sup>33</sup> The author of the report looked for case law on the relevant websites of the higher courts (Supreme Court (Nejvyšší soud), Supreme Administrative Court and Constitutional Court Ústavní soud) and submitted a request to the Ministry of Justice and a number of NGOs. Similar requests had been made to obtain statistical data, but transgender people do not figure in any available statistics.

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Inhabitancies Evidence), available at

[http://portal.gov.cz/wps/portal/\\_s.155/701?number1=133%2F2000&number2=&name=&text](http://portal.gov.cz/wps/portal/_s.155/701?number1=133%2F2000&number2=&name=&text)  
= (Czech only), (opened on February 19, 2008)

<sup>33</sup> <http://www.translide.cz/translide-a-verejna-sprava> (opened on February 19, 2008).

## H. Miscellaneous

[77]. A new legal institution of registered partnership was introduced in 2006 by the Act on Registered Partnership. The partners in the registered partnerships have been granted some rights that are comparable to the rights of spouses, i.e. representation in ordinary matters and mutual maintenance/subsistence obligation, the right to refuse to give testimony in criminal proceedings and the possibility of choosing a defending counsel for the partner. There is a different position with regard to the family life of registered partners in comparison with the family life of spouses. The law does not allow for the adoption of children by partners and partners are also not given the possibility of adopting the children of their partners. The partners in the registered partnerships do not have access to artificial insemination, only heterosexual couples have this right (the entry into marriage as such is not required). The law also does not allow the constitution of joint ownership by the partners and does not grant the right to inherit which married couples have (their position is not equal to the married couples), the right to use a common surname or the right to a widow's pension etc.

[78]. Although the registered partnership is not treated as a marriage, generally, it has been given an equivalent position to marriage for the purpose of the provisions of e.g. the Aliens' Act (see Sec. 180f AA). A partnership can only be registered in the Czech Republic if one of the partners is a citizen of the Czech Republic, but there are no limits for partners (EU citizens or third country nationals) whose partnerships are registered outside the Czech Republic.

[79]. A total number of 487 couples entered into registered partnership (between 01.07.2006 and 31.12.2007).<sup>34</sup> Of the 487 registered partnerships there were 353 gay partnerships and 134 lesbian partnerships; eight registered partnerships were dissolved.

[80]. There are many media information sources.<sup>35</sup>

There are also civil society organisations (e.g.): STUD, Gay and Lesbian League.

[81]. In April 2007 the Working Group on the Issue of Sexual Minorities (Pracovní skupina pro otázky sexuálních menšin) was set up by the

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<sup>34</sup> Source: [www.gay.iniciativa.cz](http://www.gay.iniciativa.cz) (NGO source) (opened on February 19, 2008).

<sup>35</sup> TV programme 'Q', Film festivals on LGBT issues Mezipatra, eLnadruhou, websites [www.stud.cz](http://www.stud.cz), [www.bengales.cz](http://www.bengales.cz), [www.lesba.cz](http://www.lesba.cz), [www.glliga.cz](http://www.glliga.cz), <http://www.translide.cz/>, <http://www.transforum.cz/tf/> (not updated).

Minister for Human Rights and Minorities (Ministryně pro lidská práva a národnostní menšiny) Džamila Stehlíková, on the occasion of the European Year of Equal Opportunities. The working group published a report, *Analysis of the situation of lesbian, gay, bisexual and transgender minorities in the Czech Republic*.<sup>36</sup>

- [82]. There is no state agency which deals solely with the issue of discrimination on the grounds of sexual orientation. The issue is monitored by the Government Council for Human Rights and by the relevant departments of the ministries. The establishment of a Government Committee for Human Rights and the LGBT Minority was proposed to the government in 2008. There are also several NGOs which represent the interests of the LGBT community.
- [83]. The National Strategy for the European Year of Equal Opportunities (Národní strategie pro evropský rok rovných příležitostí) prepared by the Government of the Czech Republic deals with the position of partners in registered partnerships.<sup>37</sup> Part 3 of the Strategy describes the efforts to combat discrimination on grounds of sexual orientation. The Strategy notes the challenges for society: more information which would lead to a public debate on the elimination of stereotypes in society, more information about discrimination on grounds of sexual orientation and the possibilities for protection from discrimination.

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<sup>36</sup> Available at [http://www.vlada.cz/assets/cs/rvk/rlp/PracSk\\_sex\\_mensin/Analysis\\_EN.pdf](http://www.vlada.cz/assets/cs/rvk/rlp/PracSk_sex_mensin/Analysis_EN.pdf) (opened on February 19, 2008)

<sup>37</sup> Available at [http://www.vlada.cz/cs/vlada/stehlikova/errp/narodni\\_strategie.html](http://www.vlada.cz/cs/vlada/stehlikova/errp/narodni_strategie.html) (Czech only) (opened on February 19, 2008).

## I. Good practices

- [84]. The Working Group on the Issue of Sexual Minorities which was established by the Minister for Human Rights and Minorities on the occasion of the European Year of Equal Opportunities published a detailed report, *Analysis of the situation of lesbian, gay, bisexual and transgender minorities in the Czech Republic*. The report gives recommendations which are structured according to the relevant laws and may be used easily by politicians.
- [85]. Czech legislation on freedom of movement and family reunification provides for full equality of treatment for LGBT and other people.
- [86]. The National Strategy for the European Year of Equal Opportunities prepared by the Government of the Czech Republic deals with the position of partners in registered partnerships.<sup>38</sup> Part 3 of the Strategy describes the efforts to combat discrimination on grounds of sexual orientation. The Strategy notes the challenges for society: more information which would lead to a public debate on the elimination of stereotypes in the society, more information about discrimination on grounds of sexual orientation and the possibilities for protection from discrimination.

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<sup>38</sup> Available at [http://www.vlada.cz/cs/vlada/stehlikova/errp/narodni\\_strategie.html](http://www.vlada.cz/cs/vlada/stehlikova/errp/narodni_strategie.html) (Czech only) (opened on February 19, 2008).

# Annex 1 – Case law

## Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

Case title	L.S.
Decision date	TBC 2007 (the page with the decision of the relevant court is temporarily unavailable)
Reference details (type and title of court/body; in original language and English [official translation, if available])	TBC
Key facts of the case (max. 500 chars)	TBC
Main reasoning/argumentation (max. 500 chars)	TBC
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	TBC
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	TBC

DISCLAIMER: This study has been commissioned as background material for a comparative report on homophobia and discrimination on grounds of sexual orientation by the European Union Agency for Fundamental Rights. The views expressed here do not necessarily reflect the views or the official position of the FRA. The study is made publicly available for information purposes only and does not constitute legal advice or legal opinion.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 2

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 3

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 4

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 5

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

Chapter B, Freedom of movement, case law relevant to Directive 2004/38/EC, case 1

Case title	There is no case law on freedom of movement
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1

Case title	TBC
Decision date	October 5, 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Rozsudek Nejvyššího správního soudu z 5. října 2006, Azs 66/2006-52</i> [Decision of the Supreme Administrative Court of 05.10.2006, No. 2 Azs 66/2006-52]
Key facts of the case (max. 500 chars)	TBC
Main reasoning/argumentation (max. 500 chars)	TBC
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	TBC
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	TBC

[copy template for next four cases]

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1

Case title	TBC
Decision date	23.11.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Decision of the Supreme Administrative Court of 23.11.2007, No. 5 Azs 50/2007-71
Key facts of the case (max. 500 chars)	TBC
Main reasoning/argumentation (max. 500 chars)	TBC
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	TBC
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	TBC

[copy template for next four cases]

Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC, case 1

Case title	There is no case law on family reunification.
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

Chapter E, Freedom of assembly, case 1

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	Supreme Administrative Court – there is a case which might be relevant, although it is not a case relating to the LGBT minority.
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

Chapter F, Hate speech, case 1

Case title	There is no case law on hate speech
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

Chapter F, Hate crimes, case 1

Case title	There is no case law on hate crimes
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

Chapter G, Applicability of legislation on trans gender issues, case 1

Case title	There is no case law on the applicability of legislation on transgender issues
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 1

Case title	There is no case law on name change and sex change of transgender people.
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 1

Case title	No case law on the issue.
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

## Annex 2 – Statistics

### Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	1 (employment)						
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	1 (employment)						
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	1 compensation payment: CZK 70,000 (approx. 2700 Euro).						
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	Only the above-mentioned information is available						

**Chapter B, Freedom of movement of LGBT partners**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	Not available							
Number of LGBT partners who claimed their right to residence but were denied this right	Not available							

**Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	Not available							
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation	Not available							

**Chapter C, Asylum and subsidiary protection, protection of LGBT partners**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in	Not available							

your country falling under Art 2/h Directive 2004/83/EC								
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner	Not available							

#### Chapter D, LGBT partners benefiting family reunification

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	Not available							
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	Not available							

#### Chapter E, LGBT people enjoyment of freedom of assembly

	2000	2001	2002	2003	2004	2005	2006	2007
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	None, according to the information available							
Number of demonstrations against tolerance of LGBT people.	None, according to the information							

	available							
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### Chapter F, Homophobic hate speech

	2000	2001	2002	2003	2004	2005	2006	2007
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	None, according to the information available							
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	None, according to the information available							
Range of sanctions issued for homophobic hate speech	----	----	----	----	----	----	----	----
Number of non-criminal court cases initiated for homophobic statements	None, according to the information available							
Number of non-criminal court cases initiated for homophobic	None, according to the information							

statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	available							
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**Chapter F, Homophobic motivation of crimes as aggravating factor**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	None, according to the information available							

**Chapter G, Transgender issues**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of name changes effected due to change of gender								
Number of persons who changed their gender/sex in your country under the applicable legislation								

Chapter I, Statistics relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation  
[presentation according to the templates above]