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## **DEFENDER'S MISSION**

The Public Defender of Rights (Ombudsman), pursuant to Act No. 349/1999 Coll., on the Public Defender of Rights, protects the citizens from actions of authorities and other institutions in the case these actions are inconsistent with the law, do not correspond to the principles of democratic rule of law and good governance, or in the case the authorities fail to act. The Defender has the right to consult official or court documents within the limits of investigating a complaint, to request explanation from the authorities, and may carry out unannounced on-site inspections. In the case an error in the actions of the authority has been identified and no remedy has subsequently been applied, he may inform the superior authority or the general public.

Since 2006, the Defender has fulfilled the function of a national preventative mechanism according to the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The aim of systematic visits is to reinforce the protection of persons whose freedom has been restricted from mistreatment. The visits are carried out both at the locations of restricted freedom by virtue of office and at institutions which provide care on which the recipients are dependent. The Defender generalizes the findings and recommendations regarding the conditions in a certain type of institutions and presents them in summary reports from the visits; based on these, he defines the standards for treatment. The Defender addresses his proposals to improve the identified state of affairs and to remove any potential mistreatment both to the institutions themselves and their founders as well as the central authorities of public administration.

In 2009, the Defender was assigned the role of the national body for equal treatment and protection from discrimination (equality body) in accordance with the EU legislation. He contributes to promoting the right to equal treatment for all persons regardless of their race or ethnicity, nationality, gender, sexual orientation, age, disability, religion, belief or worldview. To further this, he provides assistance to victims of discrimination, carries out research, publishes reports and submits recommendations on issues associated with discrimination and manages exchange of available information with relevant European entities. Since 2011, the Defender has also been monitoring detention of foreigners and deportation procedures.

As part of his special authority, he has the right to submit proposals to set aside subordinate legislation, the right to act as a secondary party to the Constitutional Court proceedings on setting aside a law or its part, the right to sue for protection of public interest or to petition for initiating disciplinary proceedings with a President or Deputy President of the court. The Defender may also recommend to

the government to adopt, amend or set aside a law. The Defender is independent and impartial; he is accountable for the activities of the office only to the Chamber of Deputies which elected him. He is assisted with a Deputy Defender elected in the same manner, to whom he may delegate a part of his office. The Defender continually informs the general public about his findings through the Internet, social networks, expert seminars, round table debates, and conferences. The most important findings and recommendations are summarized in a Report on the Activity of the Public Defender of Rights which is presented annually to the Chamber of Deputies of the Parliament of the Czech Republic.

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## **INTRODUCTION**

In 2009, the Public Defender of Rights became the body in charge of equal treatment, i.e. the place where victims of discrimination may turn to with their request for assistance. The number of people who have done so already has increased steadily; while in 2010 the Public Defender of Rights received 178 complaints regarding discrimination, in 2014, the number almost doubled (332). Despite the obvious increase in numbers of complaints, their total number remains rather low. This raises the question whether discrimination is really so scarce in the Czech Republic, or whether the victims of discrimination are prevented from accessing legal aid through various barriers.

I consider the second option to be more likely, i.e. that the Public Defender of Rights, similar to other European equality bodies, is struggling with underreporting of discrimination. This phenomenon may be described as a situation where the victims of discrimination do not report the occurring incidents for various reasons (neither at the location where the discrimination occurred, nor at institutions which are designed to help victims of discrimination), and they do not claim their lawful rights.

The necessity to deal with underreporting of discrimination and its active prevention is evident. Any anti-discrimination legislation or organizations that should promote and enforce it are worthless if the victims of discrimination do not have sufficient information and courage to turn to them for help. The aim of the Public Defender of Rights as an equality body as well as all institutions where complaints regarding discrimination may be presented is to ensure effective help and support the maximum number of victims in their struggle for their lawful rights. The desired effect is obviously not to simply increase the number of complaints of discrimination, but a situation where everybody knows their rights and also knows how and where to turn to in case of their violation.

Evidence concerning the significant extent of underreporting of discrimination on the EU level has been brought by the research study of the European Union Agency for Fundamental Rights (FRA) from 2009.<sup>1</sup> The study was focused on the experience of immigrants and ethnic minorities living in the EU, and over 23,000 persons took part in it. Up to 82 % of respondents who mentioned that they had been discriminated against over the past twelve months did not deal with the situation,

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<sup>1</sup> European Union Agency for Fundamental Rights (2009): EU-MIDIS. European Union Minorities and Discrimination Survey. Main Results Report. Available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/663-FRA-2011\\_EU\\_MIDIS\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/663-FRA-2011_EU_MIDIS_EN.pdf)

neither at the location where it occurred, nor did they ask the authorities or courts for help. They most frequently mentioned as the reason for this that presenting a complaint would not resolve anything and that such incidents were part of their daily lives and were not worth reporting. Apart from this, the study showed that the victims of discrimination often do not complain simply because they do not know where to turn to, or how. Only 16 % of the respondents knew at least one organization which would be able to provide help in case of discrimination, and on the other hand, almost two thirds of the respondents answered that they never even heard about any equality body operating in their country of residence. The results of the FRA survey point to a widespread phenomenon of underreporting of discrimination among immigrants and members of ethnic minorities. The authors describe the entire situation as “dismal”, since the “*de iure* legislation” is clearly at odds with the “*de facto* legislation”.

I believe that the underreporting of discrimination in the Czech Republic also concerns other groups than just members of ethnic minorities. This is demonstrated in the obvious disproportion between the frequent occurrence of subjectively experienced discrimination (for diverse reasons) which has been indicated in representative surveys on both national and international level, and on the other hand, the still very low number of complaints regarding discrimination addressed at the Public Defender of Rights or administrative authorities, or the low number of court proceedings. For instance, according to the Eurobarometer survey results<sup>2</sup> from 2012, up to 19 % of respondents from the Czech Republic felt discriminated against over the past 12 months (primarily due to age or gender); meanwhile, up to 43 % of respondents witnessed some discrimination over the same period.

There are many causes which may lead the victim of discrimination not to resolve the incident and not to report it. The Equinet report (European association of equality bodies)<sup>3</sup> mentions e.g. low knowledge of anti-discrimination legislation, lack of information concerning how and where to file the complaint, insufficient competences to file a complaint (e.g. language barrier), mistrust towards national authority, psychological barriers (shame, concerns of revenge and victimization, accepting discrimination as an inalterable state of affairs etc.), imperfections in the anti-discrimination legislation, unbearable duration or costs of court proceedings, problems with the burden of proof, incomprehensibility of the anti-discrimination

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<sup>2</sup> Discrimination in the EU in 2012. Special Eurobarometer 393. Available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_393\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf)

<sup>3</sup> Equinet. Tackling the “Known Unknown”. How Equality Bodies Can Address Under-Reporting of Discrimination through Communications (2012). Available at <http://www.equineteurope.org/Tackling-the-Known-Unknown-How>

legislation or the atmosphere in the society which runs counter to promoting human rights. Within their survey of discrimination in Slovakia (2012), the Slovak non-profit organization Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights)<sup>4</sup> divided the barriers preventing access to legal protection into four types: barriers on the level of the entire society and barriers on the level of anti-discrimination legislation, its enforcement and the decisions of the courts.

I believe it is high time that the Czech Public Defender of Rights identified what prevents the victims of discrimination from claiming justice, analysed the obstacles encountered and proposed solutions to remove these obstacles.

I have therefore decided to survey the extent of underreporting of discrimination, analyse its causes and propose possible solutions. To be able to describe and investigate the current state of affairs in the best way possible, I took interest in the experience of the general population and of marginalized groups, but also in the viewpoints of the actors which enforce equal treatment rights: administrative authorities, courts and non-profit organizations.

This report summarizes the principal conclusions of the survey and presents specific recommendations to remove the obstacles. The survey was carried out within the framework of the project Together towards Good Governance (CZ.1.04/5.1.00/81.00007). The addressee and the implementer of this project is the Office of the Public Defender of Rights.

This report was compiled with regard to the legislation effective as of 31<sup>st</sup> January 2015. The aim of the survey is to explore the experience of the Czech population with discrimination, and to analyse individual, social and institutional obstacles that the victims of discrimination encounter when attempting to assert their rights. The presented publication has five parts. The first part describes and analyses the experience of Czech population with discrimination in general (including its knowledge of anti-discrimination legislation and the possibilities of its enforcement). The second qualitative part is concerned with the specific experience of members of underprivileged groups with discrimination. The first two parts of the research report were compiled by the FOCUS Marketing & Social Research agency. The two subsequent parts analyse the activities of the actors who participate in enforcement of equal treatment: non-profit organizations (Part Three) and courts and inspection

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<sup>4</sup> Poradňa pre občianske a ľudské práva. 2012. Diskriminácia na Slovensku. Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou (Discrimination in Slovakia. Identifying Barriers in Access to Effective Legal Protection from Discrimination). Available at: <http://poradna-prava.sk/wp-content/uploads/2012/11/Publik%C3%A1ciu-si-m%C3%B4žete-stiahnu%C5%A5-tu-105-MB.pdf>

authorities (Part Four). The fifth part summarizes the principal findings and, above all, recommendations which could mitigate the obstacles in seeking legal aid.



Anna Šabatová  
Public Defender of Rights



# **I. DISCRIMINATION AND POSSIBILITIES FOR INSTITUTIONAL DEFENCE THROUGH THE EYES OF CZECH PUBLIC**

The primary goal of the target was the description and analysis of the attitudes of the Czech population towards discrimination based on specific personal characteristics (e.g. age, gender or ethnicity) and their opinions on the possibilities of resolving this issue. The entire topic was divided into the following thematic groups: 1) the perceived extent of discrimination in the Czech Republic and the ideas regarding the possibilities of defence; 2) opinions on the possibilities of institutional defence against discrimination; and 3) the personal experience of the population with discrimination and harassment (the circumstances, causes and further characteristics of the experienced discrimination, the rate of reporting of discrimination and harassment cases to the relevant institutions and the barriers to contacting the institutions).

The entry data is the result of a field survey<sup>5</sup> on a representative sample of the population of Czech Republic aged 18 or more. The survey was carried out in two rounds in June and August 2014. Altogether, 2,079 respondents were surveyed, with 1,039 in July and 1,040 in August. The respondents were selected through quota selection; the data is representative with regard to the distribution of gender, age, highest attained education, size of domicile and region<sup>6</sup>.

Apart from tables and graphs, the final report also contains a text interpretation of the most important findings. Whenever any findings are presented as statistically significant, they represent a 95 % level of confidence. The confidence interval is a maximum of  $\pm 2.15$  % on the 95 % level of confidence.

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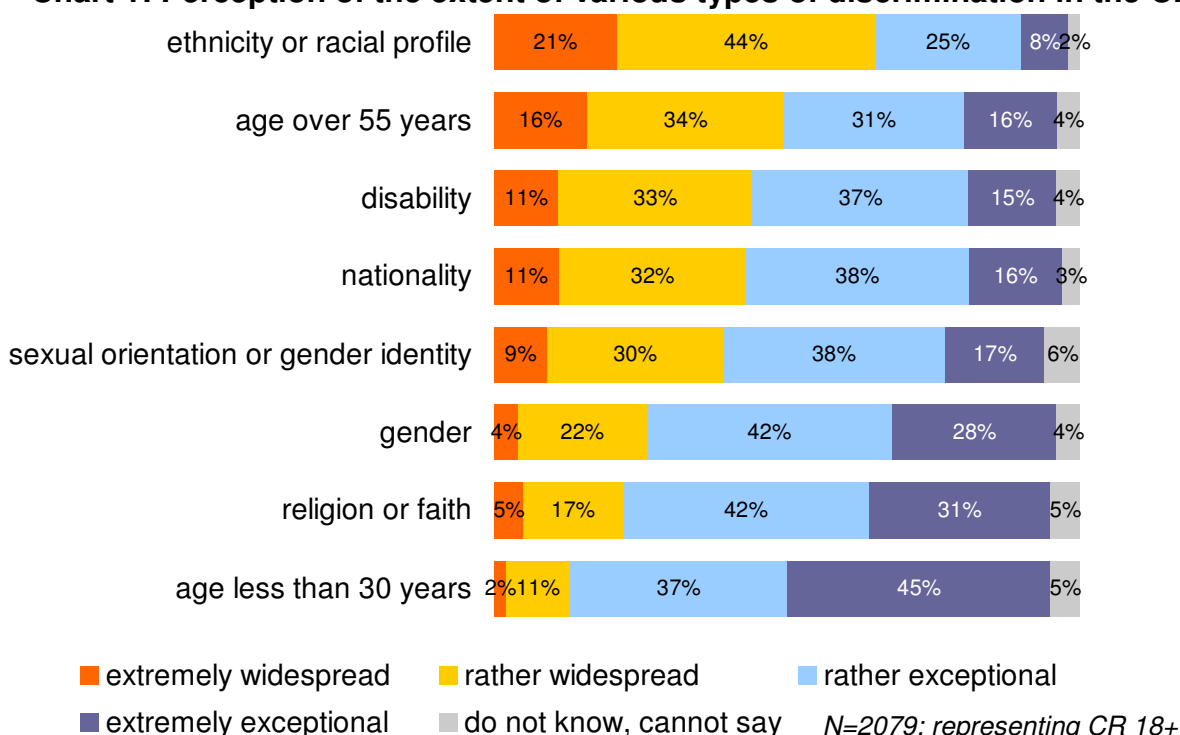
<sup>5</sup> The data survey was carried out by trained interviewers of the Focus agency using direct standardized interviews with the respondents (face to face interviews) using the CAPI method (Computer Assisted Personal Interviewing). They recorded the individual interviews into an electronic questionnaire on a laptop. The data was subsequently sent to the Focus agency, aggregated there, and the data matrix was subjected to formal and logical checks. Every survey of the Focus agency is carried out in adherence of the ESOMAR codex rules. In case of this sample, an internal control was carried out (correct selection of the target person, completeness of the filled-in questionnaire, correct answer recording) as well as an external control (a control survey was carried out in 15 % of the already surveyed cases).

<sup>6</sup> See Table 1 for more detail.

## I.1 PERCEIVED EXTENT OF DISCRIMINATION IN THE CR AND THE IDEAS ABOUT POTENTIAL DEFENCE

Racial or ethnicity-based discrimination is perceived as the most frequent type of discrimination in the Czech Republic. Almost two thirds of respondents believe it is widespread, one fifth even believes it is extremely widespread. One half of the population perceives the existence of discrimination based on age over 55 years, 16 % consider it to be extremely widespread. More than 40 % of the respondents also consider discrimination based on physical or sensory disability or on nationality to be common. According to the respondents, discrimination based on gender (considered to be widespread by 26 %) and on religion or faith (22 %) is encountered relatively less frequently. The least frequent type of discrimination is, according to the respondents, based on young age up to 30 years (13 %).

**Chart 1: Perception of the extent of various types of discrimination in the CR**



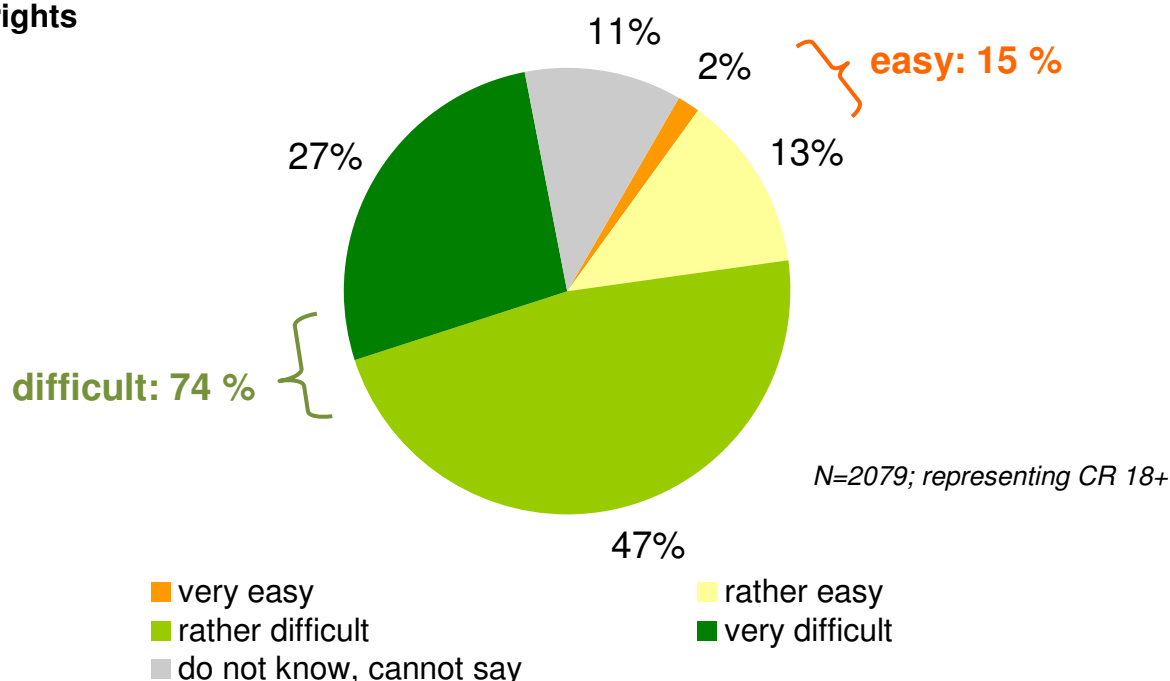
**Question text:** "Please tell me for each of the following forms of discrimination whether it is, according to your opinion, extremely widespread / rather widespread / rather exceptional / extremely exceptional in the Czech Republic."

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

The respondents are very sceptical in rating the chances of the victims to assert their rights. Only 15 % believe that it is easy to get help for the victims of discrimination; and only 2 % of the respondents find the redress very easy. On the other hand, three quarters of the respondents think that it is difficult to invoke their rights, and more than one quarter consider it to be very difficult. The attitudes of the

respondents towards this issue are not significantly statistically influenced by their sociodemographic characteristics (gender, age, highest attained education, socioeconomic status<sup>7</sup> etc.).

**Chart 2: Rating the chances of the victims of discrimination to claim their rights**



**Question text:** "How difficult is in your opinion for the victims of discrimination to seek redress to their grievances in the Czech Republic?"

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

In case the respondents felt discriminated, they would primarily turn to the police (58 %) which they likely perceive as an universal guarantee of abiding the law and order. At a great distance, they would contact a lawyer or an attorney (24 %), an ombudsman (16 %) or a court of justice (11 %). Less than a tenth of the population

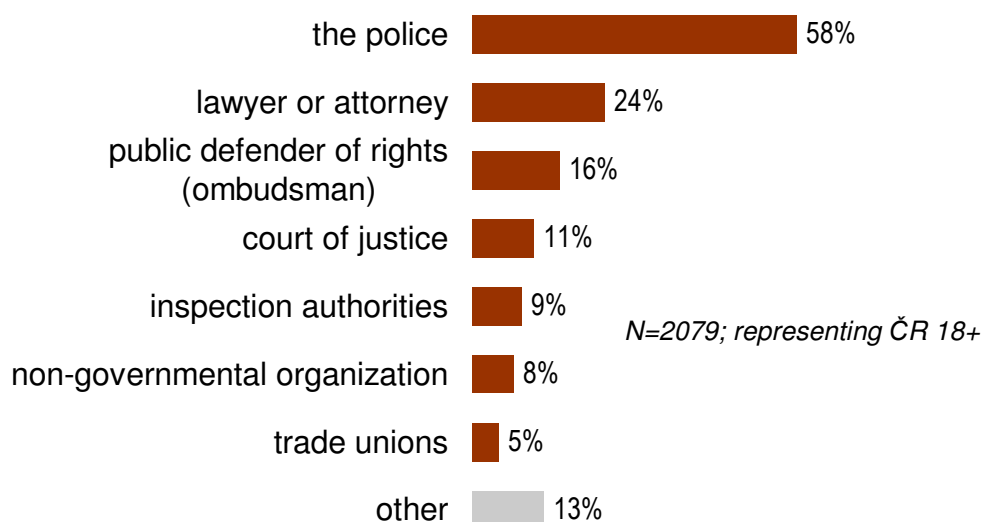
<sup>7</sup> The study operates with the so-called socioeconomic status of the respondents. This is an internationally used methodology of measuring the respondent's social and economic position with regard to multiple aspects including: education, job and job status, and equipment of the household with selected electrical appliances and other items. This results in 16 distinct groups that are subsequently classified into six hierarchical levels:

- A – highly qualified managers and experts
- B – middle management
- C1 – highly qualified white-collar workers
- C2 – qualified workers, white-collar workers
- D – blue-collar workers, white-collar workers with less proficiency
- E – semi-qualified and unqualified blue-collar workers

would turn to inspection authorities, non-governmental organizations or the trade unions.

An interesting piece of information has been brought up by categorizing the spontaneous answers of those respondents who would turn to other entities than those listed in the questionnaire. These respondents would most frequently ask their own family members or friends for help (5 %). The respondents therefore probably presume that aside from institutional help, they would also require psychological and humane support in the case of discrimination, or a compensation of their feelings of injustice and powerlessness. A certain level of scepticism towards the potential institutional solution of discrimination is also suggested by the second most frequent category of spontaneous answers: the respondents would not turn to anybody; they consider it pointless as nobody would help them with their problem (3 %).

**Chart 3: Who would the respondents turn to in the case they felt discriminated against or harassed**



**Question text:** "In the case you became a victim of discrimination or harassment in the future, to whom would you most likely turn?" (Multiple answers possible)

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

The willingness to contact the police, courts, inspection authorities, NGOs or trade unions is not significantly influenced by the sociodemographic characteristics of the respondents. A statistically significant correlation with the attained education can be observed on the respondents who would potentially contact the Public Defender

of Rights: only 10 % of the respondents with elementary education would dare take this step; for college-educated respondents, the rate is 23 %.<sup>8</sup>

A stronger relation with the sociodemographic characteristics of the respondents has been observed for the willingness to turn to a lawyer or an attorney in case of discrimination. There is a statistically significant correlation with attained education, economic activity and the socioeconomic status of the respondents<sup>9</sup>: the willingness to seek legal aid increases in direct proportion to increasing education level and socioeconomic status; the respondents from the segment of highly qualified experts and top managers are ready to take this step much more frequently (47 %) than blue-collar workers (18 %), students (18 %) or unemployed respondents (19 %).

**Table 1: Willingness to contact the public defender of rights or a lawyer / attorney in case of discrimination – by sociodemographic characteristics.**

		Willing to turn to the ombudsman		Willing to turn to lawyer or attorney	
		yes	no	yes	no
Education	Elementary	10%	90%	15%	85%
	HS non-graduates	13%	87%	19%	81%
	HS graduates	18%	82%	28%	72%
	College graduates	23%	77%	35%	65%
Socioeconomic status	A	24%	76%	37%	63%
	B	19%	81%	28%	72%
	C1	16%	84%	31%	69%
	C2	15%	85%	24%	76%
	D	12%	88%	17%	83%
	E	13%	87%	13%	87%
Economic activity	Highly qualified experts, top management	25%	75%	47%	53%
	Middle management, SMB owners	15%	85%	32%	68%
	Officials, white-collar workers	15%	85%	25%	75%
	Blue-collar workers	14%	86%	18%	82%
	Pensioners	15%	85%	22%	78%
	Students	15%	85%	18%	82%
	Homemakers	13%	87%	24%	76%
	Unemployed	21%	79%	19%	81%

**Question text:** "In the case you became a victim of discrimination or harassment in the future, to whom would you most likely turn?"

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

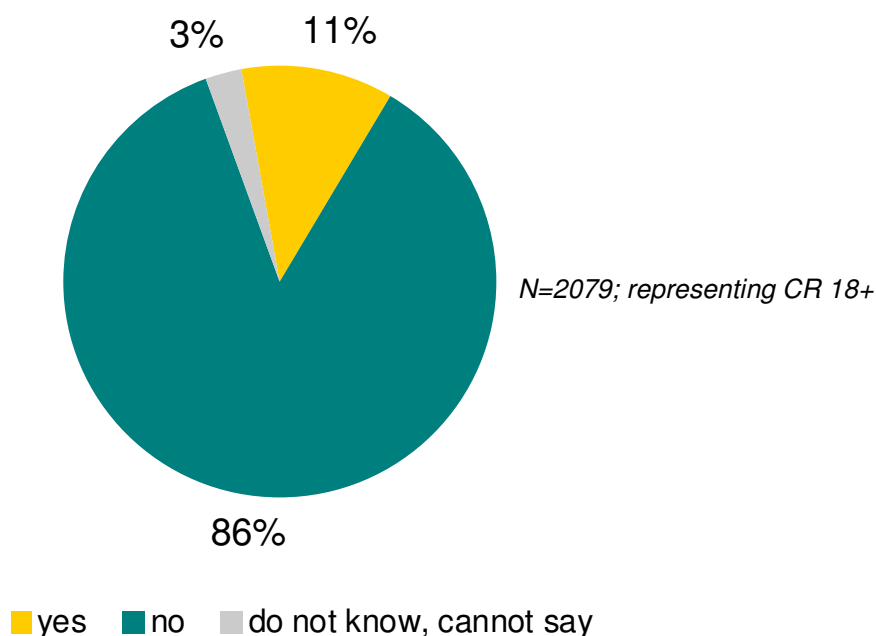
<sup>8</sup> The value of Cramer's V coefficient is 0.11.

<sup>9</sup> The values of Cramer's V coefficient range from 0.16 to 0.18.

## I.2 PERSONAL EXPERIENCE WITH DISCRIMINATION OR HARASSMENT

More than one tenth of the respondents have mentioned a personal experience with discrimination or harassment over the past five years (11 %). There is a statistically significant relation in the sample between the economic activity of the respondents and their experience with discrimination<sup>10</sup>. The unemployed (36 %) feel discriminated against much more frequently, while for students (3 %) or middle management (5 %), this experience is quite rare (see Table 2 for more details).

**Chart 4: Personal experience with discrimination or harassment**



**Question text:** "Have you personally felt discriminated against or harassed in the Czech Republic over the past five years, i.e. since the beginning of 2010?" (In the case you have lived in the Czech Republic for less than five years, please consider this period)

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

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<sup>10</sup> The value of Cramer's V coefficient is 0.16.

**Table 2: Personal experience with discrimination or harassment by sociodemographic characteristics**

		Yes		No		Do not know, cannot say	
		No.	in %	No.	in %	No.	in %
Total		234	11%	1789	86%	56	3%
Gender	Male	94	9%	878	89%	20	2%
	Female	140	13%	911	84%	36	3%
Age categories	18 to 24 years	20	8%	216	89%	7	3%
	25 to 34 years	36	9%	339	88%	10	3%
	35 to 44 years	37	10%	340	87%	12	3%
	45 to 54 years	40	12%	291	86%	8	2%
	55 to 64 years	51	15%	286	83%	6	2%
	65 years or more	50	13%	317	83%	13	3%
Education	Elementary	45	14%	262	81%	17	5%
	HS non-graduates	87	12%	607	85%	22	3%
	HS graduates	76	10%	642	88%	13	2%
	College graduates	26	8%	278	90%	4	1%
Economic activity	Highly qualified experts, top management	11	8%	126	91%	2	1%
	Middle management, SMB owners	10	5%	189	94%	2	1%
	Officials, white-collar workers	41	10%	364	89%	6	1%
	Blue-collar workers	47	9%	440	87%	19	4%
	Pensioners - retirement, disability	71	14%	433	83%	16	3%
	Students	3	3%	108	95%	3	3%
	Homemakers	9	13%	59	83%	3	4%
	Unemployed	42	36%	70	60%	5	4%
Socioeconomic status	A	16	8%	184	90%	4	2%
	B	32	13%	220	86%	3	1%
	C1	44	14%	264	84%	6	2%
	C2	58	10%	486	88%	11	2%
	D	57	11%	430	85%	20	4%
	E	27	11%	205	84%	12	5%
Net monthly household income	Up to 16,000 CZK	50	20%	191	76%	11	4%
	16,001 to 22,000 CZK	35	14%	207	82%	11	4%
	22,001 to 30,000 CZK	36	11%	290	86%	11	3%
	30,001 to 40,000 CZK	36	10%	326	89%	5	1%
	40,000 CZK or more	16	6%	270	93%	3	1%
	Do not know, did not answer	61	10%	505	87%	15	3%
Number of persons in the household	One person	42	13%	269	83%	14	4%
	Two persons	101	13%	682	85%	21	3%
	Three or four persons	79	9%	766	89%	16	2%
	Five persons or more	12	13%	72	81%	5	6%

		Yes		No		Do not know, cannot say	
		No.	in %	No.	in %	No.	in %
Household type	Single-member household	42	13%	269	83%	14	4%
	Childless household	112	12%	779	86%	20	2%
	Family with children	57	8%	609	89%	18	3%
	Three-generation household	6	13%	37	80%	3	7%
	Other household type	17	15%	95	84%	1	1%
Frequency of Internet use	Daily	103	9%	1018	89%	23	2%
	Several times a week	50	12%	357	86%	9	2%
	Several times a month	2	6%	29	94%		
	Less often	19	16%	97	80%	5	4%
	Not at all	60	16%	288	78%	19	5%
Profile on social networks	Has a profile	83	9%	817	88%	24	3%
	Does not have a profile	151	13%	972	84%	32	3%
Domicile size	Up to 4,999 inhabitants	95	12%	657	85%	21	3%
	5,000 to 19,999 inhabitants	29	8%	314	88%	13	4%
	20,000 to 99,999 inhabitants	51	11%	406	87%	8	2%
	100,000 inhabitants or more	59	12%	412	85%	14	3%
NUTS II	Prague	37	14%	220	83%	7	3%
	Central Bohemia	27	11%	218	87%	7	3%
	Southwest	33	14%	187	81%	10	4%
	Northwest	15	7%	196	91%	5	2%
	Northeast	34	12%	248	85%	10	3%
	Southeast	34	10%	304	88%	7	2%
	Central Moravia	30	13%	209	87%	1	0%
	Moravia-Silesia	24	10%	207	86%	9	4%

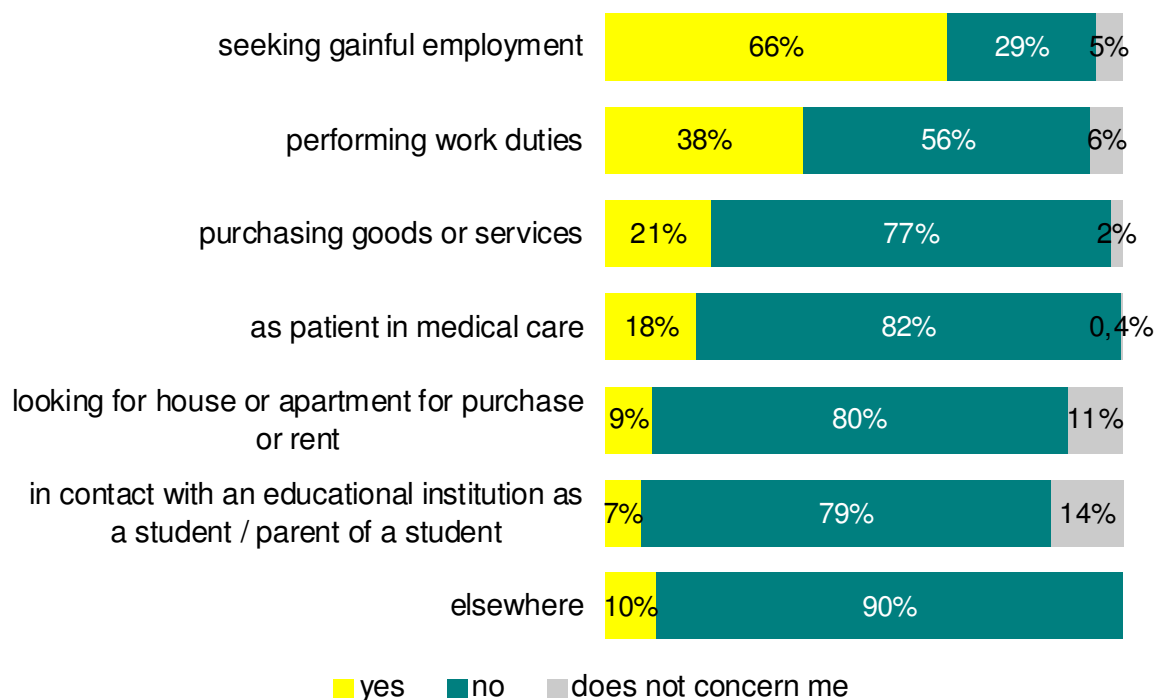
**Question text:** "Have you personally felt discriminated against or harassed in the Czech Republic over the past five years, i.e. since the beginning of 2010?" (In the case you have lived in the Czech Republic for less than five years, please consider this period)

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

The people who have mentioned that they experienced discrimination over the past years encountered this primarily when seeking gainful employment (66 % of them), when performing their job duties (38 %), when purchasing goods or services (21 %), or as patients in medical care (18 %). They have spontaneously supplied other circumstances in which they faced discrimination: in public transport, in the streets or public locations, or when dealing with public authorities.



**Chart 5: Experience with discrimination or harassment in various aspects of life**



N=234; personal experience with discrimination

**Question text:** “Have you experienced over the past five years (or since you have lived in the Czech Republic in the case it is less than five years) that you were discriminated against or harassed in the Czech Republic, when you were...”

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

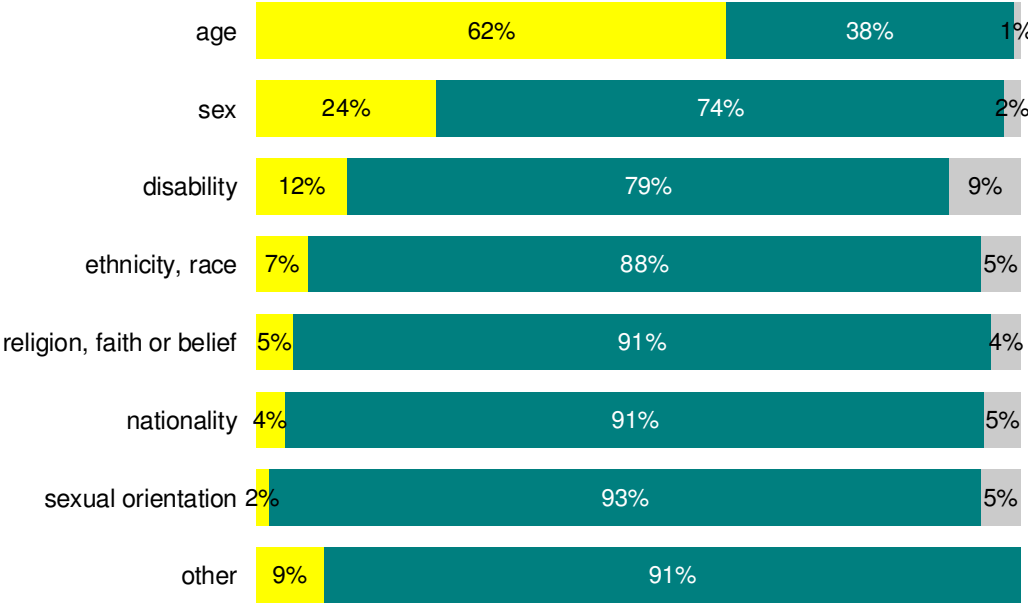
When analysing the grounds for the discrimination faced by these respondents, the most frequent one was by far discrimination based on age, either too young or too old (62 % of those who experienced discrimination). Less than one quarter felt discriminated against on the ground of the gender or their role as a parent (24 %), 12 % due to disability. For 7 % of the respondents, the ground of the discrimination consisted in their ethnicity or race.

It may be observed that even though a relatively low share of respondents were subjected to disadvantaged treatment due to their ethnicity or race, this type of discrimination is perceived as the most widespread in the general society (see

Chapter 3). People therefore perceive this phenomenon as significant even though it directly concerns only a limited number of persons<sup>11</sup>.

Other spontaneously mentioned grounds of discrimination included a lack of education and skills, or unemployment and poor financial conditions.

**Chart 6: Personal experience with discrimination or harassment by individual grounds**



N=234; personal experience with discrimination ■ yes ■ no ■ does not concern me

**Question text:** “Have you experienced over the past five years (or since you have lived in the Czech Republic in the case it is less than five years) that you were discriminated against or harassed due to ...”

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

<sup>11</sup> The quota for this survey was not constructed on the basis of ethnicity or race; therefore, we cannot rule out the possibility that these minorities were under-represented in the sample.

The respondents who declared their recent personal experience with discrimination were asked to describe this experience in greater detail. This provides an interesting view of 234 particular cases on the basis of which certain conclusions may be drawn, supplementing and extending the findings listed in the previous paragraphs:

- **The experienced discrimination is usually related to seeking employment or to work duties.** 73 % of the respondents who mentioned that they had personally experienced discrimination had faced it when seeking a job or in relation to their work duties<sup>12</sup>.
- **The discrimination related to seeking employment or carrying out work duties is dominated by unfavourable treatment due to advanced age** (30 % of those who experienced discrimination). Older people are discriminated against when seeking a job (*“They told me at the job agency that there may be an issue with my date of birth.”*), when carrying out work duties (*“The younger colleagues expressed their opinion that I am not able to use the technology or that my methods are out-dated”*), and when downsizing the workforce (*“They kept the younger employees even though they did not have as much work experience”*).
- **Another widespread form of job discrimination is due to different approach to genders** (i.e. in a vast majority of cases, discrimination against females - 10 %), **and discrimination against parents** (i.e. again predominantly mothers - 7 %). Some female respondents mentioned that during job interviews, they were enquired about the number of their children, their potential babysitting or about their plans for the family, even though HR professionals and potential employers are forbidden from such enquiries by the Employment Act.
- **A significant part of the respondents feel discriminated against when seeking employment due to lack of education or experience** (8 %). In the first case, this concerns insufficient or unfinished education, or e.g. lack of knowledge of foreign languages; in the second case, this concerns predominantly the “vicious circle” of graduates who are refused by employers due to lack of experience which they have nowhere to gain (*“They refuse me*

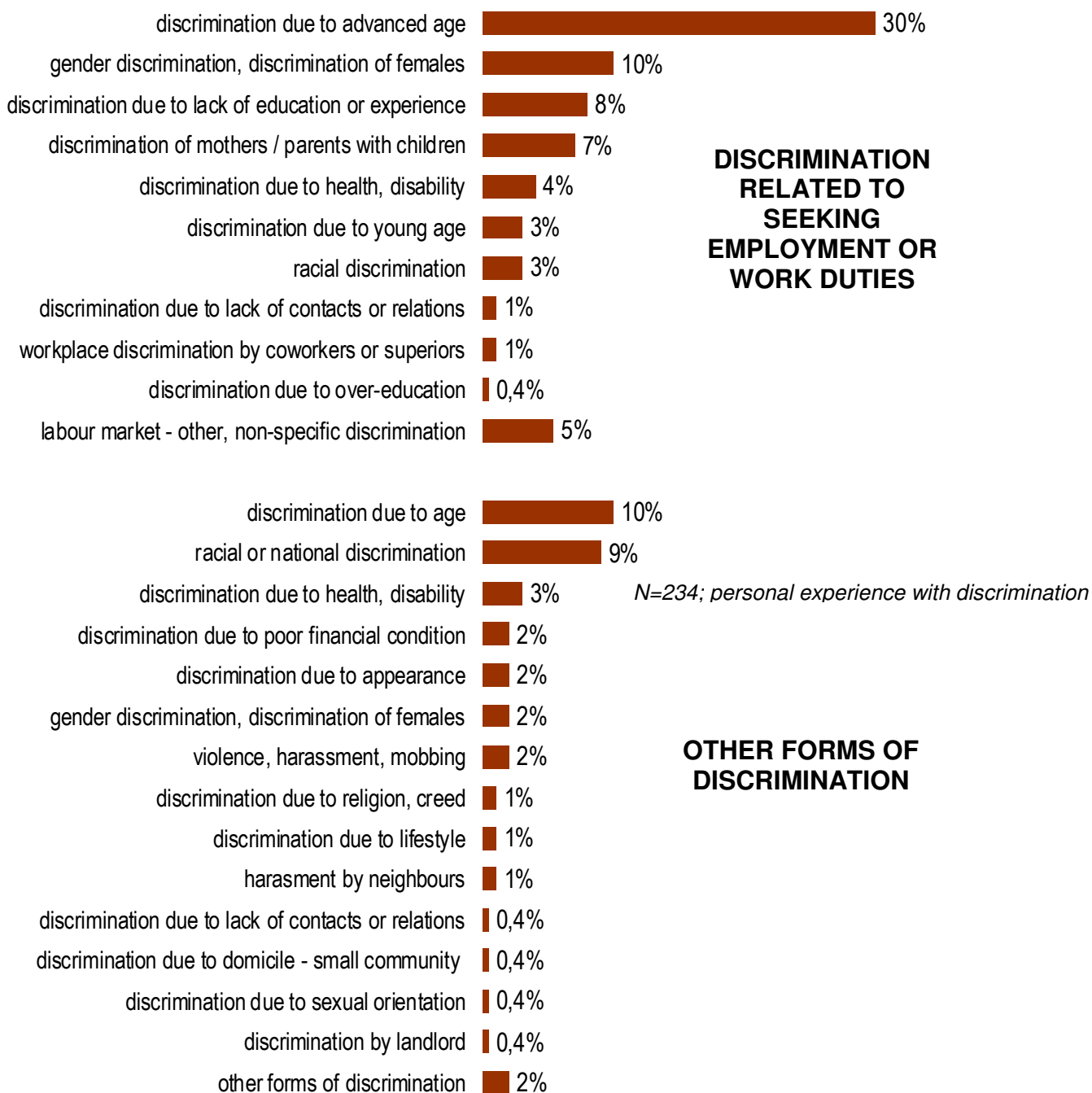
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<sup>12</sup> The respondents were allowed to list multiple cases of discrimination or describe their experience as multiple discrimination (e.g. due to their age and gender). The sum of cases of work-related and work-unrelated discrimination is therefore greater than 100 %.

*because of lack of experience - I have nowhere to gain experience as I have not found any job”).*

- **The discrimination in work-unrelated sphere is also dominated by disadvantaging of elderly persons** (10 %). They feel discriminated against in public transport vehicles, in shops or in healthcare facilities. Some of them also perceive negatively various aspects of media communication, or the overall tone of the social discussion on population ageing and increasing spending on pensions.
- The experience of **discrimination on ethnical or national base** is encountered by our respondents at a similar rate. **This usually concerns discrimination of the Roma or their non-Roma partners** (*“We adopted a Roma girl; my wife is Roma as well but I am not... I often feel the looks of strangers who judge me”).* **There are however also some cases of “reverse discrimination”** in which the members of the majority population complain about verbal or physical aggression by the Roma (*“A group of young Roma threw vulgar insults at me even though I paid no notice to them at all”*), or they rephrase the widespread ideas of their unprecedented social advantages (*“The Roma have various advantages, extra money and social benefits for things that the state does not pay for us”).*

**Chart 7: Specific types of discrimination that the respondents encountered**  
(categorization of spontaneous answers)



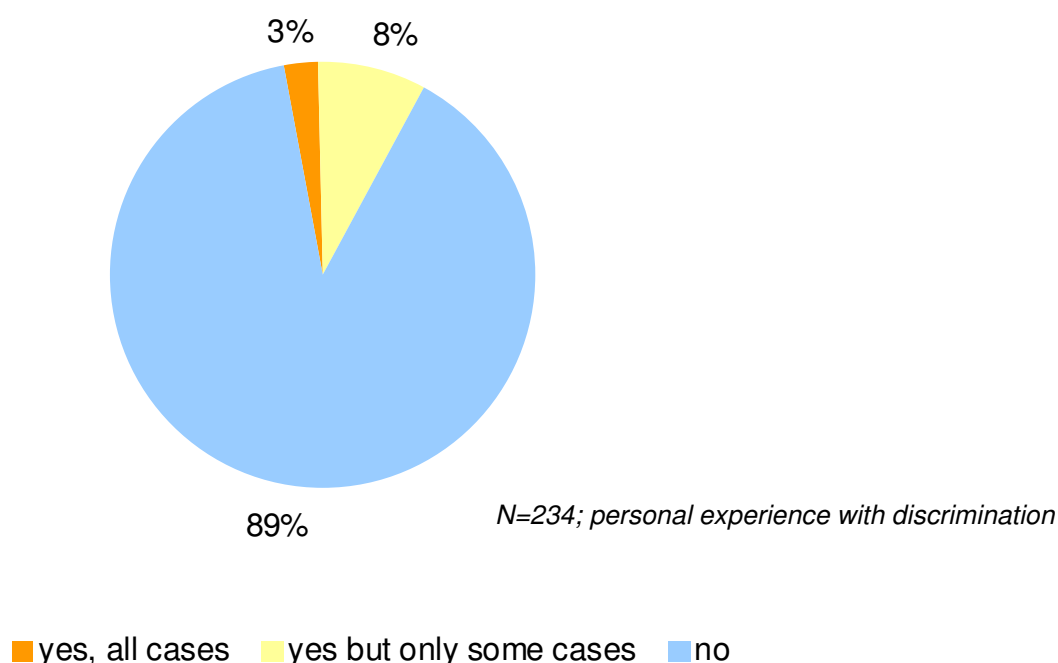
**Question text:** "Please describe the situation." (Multiple answers possible)

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

### I.3 REPORTING DISCRIMINATION TO AUTHORITIES, ORGANIZATIONS OR INSTITUTIONS

Only a minor part of the respondents who felt discriminated against reported their experience to any authorities or organizations (11 %). There are differences between the individual sociodemographic groups of discriminated respondents with regard to the rate of reporting the cases. The most prominent differences are among the individual age groups. The relatively small size of the sample, however, does not allow us to draw any statistically relevant conclusions and the data in Table 3 should be viewed as indicative only.

**Chart 8: Reporting personal experience with discrimination or harassment**



**Question text:** "People may report discriminatory treatment to various authorities or organizations. When you felt discriminated against or harassed, did you or somebody else report this?"

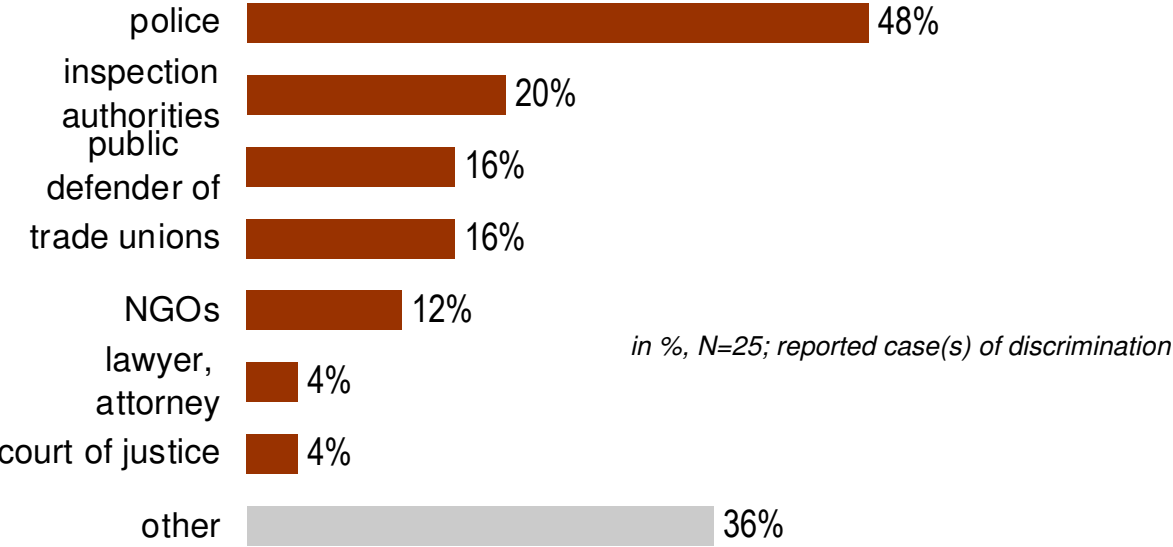
**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

**Table 3: Reporting personal experience with discrimination or harassment - by sociodemographic characteristics of the respondents**

		Reported case(s) of discrimination	Did not report case(s) of discrimination
Gender	Male	13%	87%
	Female	9%	91%
Age categories	18 to 24 years	10%	90%
	25 to 34 years	3%	97%
	35 to 44 years	14%	86%
	45 to 54 years	20%	80%
	55 to 64 years	8%	92%
	65 years or more	10%	90%
Education	Elementary	7%	93%
	HS non-graduates	10%	90%
	HS graduates	13%	87%
	College graduates	12%	88%
Economic activity	Highly qualified experts, top	18%	82%
	Middle management, SMB owners	10%	90%
	Officials, white-collar workers	10%	90%
	Blue-collar workers	11%	89%
	Pensioners - retirement, disability	13%	87%
	Students		100%
	Homemakers		100%
	Unemployed	10%	90%
Socioeconomic status	A	13%	88%
	B	9%	91%
	C1	11%	89%
	C2	12%	88%
	D	11%	89%
	E	7%	93%

The respondents who reported the cases of discrimination most frequently contacted the police (48 % of them), inspection authorities (20 %), the Public Defender of Rights (16 %), the trade unions (16 %), or non-governmental organizations. The respondents also spontaneously mentioned the infraction committee (2 cases) and the CEO of the company or enterprise (2 cases).

**Chart 9: Institutions to which the respondents complained about discrimination or harassment<sup>13</sup>**



**Question text:** “Who did you turn to with your complaint concerning discrimination or harassment?” (Multiple answers possible)

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

Even though the respondents reported the discrimination, the situation was not dealt with at all in one fifth of the cases. The approached institution either did not deal with the situation (“*The director supported my direct superior*”), or they advised the respondent to contact an attorney, to which the respondent resigned. A frequent situation was also letting the report fizzle out with no particular results (“*They told us that we cannot prove it, and they made us look like fools that we had invented the whole thing.*”), or the process has not been finished yet. The most frequent specific solution was an attempt at mediation such as an interview, a reproof or an apology.

<sup>13</sup> Only a very limited number of respondents (25) enter the analysis in this case; the results are therefore only indicative.



**Table 4: How were the discrimination cases resolved**

(categorization of spontaneous answers)

<b>Method of resolving the situation</b>	<b>No.</b>	<b>in %</b>
None, no resolution	5	20 %
No results, fizzled out	3	12 %
Interview, reproof, apology	3	12 %
Still in process	3	12 %
Case resolved by police	2	8 %
I was discharged	1	4 %
My superior changed their illegal behaviour	1	4 %
Conditional dismissal of the offender from the school	1	4 %
Case resolved by local authority	1	4 %
Judicial method	1	4 %
Higher police activity in the location	1	4 %
I changed my job	1	4 %
Not listed	2	8 %
Total	25	100 %

*in %, N=25; reported case(s) of discrimination*

**Question text:** “How was the situation resolved?”

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

The respondents who did not report their case of discrimination anywhere justified this by their lack of trust in the ability of the relevant institution to resolve the situation (43 % of those who did not report discrimination). Another barrier to reporting was lack of proof (28 %), or the respondents did not know to whom they should turn (27 %), they were worried about negative consequences (27 %), or considered their case to be too trivial (23 %).

The categorization of the spontaneously listed barriers to reporting discrimination shows that a significant portion of the respondents consider their case to be institutionally insolvable; they perceive the particular type of discrimination as generally accepted (“*It’s not really possible, what should I do when they tell me that they decided to pick somebody else?*” / “*It’s useless, people around sixty are discriminated against, everybody knows it but nobody does anything about it*”).

**Table 5: Barriers to reporting cases of discrimination**

<b>Barriers to reporting discrimination</b>	<b>No.</b>	<b>in %</b>
Reporting the discrimination would not change/initiate anything	109	48 %
Did not have sufficient proof to successfully prove discrimination	63	28 %
Did not know where and to whom to turn	61	27 %
Worried about negative consequences	61	27 %
Too trivial/not worth reporting - this is normal, happens all the time	52	23 %
Not sure if this constitutes discrimination	36	16 %
Insufficient funds to secure an attorney	35	15 %
Did not know there are legal means to fight discrimination	32	14 %
Uncomfortable/too much bureaucracy or issues/not enough time	30	13 %
Decided to resolve their case by personal arrangement with the discriminating person	19	8 %
Worried about threats by the offenders in case the discrimination would be reported	14	6 %
Other reason	21	9 %

**Question text:** "Why have not you sought help and reported the case?" (Multiple answers possible)

**Source:** Focus agency representative survey on the adult population of the CR, July to August 2014

*in %, N=228; did not report case(s) of discrimination*

## **I.4 CONCLUSION AND SUMMARY**

- **The Czech population perceives the most frequent types of discrimination in our country to be based on ethnic or racial background, or on the age above 55 years.** At the same time, discrimination on the ground of religion or the age less than 30 years is not perceived as widespread.
- **The possibilities of the victims of discrimination to exercise their rights are rated as complicated by three quarters of the respondents.** In the case the respondents themselves felt discriminated against or harassed, they would primarily turn to the police (58 %), and to lesser extent to lawyers (24 %) or to the ombudsman (16 %).
- **11 % of the respondents experienced discrimination or harassment in person over the past five years.** The discrimination was primarily related to their employment; **they felt discriminated against mostly when seeking employment or when carrying out their work duties. The key cause was advanced age.** Another widespread form of work discrimination is different approach due to gender and discrimination of parents.
- **Only a minor part of the respondents who felt discriminated against reported their experience** to any authorities or organizations (11 %). The respondents primarily contacted the police, and to lesser extent the inspection authorities, the ombudsman or the trade unions.
- **The key barrier to reporting the cases of discrimination is the lack of trust in the capacities of the relevant institutions to resolve the case.** The respondents were also dissuaded by the lack of proof, or they did not know to whom to turn, or they were anxious about the negative consequences of such action.

## I.5 SOCIODEMOGRAPHIC PROFILE OF THE SAMPLE

The quota for sample selection which ensures representativeness of the sample in relation to the target population is built on the regional level (NUTS III). Given the sample size, the outputs for some regions may be less precise due to a small sample of respondents in the particular region, which concerns especially smaller regions such as Karlovarsky or Liberecky. For this reason, this report operates with larger entities on the NUTS II level, which eliminates this issue.



**Table 6: Sociodemographic profile of the sample (bar %)**

		No.	in %
Gender	Male	992	48%
	Female	1087	52%
Age categories	18 to 24 years	243	12%
	25 to 34 years	385	19%
	35 to 44 years	389	19%
	45 to 54 years	339	16%
	55 to 64 years	343	16%
	65 years or more	380	18%
Education	Elementary	324	16%
	HS non-graduates	716	34%
	HS graduates	731	35%
	College graduates	308	15%
Economic activity	Highly qualified experts, top management	139	7%
	Middle management, SMB owners	201	10%
	Officials, white-collar workers	411	20%
	Blue-collar workers	506	24%
	Pensioners - retirement, disability	520	25%
	Students	114	6%
	Homemakers	71	3%
	Unemployed	117	6%

		<b>No.</b>	<b>in %</b>
Socioeconomic status	A	204	10%
	B	255	12%
	C1	314	15%
	C2	555	27%
	D	507	24%
	E	244	12%
Net monthly household income	Up to 16,000 CZK	252	12%
	16,001 to 22,000 CZK	253	12%
	22,001 to 30,000 CZK	337	16%
	30,001 to 40,000 CZK	367	18%
	40,000 CZK or more	289	14%
	Do not know, did not answer	581	28%
Number of persons in the household	One person	325	16%
	Two persons	804	39%
	Three or four persons	861	41%
	Five persons or more	89	4%
Household type	Single-member household	325	16%
	Childless household	911	44%
	Family with children	684	33%
	Three-generation household	46	2%
	Other household type	113	5%
Frequency of Internet use	Daily	1144	55%
	Several times a week	416	20%
	Several times a month	31	1%
	Less often	121	6%
	Not at all	367	18%
Profile on social networks	Has a profile	924	44%
	Does not have a profile	1155	56%
Domicile size	Up to 4,999 inhabitants	773	37%
	5,000 to 19,999 inhabitants	356	17%
	20,000 to 99,999 inhabitants	465	22%
	100,000 inhabitants or more	485	23%
NUTS II	Prague	264	13%
	Central Bohemia	252	12%
	Southwest	230	11%
	Northwest	216	10%
	Northeast	292	14%
	Southeast	345	17%
	Central Moravia	240	12%
	Moravia-Silesia	240	12%

## **II. QUALITATIVE RESEARCH WITH RESPONDENTS FROM CHOSEN MARGINALISED GROUPS**

### **II.1 RESEARCH AIMS**

The aim of the qualitative research was an in-depth identification of barriers preventing discrimination victims from accessing legal help within the whole of the Czech Republic.

Individual aims emerged from a quantitative analysis the realisation of which preceded the qualitative survey. They can be divided into four main areas where within each the effort was made to answer several research questions.

The research output included the identification and description of the main barriers in the access to legal help. The areas focused on in the research were the following:

#### **A. Personal experience with discrimination and its solution**

1. What is the respondents' experience with discrimination (personal experience or the experience of people from their surroundings)? How do respondents understand it - to what extent do they consider discrimination to be any given injustice toward their person, to what extent are they able to determine the reason as defined by the antidiscrimination law? In what areas does it occur? What language do respondents use to describe it? What feelings, emotions are connected with it? What effect did discrimination have on their life?
2. What are the respondent's reactions to discrimination? How did they deal with it? If they complained, to whom and with what results?

#### **B. Barriers and barrier elimination proposals**

*The quantitative research showed that 74% of the population thinks that in the Czech Republic it is difficult for victims of discrimination to exercise their rights; 89% did not report their own experience with discrimination or harassment - what are the main causes?*

1. To what extent are there situations in the respondents' surroundings in which people are discriminated against but do not want to complain?
2. What reasons do respondents have for not complaining about discrimination? What are, according to them, the most important causes of discrimination

victims not wanting to complain and protect their rights in a legal manner?  
How do these responses differ depending on respondents' characteristics?

3. What should be changed in order for discrimination and harassment victims in the Czech Republic to have better and easier access to legal help?

### **C. Awareness of rights, knowledge and confidence of organizations providing help to discriminated persons**

*The quantitative survey showed that 27% of respondents who experienced discrimination did not try to resolve it because they did not know who to turn to and where; only 16% of the overall number of respondents would approach the ombudsman; according to the Eurobarometer (2012) 48% of people would not know their rights in the case of becoming a victim of discrimination or harassment. The aim was to find out the causes of this state.*

1. What is the degree of familiarity with the antidiscrimination law? What are the notions about what discrimination victims in the Czech Republic can attain? How do different respondent groups differ in this respect?
2. What is the degree of awareness of organizations which provide support and advice to discriminated persons? What is the awareness of the ombudsman?
3. Where would respondents seek help? Why would they seek it in these specific places? To what extent would they turn to the ombudsman?
4. To what extent do respondents consider the ombudsman's office a trustworthy place? What is in this respect the position of the ombudsman as opposed to other places where it is possible to complain of discrimination?

### **D. Access to information, information competence**

*With regard to low levels of awareness the aim was to find out what is the information competence of people belonging to groups threatened by discrimination and to what extent the phenomenon of not reporting discrimination is related to low information competence.*

1. Where and how do respondents usually find out practical information useful for their everyday life?
2. What is the material accessibility of new information and communication technologies (computer, internet) and what is the manner of their usage? To what extent can respondents use the computer; to what extent are they computer-literate?

3. How would respondents proceed if they wanted to find out more information about discrimination and their defence options?

## **II.2 RESEARCH METHOD**

The qualitative research was conducted with the help of an in-depth interview method with 51 respondents from selected marginalised groups (e.g. clients of non-profit organizations) who became victims of discrimination but for various reasons did not wish to deal with their situation in any legal manner: they did not report it to the ombudsman, administrative bodies nor courts. A table below shows an overview of the respondents.

Respondents were chosen through deliberate selection and their recruitment took a form of two phases: The Office of the Public Defender of Rights approached selected non-profit organization representatives with the request that they provide contact information of suitable respondents who were consequently approached by researchers with a request for cooperation.

Interviews were moderated by experienced researchers (sociologists, psychologists, or anthropologists) and were carried out around the whole Czech Republic.

The average length of an interview was 82 minutes; interviews were conducted within the premises of the research agency, in the respondents' homes or in public places - always in agreement with the preference of the respondent.

The interview phase lasted from 1 October 2014 until 15 February 2015. All the interviews were carried out face to face and recorded in the form of an audio recording which was subsequently transcribed, made anonymous and destroyed.



**Table 7: Overview of respondents**

ID	Gender	Age	Education	Country of birth	First language	Dependent children	Respondent characteristic
1	Female	62	University	Czech Republic	Czech	0	gender – female, age
2	Male	28	University	Ukraine	Ukrainian	0	national origin – Ukrainian
3	Male	42	Primary	Slovakia	Slovak, Romani	3	ethnicity/ethnic origin – Romani
4	Female	28	Secondary	Czech Republic	Czech, Romani	0	ethnicity/ethnic origin – Romani
5	Female	37	Secondary	Czech Republic	Romani	3	ethnicity/ethnic origin – Romani
6	Female	54	University	Czech Republic	Czech	1	gender – female, age
7	Female	62	University	Czech Republic	Czech	0	mental disability (husband)
8	Female	35	Primary	Czech Republic	Czech	2	ethnicity/ethnic origin – Romani
9	Male	37	Secondary without graduation exam	Czech Republic	Czech	2	ethnicity/ethnic origin – Romani
10	Female	40	Secondary without graduation exam	Czech Republic	Czech	2	ethnicity/ethnic origin – Romani
11	Female	33	University	Czech Republic	Czech	0	gender – female
12	Female	46	Secondary	Czech Republic	Czech	0	gender – female
13	Female	40	Primary	Czech Republic	Czech	2	ethnicity/ethnic origin – Romani
14	Female	42	University	Czech Republic	Czech	0	ethnicity/ethnic origin – Romani
15	Male	36	University	Czech Republic	Czech	0	sexual orientation – gay
16	Female	62	Secondary	Czech Republic	Czech	0	age
17	Female	45	Primary	Czech Republic	Czech, Romani	3	ethnicity/ethnic origin – Romani
18	Male	65	Primary	Czech Republic	Czech	0	physical disability
19	Female	59	Primary	Czech Republic	Czech	0	physical disability
20	Female	68	Secondary without graduation exam	Czech Republic	Czech	0	physical disability
21	Male	50	Secondary without graduation exam	Slovakia	Slovak, Romani	2	ethnicity/ethnic origin – Romani
22	Male	28	Secondary	Czech Republic	Czech	0	physical disability
23	Female	33	University	Bolivia	Spanish	0	national origin – Bolivia
24	Female	31	Secondary	Czech Republic	Czech	0	physical disability
25	Female	37	Secondary	Czech Republic	Czech	1	mental disability (autism – daughter)
26	Male	28	Primary	Czech Republic	Czech	0	physical disability

*Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice*

ID	Gender	Age	Education	Country of birth	First language	Dependent children	Respondent characteristic
27	Male	37	Secondary	Czech Republic	Czech	0	physical disability
28	Female	53	Secondary without graduation exam	Czech Republic	Czech	0	physical disability (her mother)
29	Female	79	Secondary	Czech Republic	Czech	0	age
30	Female	37	University	Czech Republic	Czech	2	physical disability (son)
31	Female	43	University	Georgia	Russian	2	national origin – Armenia
32	Female	67	University	Ukraine	Ukrainian, Russian	1	national origin – Ukraine
33	Male	35	University	Czech Republic	Czech	0	physical disability
34	Female	50	Secondary	Czech Republic	Czech	1	mother of a child with disability
35	Female	55	University	USA	English	0	sexual orientation – lesbian
36	Female	40	University	Czech Republic	Czech	0	physical disability
37	Female	42	University	Czech Republic	Czech	0	physical disability
38	Male	21	Secondary without graduation exam	Czech Republic	Czech	0	physical disability
39	Female	32	Secondary	Czech Republic	Czech	0	physical disability
40	Male	36	Secondary	Egypt	Arabic	0	national origin, religion – Egypt, Islam
41	Male	59	Secondary	Czech Republic	Czech	0	age
42	Male	31	Secondary without graduation exam	Tunisia	Arabic	0	national origin, religion – Tunisia, Islam
43	Female	29	Secondary without graduation exam	Czech Republic	Czech	0	sexual orientation – lesbian
44	Female	24	University	Czech Republic	Czech	0	sexual orientation – lesbian
46	Male	31	University	Czech Republic	Czech	0	sexual orientation – gay
47	Female	46	University	France	French	1	gender – motherhood, national origin – France
48	Female	39	University	Czech Republic	Czech	2	gender – motherhood
49	Female	25	Secondary without graduation exam	Slovakia	Slovak	1	gender – motherhood, combined disability (child)
50	Male	33	University	Czech Republic	Czech, Arabic	3	national identity, religion – Syria, Islam
51	Male	31	Secondary	Czech Republic	Czech	0	sexual orientation – gay
52	Female	30	Secondary	Czech Republic	Czech	0	gender identification – transgender lesbian with disability

## **II.3 PERSONAL EXPERIENCE WITH DISCRIMINATION AND ITS SOLUTION**

Interviews with protagonists who have directly or indirectly encountered discrimination are a result of their own reflexive interpretation of given events and as such are naturally marked by certain interpretative subjectivity. Therefore, they cannot be perceived as objective intersections of discriminatory situations but rather as case histories and biographical interpretation of experience with discrimination. This apparent drawback presents substantial advantages especially in terms of description of chosen strategies in dealing with particular problematic situations, in the reflection on the emotional effects of discrimination on their personality as well as the integration of the role of the discriminated into their character habit. Thus, the significance of discrimination seen within the interpretation of the situation can be captured very well and the logic of the choice of a reactive strategy also understood.

### **II.3.1 Issues of discrimination identification**

In terms of perceiving the fact of discrimination, the essential moment is that of coming to realize it. This seemingly banal discovery contains in itself a basic feature from which the perception of discrimination and the position of the discriminated is derived, which is **the ability of reflection and discrimination identification**.

In many cases, we encounter the fact that the protagonists are not able to identify whether their experience is that of discrimination or not. It is **difficult for them to reflect on their position within the wider context of other people with similar experience. They cannot distinguish what manner of conduct and the degree of its intensity fulfils the definition of discrimination. They are unable to determine what discrimination means despite usually having a general notion of what discrimination entails**. In some cases, they are at first even unwilling to admit that they have become victims of discrimination, that it affects their own person and that it is not a question of the effect of other circumstances (general situation on the job market, generally accepted notions about the role and position of women in the work process etc.). This refusal of the position of the discriminated is fairly characteristic for protagonists who achieved lower education and who come from a worse socio cultural background, often members of ethnic minorities. In reflecting on the problem they are unable to abstract away and free themselves from specific details and specifics of a particular situation and to move on to setting a given situation into a wider framework and context.

*When a person goes to work and there are 10 Romani people and one Czech man arrives and there are so many people waiting and they only pick one*

*which is the Czech one then I don't know if it is not discrimination. (Male, 42 years old, primary education, discrimination based on ethnicity)*

In other cases, **reflecting on the problem of discrimination is blurred by the specificity of the particular discriminatory situation.** For the participant, it is then very difficult to relate their individual experience to a generally relevant principle, as they do not have a sufficient referential framework for unequivocal identification of discrimination.

*Basically there is red tape in place. And so it ended up like this – as I was not of age, my parents had to write up a statement that if I died during classes the school would not be accountable, otherwise they wouldn't let me complete the grammar school. I remember, maybe it was discrimination, I guess, I don't know. And it was definitely unpleasant. Well, but then it kind of dragged on, so even when it came to university, I mean - I finished grammar school but from there I didn't get into university so I studied at a nursing school. (Female, 40 years old, university education, discrimination based on disability)*

*Looking for housing was a bit of a tough proposition but that was more because of a financial reason and an accessibility reason and so on. And now this problem we have with housing, but that is more, I don't know if it is related to being physically handicapped or not. Though the landlady is slightly prejudiced toward the physically handicapped. And on top of that we have two dogs, so two big dogs, which absolutely drives her crazy. (Male, 35 years old, university education, discrimination based on disability)*

*I don't know how to define it to you. Just like humiliation, quite just like, in such a manner I feel like, once I was, not now, it was just about a year and a half ago, really I just felt quite like you are old, so okay, now I will say it as it is, you have nothing to do here. Right? Basically. Even though I wasn't feeling - so then they got me into a completely different situation because I hadn't been feeling old before. (Female, 62 years old, secondary education, discrimination based on age)*

#### II.3.1.1 Discrimination as a social phenomenon

The protagonists often very well identify **the social character of discriminatory conduct. They perceive that within the framework of the discriminatory situation their role is not that of individuals but of representatives of certain features**, of a social, ethnic or a nation group and that it is this fact that makes them victims of discrimination. This position of an anonymous representative, however, has a considerable specific and individual impact on them.

*Well, I see it like this, because as a Ukrainian I am a foreigner, they see us, they don't see us as they do others. The first thing is, let's say, they see us as*

*slaves or a sort of hammers and that's it. Hammers means like drudgers, hammers who are hammering, slogging away like slaves.... So my mate told me: "You have to understand that you're just – you have "Uke" written on your forehead. It's your stamp which will like drag along with you for a long time." (Male, 28 years old, university education, discrimination based on nationality)*

*And such a person who is free and lives according to themselves makes the other person who is afraid to be different feel jealous and threatened. I will give you a banal example. I was at a school where I studied Polish. And my classmate would say: "Well, people don't like you because you are different." And I said: "What is different about me? They can only see me and I wear the same uniform as everybody else. How can they tell that I'm different?" "They can sense it," she said. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*Well of course, humiliated and inferior, that again, as I was used to from the previous life, that nobody trusts me who I am, but that again it was there, and that I was clearly shown how much this particular illness is different from any other. (Female, 30 years old, university education, discrimination based on gender identification)*

**Realising the fact** that they are discriminated against and that they are made to endure injustice on the basis of more or less apparent characteristics **enables the protagonists to understand this situation and gives them a chance to react to discrimination**. In some cases they are able to see their life in terms of "before" and "after" and reflect on the reasons which caused the discriminatory situation and alternatively also the moment when discrimination stopped being enacted by their surroundings. They perceive the moment when in the eyes of the oppressive surroundings they stopped being an anonymous representative of a group and started to be perceived as a particular individuality.

*As they got to know me and saw that I simply go to work regularly and that I am good at it, that I get a lot of work done, then things changed. Then I wasn't seen as just a Romani but I became "our Dana". (Female, 28 years old, secondary education, discrimination based on ethnicity)*

*So of course, it is now after my injury so I can compare the state before and after the injury. Which I have to admit is diametrically different. You know? Of course, the injury opened up a different perspective for me and life took a slightly different turn. And so one realizes a lot of things which one normally wouldn't. (Male, 35 years old, university education, discrimination based on disability)*

Especially members of ethnic, nation or sexual minorities can unequivocally identify the real reasons of applied discrimination where they understand their affiliation to the group as an a priori stigmatizing marker. They know the character of stereotypes and prejudice held by the majority towards them, they can reflect on it and in their defensive interpretation they in some cases see some of its features as justified.

*So in first grade I for sure did not know what discrimination is. At my first job I sensed that I am seen as something a bit other. Because then another girl, also a Romani, was hired and the girls at work - at this point they had known me for a while, and didn't know her yet, and one of the girls who wasn't Romani, she says: "Hide all of your things in the dressing room!" (Female, 28 years old, secondary education, discrimination based on ethnicity.)*

*They have it in them, they simply say – oh, the Romani are bad. And at first sight it is just a no. If the person could not even speak and they just stood there it would be: not you, not you, not you. Because you are a Romani, you are dark. And one doesn't have to say even one word. (Female, 28 years old, secondary education, discrimination based on ethnicity)*

*Well, that a person has travelled into the country, that the person sees how they talk to you in a strange manner. It is apparent that they are quite - well I'm not saying that I feel like they are pissed off, it's more that they don't take you very seriously. That there is always some kind of a question. (Male, 28 years old, university education, discrimination based on nationality)*

*So now we have sexual orientation, we have talent, we are supposed to be a woman and now we are supposed to be a foreigner. So the reasons for discriminations are truly diverse. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*It simply is not a feeling but reality of course, so it is discrimination in terms of workload because I can see that, that the men around me simply function in an absolutely different manner than the women. Right? And when it comes to me specifically - it is a question of salary which is absolutely obvious, right. So it's not just assumptions but it's reality. And men who achieved lower education are given university level jobs. So where are we, right? It is simply a solid fact. It's nothing which would be only a speculation or a feeling. Am I right? Everyone knows that. (Female, 62 years old, university education, discrimination based on gender and age)*

**The process of identifying and realizing the fact of discrimination in some cases strongly obscures and hinders societal pressure on concealing the real reasons of disadvantaging the discriminated.** Public discussion about the

unacceptability of discrimination leads its participants to attempt to conceal this conduct with references to the observance of norms, regulations or internal rules in such a manner that the reason of discrimination is not unequivocally identifiable at first sight. In such a case the discriminated person has to uncover individual argumentations of the discriminating person and at the same time rely on their own self-reflection within the given case. If this person is unable to perform argumentative analysis they might be unable to expose the real source of discrimination and therefore cannot actively posit themselves against it.

*The more symbolic and cultural capital there is, meaning the more those people are placed at some kind of a job or something like that, then of course they can see that the kind of very straightforward discrimination is not on display and they see that that kind of discrimination would be legally prosecutable. Therefore, discrimination is sort of very hidden. So it's just not out in the open. (Male, 33 years old, university education, discrimination based on nationality and religion)*

#### II.3.1.2 Lay definition and understanding of discrimination versus discrimination as a legal term

As we have already mentioned, the protagonists **have a general notion about what the concept of discrimination entails**. This generality, however, raises a major problem - on an individual level within their practical experience, this **general awareness does not frequently provide them with an unequivocal lead to the identification and interpretation of a situation as a discriminatory situation**.

*Well the probable meaning of the word is to differentiate. And in the case of discrimination of people one differentiates between one and the other and the modern meaning of the word is that one unrightfully sets people apart in such a way that one is advantaged and the other one is disadvantaged. I guess that's how I would describe it. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*Discrimination means that some part of the society is discriminated against. So for example the Romani, they are discriminated against in regards to certain things. For example discrimination at work, I don't know how to say it. I meant that I am a Romani so I for example won't get a job even though I am as competent as the other person. (Female, 28 years old, secondary education, discrimination based on ethnicity)*

*Well, what it means, so it is different treatment of one group of population as opposed to another. And I don't see this exclusively among people but it's also for example people discriminating against other animals, that they treat them as slaves or as food. So I see this as discrimination as well. Basically in its*

*essence it means that the affected individual, belonging to a different group, so because he belongs to a different group the individual is persecuted by a different behaviour towards him. (Female, 30 years old, university education, discrimination based on gender identification)*

On the level of the legal definition of the problem of discrimination the respondents teeter on the brink of a great uncertainty. In many cases they are unable to explain spontaneously and in detail what motives and forms of discrimination are delineated by the law and they very often perceive the problematic of discrimination on a very subjective level based on their lived experience which, however, has little correspondence to the brusque and matter-of-fact definition of the legal regulation. This subsequently complicates their possibility to unequivocally define their position in a problematic situation and based on that opt for an adequate form of reaction.

*Discrimination equals the suppression of personal rights. Which is a legal term. Right? The suppression of personal rights and - and here it is a bit relative again because everyone understands it differently - do harm to someone's human dignity or damaging the human dignity of the person. That's where everyone's threshold is set differently. And mine is set quite high. (Female, 62 years old, university education, discrimination based on mental disability)*

### II.3.1.3 Accepting the position of a discriminated as a part of one's individual identity

As has been suggested, if the discriminated are already able to identify that a discriminatory approach is exercised, **they often refuse to accept the fact that it concerns them personally.** Even if in reflecting on the discriminatory situation, they manage to clearly identify and discern how their position differs from that of people who are not discriminated against, in many cases they subsequently **try to rationalise and downplay the situation in such a way so that they avoid being included among discriminated persons.** Apparently, the **principle of secondary stigmatization** takes place, where they know that they differ from the “norm” in certain ways which on their own differentiate them and set them apart from the societal mainstream. Accepting the role of a discriminated person would further enhance this fact: I am not only different but my otherness also has a significant personal impact and they a priori do not treat me as equal to them. What then comes about is a certain ambivalence where although they can talk about discrimination to people with similar specifics, they decidedly refuse to be seen as discriminated.

*It's normal now. Now it's normal, now I don't feel discrimination. Not at all. I did ten years ago, even five years ago, when it comes to discrimination but now*



*one has to understand that there simply is no work here in the Prostějov area. I don't perceive it as discrimination anymore because anyone simply understands that there is little work and when you find a job you have to watch it. Unfortunately, I don't have any job right now so how can I watch it? ... There are certain people who are discriminated against a lot. The ones who have moved here, they are discriminated against a lot. People virtually hate them here. And it's the same thing again. They shouldn't make a mess, a racket. ... Our Romani people. Because of that all of us suffer. Because then the Czech nation knows what these people are like so they prefer to pick a young Czech person. (Male, 42 years old, primary education, discrimination based on ethnicity)*

As has been mentioned it is the ability to integrate the fact of discrimination and the role of the discriminated into the conception of building their identity which plays a decisive role for dealing with the discriminatory act. It also impacts the strategy employed by the protagonist.

A sort of an inter stage within the process of perceiving one's self as a subject of discrimination is a situation in which the protagonists identify discrimination within their surroundings in detail, however, for the reasons mentioned above they, as a defence mechanism, choose to distance themselves from the role of the discriminated.

*We were walking in a group. They let me, my sister and my friend go but the three girls who went with us as well, they were from Přerov, they didn't let them go. Even though we were in a group. They didn't want to let them go, they said no, they are Romani, they weren't going to let them go. So we said, we are Romani too, right? And he said - well, but you don't look like it. (Female, 28 years old, secondary education, discrimination based on ethnicity)*

*Well I personally have experience with discrimination. I would say that in my case it hasn't been serious because when I compare it with people around me who sometimes give me information about how they are discriminated against, it seems to me that discrimination against me has been only slight. (Male, 31 years old, secondary education, discrimination based on sexual orientation)*

During the analysis of the protagonists' responses, it was surprising to find that **some respondents relate the reflection on their problem with discrimination to the identity of the discriminating.** It of course concerned cases where protagonists internally understood their position and role clearly and so they searched for the motivation of the discriminating person. **They were able, on a very abstract level, to relate the behaviour of the discriminating person to the problem of their self-definition and identity crisis and find the source of discrimination even on the**

**level of the group identity of the discriminatory majority.** Within such interpretation the drive of discrimination was not the indicated otherness of the discriminated but the problematic self-determination and personal insecurity of the discriminating persons.

*Because there is just some kind of a global identity crisis here. Because the Czechness just does not have any meaning and then the interpretations sometimes become bizarre. And there is kind of direct animosity, even when I just talk to people or for example the way we or the Czech people use Romani and so on, so I really see it as some kind of an attempt to hold onto their own fragile identity which the Czech can't support in any other way. You know? And when you delve deeper into it you will find out that the racism isn't there in the way of opening itself up but it's about projecting that Romani "represent" everything what the Czech people shouldn't be. (Male, 33 years old, university education, discrimination based on nationality and religion)*

*Usually it's a group of people. Because within it the people try to prove to themselves that they are in the right because they have, let's say, the right sexual orientation. (Male, 31 years old, secondary education, discrimination based on sexual orientation)*

### **II.3.2 Areas of life in which discrimination occurs**

From the testimonies of the respondents who talked about areas in which they feel to be discriminated against and about specific situations which show characteristics fully corresponding with the definition of discrimination, it follows that **certain types of discrimination are closely related to certain types of reasons for discrimination.** It can generally be said that for particular reasons of discrimination there are corresponding standardized discriminatory situation which are characteristic to them.

This is unambiguously clear in the case of **the relation between discrimination based on ethnicity or nationality and discrimination in terms of the right to housing. Similarly strong relation is between health disability and the discriminatory situation in the area of services provision, especially transport.**

By contrast, discrimination pertaining to the issues of employment or public administration is not related to a specific type of discrimination grounds and respondents present these cases in general within the context of the whole surveyed group.

### II.3.2.1 Discrimination in employment

The issues of discrimination in employment afflict a fairly wide range of protagonists. We can see that it concerns people discriminated against for their disability, ethnicity or nationality but people discriminated against on the basis of their age, gender or sexual orientation are not an exception.

Although **reasons for discrimination in this area of life are fairly wide and manifold** there is a unifying feature which is **the indirect nature of discrimination**. The protagonists do not encounter direct rejection based on their stigma but often various **strategies are used against them which are supposed to conceal the discriminatory character of the situation**. Dismissals from jobs are labelled with reasons of redundancy, public dehonouration of the workers' performance or more or less informal pressure on them to enhance their performance which the discriminated are not realistically able to manage. In the case of open job competitions or responding to job advertisements, they encounter false claims about the vacancy being already taken up by someone. Or they are met with being treated unequally during the open competition where for example ethnic background, university age, parenthood or disability constitute a clear dividing line in the approach to individual candidates.

*But you can't prove it to anyone at work. But I actually started in state administration. I worked there for two years. And every year I would go to a health resort. It's not as if I was sick but I would just go to a health resort for six weeks. And of course if you get 5 weeks of holiday and then you go for another 6 weeks to a health resort then, although when they are hiring you they say it's not a problem, later on there is always someone who starts pointing out you are not there for most of the year. (Male, 35 years old, university education, discrimination based on physical disability)*

*Recently one man wanted to give me a job and he told me that he was a gardener. He told me that before giving me the job he had to ask the owner if I could enter the garden. He has to ask the owner of the garden if a Romani can go there! I don't know - they have bad experience with us and that's a problem. Because really, some of the Romani make a mess, that's true. But not everyone can be the same. (Male, 42 years old, primary education, discrimination based on ethnicity)*

*My manager called me up to talk to her face to face and she told me that I should hand in a resignation. And if I don't do that she will sack me and she will make up some reasons to do so. Because it's easy to give a dog a bad name and hang him. So I actually left the job without putting up a fight. (Female, 55 years old, university education, discrimination based on sexual orientation)*

### II.3.2.2 Discrimination in education

Discrimination in the area of education concerns primarily protagonists who are disadvantaged for reasons of **ethnicity or physical disability**.

Discrimination **based on ethnic background occurs especially in the environment of primary schools** where children are set aside based on their ethnicity during lessons and there is an effort on the part of teachers to pressure parents into transferring their children to special schools. The teachers' motivation for this strategy is not always xenophobia or ethnocentric prejudice but in many cases it is an effort to make easier for themselves the coordination of the class collective or it is a result of insufficient funding of required assistant positions at schools.

*Just that the school - I mean that the headmaster makes no effort. You know? To simply put someone in there who would help these kids so that they complete the primary school. Because Honzík is smart when it comes to this - I am his mother and I know that if he studies something he learns it fast and so if he actually had an assistant, he just needed some kind of an assistant by him who would advise him because if there are 32 kids in the classroom and if he's a bit slower then he thinks he should have had an assistant who would help him. This is what bothers me about this school and the headmaster that he'd rather appeal to me to put him in a special school. (Female, 37 years old, secondary education, discrimination based on ethnicity)*

In contrast, **people with disabilities face discrimination in education more frequently at a higher level of studies**, mostly at high school or at university. In this case, the problem lies especially in **the lack of the schools' preparedness for people with disabilities, not only in the material or technical aspect** (barrier-free access, space for the movement of persons in a wheelchair, etc.), but also in **the insufficient experience in working with disabled people**. Educators and school management rarely know how to approach the disabled, which is particularly clearly apparent in the case of persons with mental or sensory impairments. Misplaced concerns then frequently stem from this insecurity which paradoxically heighten the segregation of the disabled from normal schools – the schools do not know how to approach people with very specific impairments and they are unsure about the extent to which they can individually set the standard of exams and modify the course of their studies. That is why they often try not to admit these persons into studies or make them leave the programme at their school.

*It manifests itself in my collapsing and I collapse completely unexpectedly. And the collapse looks like this; sometimes I just fall down, after, I don't know, two minutes I wake up as during a classic collapse, sometimes I just stop breathing. When I stop breathing then the brain - it doesn't like it so I start to have a seizure. It probably looks like an epileptic seizure although I don't*

*know. I've never seen it, I only know it from descriptions. And I've had this since the age of 16. So when it was my first year of high-school they called up my parents at half-term and said that I was a typical malingerer, a typical alcoholic. What else did they make up? That I take drugs, that I smoke and that I'm not the study type. And they immediately wanted to transfer me to an apprentice school - to become a shop assistant. (Female, 40 years old, university education, discrimination based on physical disability)*

### II.3.2.3 Discrimination in services provision

The range of discrimination in the area of services provision is, **when it comes to the breadth of the spectre of reasons for discrimination and situations in which discrimination occurs, probably the widest.** It includes manifestations of discrimination both on the level of usual services provided on a daily basis (public transport, visiting restaurants and shops), as well as specific situations as is the provision of banking services, particularly loans.

**The hallmark of discrimination in the area of services is its relative directness.** The protagonists are not only impeded in the provision of services, **they are directly disabled from the access to them, and that primarily on the basis of clearly defining features** (disability, foreign accent in speech, physical markers of minority ethnicity).

*It happened to me a few times that they kicked me out of a pub for example, saying that they didn't serve drunkards. That was when, unfortunately, I didn't have crutches yet. So I don't know if from the way I moved they assumed I came into the pub already drunk or not, I don't know that. (Male, 35 years old, university education, discrimination based on disability)*

*Well because of jaundice. We couldn't go to the shop, to the pub. Because I'm a smoker or when it's warm outside I have a beer from time to time. But they didn't want to give us even just a beer or vodka because people thought we spread some bacteria here. (Male, 42 years old, primary education, discrimination based on ethnicity)*

The discriminating person here clearly applies biased stance toward a group to which the discriminated actually belongs or is subjectively interpreted to belong to by the discriminating person. Paradoxically this occurs even in cases where the rational and economic arguments should prevail. For instance, in the case of a long-term business relationship.

*This means that for example I request better terms on a loan which I normally should be granted. And they don't say it to my face but they tell my managing clerk who is Czech and we have a good relationship with the banker, so the*

*banker suggests that my Arabic name basically signifies some kind of a higher risk to the clerks. (Male, 33 years old, university education, discrimination based on nationality and religion)*

Protagonists discriminated against on the basis of ethnicity or nationality also meet with increased supervision while shopping at supermarkets although this measure taken by the staff or security services was not prompted by any reason on their part.

*You know, the security guards in the supermarkets. Well here in our Penny they take turns all the time. They are quite normal. They have always been here and there have been no problems. Well, we have lived here in Ivančice for 10 years. Everybody knows us. So there was a new guard when we went shopping as usual with my husband one night. And he passed by us and heard that we are from abroad. So he turned around and followed us everywhere. Everywhere I went he went. (Female, 43 years old, university education, discrimination based on nationality)*

Almost curious cases are recorded by people who, due to their disability, use the services of assistant dogs. Therefore, they are not primarily discriminated against for their disability but are **restricted or prevented from being provided a service due to the accompaniment of an assistant - a dog**. In this case, it is the distinctness and unambiguous interpretability of the disability from the point of view of the discriminating person that plays a significant role. They play the role of an arbitrator who usurps the option to decide whether the protagonist is entitled to use the services of an assistant or not. When it comes to disability that is not obvious at first glance it is very probable that the person discriminated against will not be admitted with the assistant dog.

*So I entered Billa and immediately the security guard turned up: "Miss, the dog has to go out!" Right? So I said: "But that's just an assistant dog, he looks after me. If I have to go out, I have to have him with me. And I just need to do some shopping." And that's how we argued. (Female, 40 years old, university education, discrimination based on disability)*

In the area of transport, **the affected persons often encounter strict application of internal directives and regulations of the transport company**. That is why there are conflict situations even though the solution would appear quite simple if a certain leeway in the interpretation of the rules was allowed for. This is typical especially for travel by public transportation by air or by a train.

*Regiojet is a private transport company which in its regulations states that there can be only an assistant or a guide dog in the company of a person with a ZTP [particularly heavy disability] or ZTP/P [particularly heavy disability /*

*guide] card. And one day I travelled with my father and with Čaki and my father went for free and Čaki went for free. And so we were told that I just cannot go both with a dog and a guide for free that I have to pay for either of them. I said, "OK, I understand that. So I'll pay for the dog." "Well, you can't pay for the dog because we don't have a tariff for dogs because we don't transport dogs." (Female, 40 years old, university education, discrimination based on disability)*

Another variation of discrimination application in transport is **transporters' insufficient technical equipment for the transport of persons in wheelchairs or with reduced mobility**. On certain routes or during specific occasions, there is a lack of low-floor buses or vehicles with a hydraulic platform which prevents transport of people with disabilities. This is, however, the only manner of public transport which they could use to reach their destination.

*So simply. There were nine pilgrimage church services, it was the 350th anniversary of the Diocese of Hradec; it ended in November. And all in all, I could only go to Hradec and to Libice with one parishioner with a car. Even though the bus goes everywhere. But the buses are not adapted. A bus could take me there. There are no trains whatsoever to any of those places. (Female, 59 years old, primary education, discrimination based on physical disability)*

#### II.3.2.4 Discrimination in housing

Problems with obtaining housing are encountered especially by those protagonists **who are discriminated against on the basis of their ethnicity or nationality**. Frequently, the people offering housing already refuse them during the initial phone call because of their clearly different accent or a name which indicates that the applicant is a foreigner or a member of an ethnic minority group. **In that case, they do not even get a chance to overcome the barrier of the supplier's prejudice** during a personal interview or through offering a prospective financial deposit.

In some cases, the discriminating person is not in favour of segregational approach but they are afraid of the reaction of their surroundings - the owner of the flat whose interest they represent as a mediator or the reaction of other tenants in the proximity of the rented or sold flat.

*I call them and at the beginning they say, "Sure, sure you can come for a viewing and so on." And then they say, "You aren't Czech, right? Oh well, in that case we are sorry but we simply do not accept foreigners." So, that's how*

*it simply is. (Male, 31 years old, secondary education without graduation exam, discrimination based on nationality and religion)*

However, the situation is problematic not only in the category of commercial leases and real property sales but also in the category of municipal flats assignment. Even in this case, **the officials often do not respect the principle of equal treatment of all citizens and they subject this criterion to their subjective fear of the common unfavourable acceptance** of foreigners and the Romani among the residents of a given city area or a municipality.

*We went to the municipal office and we wanted them to give us a bigger flat. Because it's impossible to live in this one. It's too small and we pay a lot. Well and the lady who is in charge of flats, she simply literally indicated that we will just stay here and they won't deal with us. They just decide to put the Romani in one place - only Romani people live there, not anywhere else, because the whites simply do not want to live with the dark ones. So to say it. So just live there and do what you want there. (Female, 35 years old, primary education, discrimination based on ethnicity)*

#### II.3.2.5 Discrimination in family life

A very emotive and sensitive area of discrimination is the subjectively perceived right to the raising of children. This particularly concerns cases where people feel affected by discrimination on the basis of their sexual orientation, therefore it concerned the cases of problems in the area of homoparentality. The protagonists stress the fact that sexual orientation of the parents does not in any way affect their ability, or as the case may be the inability, to be a good parent. **Currently, however, parental rights of partners in a same-sex parental union are not legally covered in any way as opposed to a heterosexual union. Logically, this causes the protagonists to feel discrimination** in this very personal area of partnership and family life.

*Because to proclaim that I would like to have a child one day, I would like for it to be mine and my boyfriend's, actually exactly as it should be in my opinion. And when someone proclaims that two guys just are not able to raise a child and the same person just places the child into a family where the father beats it and the mother doesn't do anything then it seems absolutely preposterous to me and I think that when the time comes of me really wanting the child then this kind of discrimination will really bother me. (Male, 31 years old, secondary education, discrimination based on sexual orientation)*



### II.3.2.6 Discrimination in health care

The problem of **discrimination in the area of access to health care seems to be rather exceptional**. In the studied cases, we did not find significant connecting themes or features. It rather concerned very specific and even rare situations.

On a more general level here, we come to the **problem of assessment commissions which as expert authorities decide about the proceeding in each specific case. The person discriminated against is, however, in relation to them in a clearly unequal position**, having to absolutely respect the decision without the option to affect it in any way or to file a complaint against such decision. The decision-making of such a commission as the embodiment of expert knowledge in its essence does not have a democratic character; the discriminated person is completely at the mercy of its decision.

Probably the most specific problem was that of the case of a protagonist – a transsexual who has sought a change of gender in vain. Although the contemporary approach to this problem is strongly liberal and medical science provides plenty of options for how a person suffering from this disorder can solve it, there nevertheless arise cases in which the current practice is humiliating for the protagonist who tries to claim their rights only with great difficulty. Furthermore, in her case there does not exist the above described practice of the expert commissions. Here the individual is left to chance and the will of a particular doctor.

*Probably the most humiliating at the social level, the most degrading disease is transsexuality. I.e., that a person gets born into a body of the opposite gender and today it is already almost proven that it is a body defect. But despite that outdated conclusions that it is a defect of the soul are preferred. And basically it is perceived as the soul kind of being unwilling to adapt to the body which is in principle exactly reversed because the soul should always take precedence over the body which should adapt. But unlike other disabilities where the body is deformed in a different way, in this case there simply does not exist any commission which would decide if an affected person or another has or does not have the right to be treated. (Female, 30 years old, university education, discrimination based on gender identification)*

Similarly, as in the case of discrimination in access to services, there arose a case which relates to **the issues of assistant dogs**. In this situation, **the assistant dog became a pretext for refusing to provide medical care**, or the necessity of making use of the dog's assistance led to the denial of a health resort stay. Here it again particularly concerns cases where the handicap of the discriminated person is not clearly identifiable at first sight and therefore the necessity to use the service of an assistant dog is disputed by medical institutions although they do not have any formal authorization to do so.

*When it comes to the dog we've had a lot of problems for example with not getting admitted into a health resort. Then recently we had a conflict at the GP's. We didn't have a problem with the doctor herself but with the nurse who simply didn't want to let us in with the dog, not even in the waiting room. So we just had to leave the dog in the waiting room. I actually stayed there for a bit when my girlfriend was inside but I had to leave for work so I left the doggie alone in the waiting room. (Male, 35 years old, university education, discrimination based on physical disability)*

### II.3.2.7 Discrimination in public administration

Dealing with authorities, submission of applications, negotiations of an extension of the residence permit, these are the situations in which discrimination in the area of public administration is manifested the most often. **In this case, the typical victims are again people persecuted on the bases of their ethnicity or nationality.**

The issue here is again the direct **inadequate use of prejudicial assessment of citizens based on their actual or imagined affiliation with a certain ethnic group or nationality.** Here, discrimination has its root in apparent trivialities such as the degree of knowledge of the Czech language, detailed knowledge of grammar or the manner of expression of the discriminated. Instead of actively helping the protagonists to overcome these disadvantaging characteristics the administration personnel uses them as a pretext for the problematisation of their cases or for direct refusal of their applications.

*Well, some of them took the forms and wrote it down with us, they filled them in or they showed us how to do it. Somewhere it was such a problem that when I asked about something, she would say: "Well, so what? You don't see it here?" Well I see it is written there. Maybe I make sense out of what is there but not every word can I understand. But when I fill it in I need to understand every word. Well some of them were annoyed. At the authorities, yes. (Female, 43 years old, university education, discrimination based on nationality)*

## II.3.3 Reaction to discrimination

### II.3.3.1 Emotional dimension of discrimination

Discrimination does not only have its factual, or, in other words, a rational dimension. **Often, the fact of discrimination causes much more serious impact at the level of emotions and self-perception of the discriminated person.** Since the act of discrimination is in its nature a social act, it often places the protagonists in very problematic personal situations where they are very heavily affected by the

pressure of their nearest formal and informal surroundings. If they inwardly identify with the role of an outsider, with the role of an ostracized person who is not welcome in a given community (typically in the case of discrimination in employment, in access to education or in public administration), it has a fundamental impact on their psyche. The discriminated person often feels loneliness, the weakness of their position, all associated with isolation and mutual mistrust.

*Well it's something else when you go are on your way to work and you are looking forward to it. You tell yourself the girls will be there, it will be fun, we will get the work done, get coffee, and so on. But the first week I basically worked on my own, it was kind of – I don't know. Before everyone adapted, before we really became friends, I hadn't enjoyed the work. I was looking for something else. I said that I would endure it for two months and that I need something else. I couldn't stand being there. (Female, 28 years old, secondary education, discrimination based on ethnicity)*

Emotional stress resulting from discrimination then often overrides factual existential problems which the discriminated person experiences for example after losing a job. The latter is in the end often a relieving way out of an unbearable situation which is manifested in hostile relations in the workplace and the everyday pressure associated with that.

*Generally the impact was always terrible. Because it's very stressful when a person loses a job. It's sometimes a problem to get another job. And when the person doesn't lose the job and people only make the workplace a hell for them it is perhaps even worse. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*I feel really sad, I feel like, kind of bad. We just like to live here. And.... It's not pleasant. It really isn't pleasant at all here. (Male, 31 years old, secondary education without graduation exam, discrimination based on nationality)*

*The discrimination? It's a drag on the psyche; at times a person thinks they're worthless. (Male, 59 years old, secondary education, discrimination based on age)*

*It's tiring. The thing I told you – when I was without it then it was more the ordinary people, and it really, really annoyed me when they swear at you, they coarsely swear at you. You know? So when I would take the tram at 6 in the morning and they tell you – a cripple and she should sit at home and get out of the working people's faces. To explain that you are a cripple who works, well that's a bit of a problem. (Female, 40 years old, university education, discrimination based on physical disability)*

**The typical emotional reaction** which follows these impacts of discrimination **is the feeling of helplessness and giving up on any action** which could solve the given situation or at least improve the position of the discriminated person against the discriminating institution or person. The affected have a strong subjective feeling of weakness in their starting position before the institution or the company against whom they should file their complaints. They are afraid of further worsening of their position after taking a specific action.

**Previous negative experience is often added to this as well as innate distrust of formal institutions or their representatives.** Low self-esteem often resulting from poor starting social conditions and intellectual background is reflected in their reaction. They assume that **institutions would not consider their cases with sufficient seriousness, they do not have confidence in the law enforcement and they fear the financial costs of such a procedure.**

*So now I'm specifically dealing with discrimination in terms of wage classification and in terms of status. Thus, from the perspective of gender, education and – well, that will probably be all. So this, I think, is an insoluble matter. When you turn to the highest superior, then nobody de facto wants to somehow radically tackle that, right, so it peters out. (Female, 62 years old, university education, discrimination based on gender and age)*

*Well, so here it is quite like this – this is merely my thinking but I'll say that barely anyone will listen to foreigners. If you take all the lawyers, so nobody has the option to go to the lawyer and solve any problem through the lawyer. Because in the end he will want some dough. Someone to pay him for it. He definitely won't want to deal with some trifles, with foreigners, he won't deal with it. (Male, 28 years old, university education, discrimination based on nationality)*

*Because I think they would laugh in my face and not do anything about it. Such is life and it's your call if you fight and do something or do nothing about it. And just walk the line. ... Myself, I wouldn't go file a complaint anywhere because I think no one would – what would say to that? Yeah right, we will persuade the inhabitants of the Czech Republic not to be against you, yeah? I just think it's innate to everyone. (Female, 28 years old, secondary education, discrimination based on ethnicity)*

*Things like being able to go to the employment office to complain and they do not care because for them it's important that you bring a confirmed document and that's it. They're not going to talk to you any more. So I didn't know this exists at all that we have somewhere to turn to or not. (Male, 42 years old, primary education, discrimination based on ethnicity)*

Another effect of discrimination being reflected in the individual's identity is a **more pronounced tendency to self-reflection, self-control and a conscious effort to suppress those specific features of one's character which could invite their surroundings to apply another discriminatory approach.** The discriminated persons want to consciously hide from the oppressing power; they create a protective mimicry which is supposed to rid them of the unwanted attention. Based on their negative experience they try to flexibly adapt to their surroundings and to "cut their edges" against which the surroundings could brush. Or else they trivialize their difference and consciously downplay it with the help of humour.

*So the person will experience discrimination as I described the various cases and then they look after themselves. So that discrimination doesn't occur again. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*I try not to be bothered by such things. I just try to disregard it. And like, it goes one ear in and out the other but not taking it seriously. (Male, 28 years old, university education, discrimination based on nationality)*

*When I'm getting my ID renewed or I have to deal with some communication with the police I just have to sell it as if – kind of reach into the culture and speak with a bit of the local dialect and just say: „I might be an Arab but I'm really a Moravian.“ And just make it into a kind of a joke so that I'm just treated in some kind of a normal way. (Male, 33 years old, university education, discrimination based on nationality and religion)*

*Well I tried to prevent it by blocking it out. Or if it came to being shouted at I would leave so I wouldn't have to confront the situation. And usually I ignore it, I leave it be. (Female, 29 years old, secondary education without graduation exam, discrimination based on sexual orientation)*

*I try not to state it in my CV: status and age and all of this. Actually once it happened to me, it was during the Czech presidency of the Council of the EU, I was applying to one position at the Government Office. And there, it's the Office of the Government which, you know, the ombudsman has just been dealing with the case there. So there. Well and that was still during Topolánek being in office actually. So there one of the ladies there asked me how old I was, if she could ask. And I said it wasn't necessary to know that, that it's actually a discriminatory question. So well we laughed at it. So that's that. But I told them eventually. It was like ha, ha, ha, but still... (Female, 39 years old, university education, discrimination based on gender (maternity))*

*The solution is to ignore it and go. Because when you notice it, they get, it starts to stir up, they get a confirmation that what they are doing affects their*

*surroundings and that they really make people notice by their behaviour. (Male, 31 years old, secondary education, discrimination based on sexual orientation)*

### II.3.3.2 Strategy of dealing with discriminatory conduct

**Institutional and legal solutions of the problem of discrimination are more of a rare and unique strategy.** As it has been mentioned before, the discriminated persons are often emotionally exhausted, distrustful, they feel they are in a weaker starting position and moreover, they do not trust formal institutions.

*When I turn to my boss, well he's the party who himself has lower education and he just have higher salary. And all the friends he invited into his work team, well they are the same, right. They are even younger and have even lower education and they have even higher salary. So this is just impossible! (Female, 62 years old, university education, discrimination based on age and gender)*

**The discriminated person naturally makes an effort to avoid the situation or position in which they are made to undergo discrimination.** Such a solution takes a form of, for instance, in work relations, the departure from the job market and a transition to individual entrepreneurship. The discriminated person sees in this a chance to have their work fully under control and in their own hands, without the need to be dependent on the arbitrary acts and prejudice of the employers or the employees. Although they pay the price of not being involved in the field in which they studied, which they mastered and in which they worked up until this point.

*So I never used my apprenticeship. And now I have a business. On my own. So I realized I don't need to have someone standing above me. That I can create work for myself. Although I do have some people helping me but for example – I'll say this: if I didn't have these people I would have to do some work at some factory among people who wouldn't accept me the way they do here. Here I am my own boss so people come to me. (Female, 28 years old, secondary education, discrimination based on ethnicity)*

**In considering a possible solution of their problem through legal proceedings, they often come up against the difficulty of proving discriminatory behaviour.** They have the feeling of not having any factual proof which would clearly support the legitimacy of their complaint. In the case of solving a problem in the workplace, this problem would have to be solved within the institution which applies the discriminatory approach against them, which they see as an already lost battle.

*One level is that of business and another that of dealing with the authorities. Now I will talk about the authorities only. Overall, it is a big problem to achieve any correction of an official's proceedings and realistic enforceability of compensation is very costly, time-consuming and energy-draining. And it kind of generally applies that, I don't know, institutions have their own internal ombudsman or some institutions which should deal with complaints but their actual motivation is to sweep it under the rug. (Male, 33 years old, university education, discrimination based on nationality and religion)*

**Therefore, the reaction in most cases is a passive attitude or a minor effort to only a partial solution of the problem. Often, however, the discriminated persons prefer to keep the problem to themselves and they only share it with their closest surroundings.**

*I never considered that someone would, that someone would ever deal with it. Not at all. I told my parents but nobody else. (Female, 28 years old, secondary education, discrimination based on ethnicity)*

The fact that decreases the willingness to seek rational or institutional solution of the problem of discrimination is the repeated experience with it. Every additional manifestation of discrimination even if it is less intensive confirms to the protagonists their weakened status in terms of their position and lowers their subjectively perceived potential to prevail in the dispute.

*And this is how they get rid of people. So I have that experience. You know? And it's really not about me not knowing how to negotiate. You've heard me that I normally, but when – but you see that if it repeats all over for half a year, a year, you tell them all over and again in order for them to understand. (Female, 42 years old, university education, discrimination based on physical disability)*

Another major reason which leads to the respondents' shared reluctance to seek a radical solution to their discrimination is the fear of a **personal impact** which such a solution would bring. Not only **can they anticipate this impact, but also they had often encountered a similar impact of such attempts right in their environment or they heard about it.**

*Here at the Faculty of Arts corruption took place. One of my colleagues, a friend of mine, she found out that money was being stolen. And she reported the person who stole the money. However, this person bribed everyone so they would stay silent. That's why she was quite popular. So the first person to lose a job after reporting it was my friend herself. She was fired immediately. Then outsider inspectors came in to inspect whether it was true and they found out it was true. The lady who stole the money had a new job earlier than*

*the one who reported her. That's typical. Unfortunately. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*My main concern was not involving my boyfriend in any disputes or – because that would be undignified. Another thing is that in this discrimination on the part of the family is manifested. (Female, 62 years old, university education, discrimination based on mental disability)*

The strategy **of bringing the problem of discrimination to court** was chosen by the minority of protagonists where they often only gave an account of filing legal complaints without any further specification of the case's progress. Such a solution seems to them **ineffective, lengthy, expensive and the prospect of a genuine real impact on their specific situation so unclear** that they do not mean to include this way of solution into their strategies. Ignorance of the options available in dealing with the matter through legal proceedings also plays a certain role.

*When something really gets to me, which can happen, then I just approach the person directly. I ask them: "What's your problem?" Or something like that and it's done. A lawyer will help nothing. (Male, 28 years old, university education, discrimination based on nationality)*

A significant factor which **markedly affects the willingness of the discriminated to deal with the problem of discrimination through legal proceedings is their (lack of) information about the possibilities of free legal services**. Most of the protagonists, if they even mention the option to deal with the problem of discrimination in a legal manner, are afraid of high financial costs and small attractiveness of such a case for the legal service provider. The awareness of free legal services is quite small. As soon as the discriminated person is introduced to such an option their willingness to solve the problem in this way significantly grows.

*Well yes, now there were once some problems, my friend had problems with his employer so we came here to the Red Cross. And there are some free lawyers so it was really dealt with there. So they helped deal with the problems (Male, 28 years old, university education, discrimination based on nationality)*

A very subjective factor which affects the willingness to deal with the problem of discrimination is **the calculation of the degree of the severity of discriminatory conduct and its individually felt intensity**. Protagonists often assess whether the given unequal treatment of them has already crossed the threshold of their internally set limit or whether they see it as more of an unpleasant banality which does not need to be dealt with. It seems to be fairly distinctive that **with the frequency of**



**banal manifestations of discrimination increases the discriminated persons' degree of tolerance of the intensity of its manifestations.**

*Because really this isn't quite, well but it's also a question of whether it is serious or not, right? It depends on how a person sees it and how often it happens to them. I personally think that I would never think to go report specifically something like this. If it concerned something else, for example if it really threatened my mental state or my health then I would definitely consider it. (Female, 24 years old, university education, discrimination based on sexual orientation)*

It is apparent that the range of manifestations of discrimination and their motivations is very wide and varied which is after all a typical feature of social phenomena.

The problem of discrimination is in fact primarily a societal problem. Which is why it is important to emphasize that in the attempt to eliminate discrimination or at least to lower the intensity of its impact it is not possible to rely only on the factual setting of the legal framework and subsequently pay thorough attention on all the parties abiding by it. By definition, the issues have a multidisciplinary character where apart from harsh and rational scenarios and argumentations, there also has to be space for flexibility and ad hoc solutions. From the protagonists' statements it follows that sources as well as the impact of discrimination are not only factual and practical but that factors such as emotion, prejudice and reflexive changes in identity and accepting specific social roles and strategies of conduct play a role here. Therefore, experts in relevant fields, such as psychologists, sociologists, social psychologists and experts in the field of andragogy should also get involved in solving this problematic to a higher degree.

**It is essential to work with the persons exposed to discrimination at the personal level of their particular case and help them both in introducing their individual position into a wider, more general framework and as follows, offer them possible solutions to the situation which could draw on normative and standardized procedures.**

## **II.4 BARRIERS AND PROPOSALS FOR THEIR REMOVAL**

### **II.4.1 Situations when the discriminated person does not complain**

The phenomenon of not reporting discriminatory behaviour is reflected in the complete range of life areas in which discrimination can occur - work, housing, services and health care, contact with authorities or education. It can be summarised

that discriminatory behaviour was not officially reported in the vast majority of the cases mentioned in the previous chapter.

In areas, which were subjectively identified by the respondents as “less critical”, the resolution of the situation is not worth the effort. Conversely, in critical areas, the victim of discrimination is afraid of the consequences of reporting and does not believe in its success. They only address current problems.

People affected by discrimination are commonly faced with a wide range of reactions from their surroundings. E.g. persons of minority sexual orientation or ethnic origin and people with disabilities cannot avoid insulting comments, feelings of rejection and various cases of disadvantages during their lives. Therefore, they tend not to report **minor cases** of discrimination anywhere. **They consider them such a common part of their lives** that their resolution is a waste of time for them.

*It is due to the fact that they do not want to deal with it; they do not have the need to address it. They do not consider it important. It is something normal, something that you just waive off and let it be. (Female, 24 years old, university education, discrimination based on sexual orientation)*

*When these are sort of little things, I can somehow overlook it and let it slide. (Female, 43 years old, university education, discrimination based on nationality)*

*Loss of time, basically, they may not believe that even if they try they will do anything about it or change anything. (Male, 28 years old, primary education, discrimination based on physical disability)*

Irrespective of the seriousness of the discriminatory conduct, non-reporting can also be seen where discrimination is **repeated or even normal**.

*Basically, I had to conform to it. It is not pleasant but because it has been happening to me all my life, you get used to it. And I have to count on it in the future as well. (Female, 46 years old, secondary education, discrimination based on gender)*

*I would have to complain every week. I have learnt to live with it. There are situations that I experience just because I am Roma. And if I were not a Roma, I would not experience these situations. So when you are Roma, you must learn to live with it. (Female, 42 years old, university education, discrimination based on ethnicity)*

The respondents are not too motivated to file a complaint in the situations **when it is almost expected that discrimination may occur**. For example, mothers of young children know many cases with a problematic return to work after parental leave in their surroundings that the employees resolved by looking for a new job.

Mothers of young children therefore expect similar problems even in their case and do not report potential discrimination. They are partially at peace with it.

*I have communicated with many friends who have encountered similar cases. All of them are dealing with the return similarly. And they all said that did not count with it. (Female, 33 years old, university education, discrimination based on gender)*

*I do not know if they are even aware of it or if they take it as a matter of course, since it works like that everywhere, for example my mother, that she has to keep her mouth shut, otherwise she would lose her job if they complained. (Female, 39 years old, university education, discrimination based on gender (maternity))*

The unwillingness or inability to defend oneself against discrimination is also associated with the **personality traits of the victim**. These are victims who tend to be passive and do not have the courage to stand up to authority. For example, people with lower level of education, socially isolated people, older people with longer experience with the previous regime and/or women may be more susceptible to it. Discriminated persons with primary education only rarely defend themselves through official channels because they do not know exactly where and how to contact. It is not just about a lack of information, but also the ability to understand a legal text and process complex information. If a person is not able to materially process a difficult situation, they tend to express emotional reactions rather than find an actual constructive solution.

*She is essentially a pretty unassertive person. In Prague, you get messed with by everyone and those people are going crazy because of it. There are people who trust people with academic degrees that they could never do this. And not everyone is endowed with dazzling intelligence or experience or have lawyers for friends. (...) Our generation is often accused of being affected by the socialist era, of being like sheep. (Female, 46 years old, secondary education, discrimination based on gender)*

*I think it may be true for people who have been at home for a long time. And they are very much locked in their own world. This is not true only for those, who have autism in the family, but even for those who are, for example, disabled themselves and do not get to be around people too much. They are so far in their own world that they do not even think that could complain or that they could have a right to anything. (Female, 37 years old, secondary education, discrimination based on mental disability (child))*

Furthermore, the absence of complaints can be seen in people who are accustomed to their quiet life and **do not want to provoke conflicts**. They consult

the situation informally with friends but they do not get themselves involved in official complaints - they do not feel sure in this area.

*I am really not the type who would want to provoke a conflict. (...) I admit that we really do not feel like it. (...) What should I tell you, Czechs are a nation of people who complain, only talk about it but then do nothing. (Male, 35 years old, university education, discrimination based on physical disability)*

*This can be laziness, but it can also be ignorance. (Male, 59 years old, secondary education, discrimination based on age)*

Discriminatory behaviour affects the identity of the victim and often evokes strong emotions. The primary need at such a moment may be to **work with this identity** which does not include support from the close, let alone distant surroundings. The victim alone thinks about the situation or discusses it with their friends but deals with it mostly on a personal level.

*I do not remember going through any official channels. People usually only complain in the pub and offend each other. (Female, 30 years old, university education, discrimination based on sexual orientation)*

*Due to the emotional wounds, I chose to only take care of myself. Those were our private battles. (Male, 31 years old, university education, discrimination based on sexual orientation)*

If a member of a disadvantaged group thinks about being subject to severe discrimination or harassment, they **confidently say that they would be able to defend themselves and they would seek help**. This idea, however, is often as good as gone when it actually happens.

First, the respondents overlook minor annoying comments without any reaction. They do not want to deal with them, avoid confrontation and uncomfortable situations overall. They do not even need to correct their surroundings and prefer to just waive it off. Gradually, they strengthen their methods of coping with situations that do not involve seeking help. However, the boundary between rude behaviour and discrimination is thin and it may easily happen that the discriminated person does not immediately realize that it has been crossed. Discrimination does not come out of nowhere, as a one-time move that would lead the affected person to a radical solution. Clear discriminatory conduct follows a number of previously experienced unpleasant situations. Thanks to that, the victim tends to overlook even those situations that have clearly crossed the line from the perspective of an outsider or from the perspective of the law.

*If it was something more serious, persistent, such as bullying and discrimination in the workplace, I would definitely not be okay with it. I would really want to enforce the law and most importantly I would not keep it a*

*secret. I would definitely want to put that person on the pillory because it is unacceptable for someone to act like that. (Female, 24 years old, university education, discrimination based on sexual orientation)*

*Obviously, if I encountered, for example, an open manifestation of violence or if someone would systematically make my life difficult, restrict me or if the view of me in employment relationships was deformed, then at that moment I would certainly look for support in an official place. (Male, 31 years old, university education, discrimination based on sexual orientation)*

When there is a situation suitable for the execution of the planned defence, **the discriminated person encounters barriers, about which I did not previously think** and which will be discussed in detail in the following sub-chapter. The previous confident statement: “I will not let this slide, I will sue them” is gone when the victim has to consider where to file the lawsuit, with whom to discuss it, how much to pay for it and so on.

*If someone tells me on the phone that I am a Romani and they would not hire me, I will find them on-line, I will find out where they live and will go sue them. I will just simply sue this person that they do not want to sublease to me because I am a Romani and it is racism. I will no longer let it be. (Female, 40 years old, university education, discrimination based on ethnicity)*

And it is mainly discrimination in the **work environment** that only few discriminated persons decide to actually report. The reality differs from the hypothetical situation both in a series of previous injustices that damage the confidence of the victim and may blur the right moment, when it is necessary to use official channels for defence, as well as in the intense experiencing of the consequences of any judicial or similar solution.

Attempts to reach an agreement directly at the workplace fail. The wrongdoer is usually the direct superior, to whom it therefore makes no sense to report anything. In this phase, confrontation or negotiation do not lead to anything and worsen the atmosphere in the workplace. On the other hand, reporting the situation to higher management leads to examining the situation with the direct supervisor which similarly worsens relationships in the workplace and increases pressure on the discriminated person. Reporting to independent institutions also eventually leads to an investigation in the company that ultimately affects the discriminated person in a detrimental way.

*There is no place where to report it. When you take it a step further to the next supervisor, they will turn to your supervisor, with whom they discuss it which is not the best solution. The relevant person takes it as a conflict and the thing turns against you again. (...) If the institution does not have a trade union, and*

*today it usually does not, then there is nowhere to turn within the institution. (Female, 62 years old, university education, discrimination based on age and gender)*

The situations where the discriminated person ultimately does not file a lawsuit and just adapts to the situation even with a positive opinion of a lawyer, are not an exception. **Potential loss caused by reporting the situation is perceived by the discriminated person as greater than the potential gain from a win in litigation.**

*We checked with a lawyer if I can sign the documents. She told me not to do it, that it is almost worth a lawsuit, that I should challenge it, and refuse to sign. Maybe I could have achieved something, but when I compared how much effort it would require, I would still have to find another job, I have a family in the middle of it all, whom I do not want to stress by being stressed myself, the result was that I would rather put the effort into finding another job and I let it be. (Female, 33 years old, university education, discrimination based on gender)*

A specific example is the situation where the respondent feels **discrimination directly from the state** - they are disadvantaged in situations when they believe that they should have the same rights as the majority society (e.g. adoption of children by homosexual couples).

## **II.4.2 Barriers to complaints of discrimination**

### **II.4.2.1 Psychological barriers**

The first condition for filing a complaint is **admitting that something wrong is happening** and starting to deal with the situation. This may not come automatically. Some victims prefer to shift the feeling of injustice aside, try to forget the unfairness as soon as possible and prefer to continue in the illusion at least from the outside that their life is in good order. Furthermore, some perceive seeking help as their own incompetence. They do not consider turning to a competent authority or institution their own successful step, but instead a weakness, a sign that they cannot cope alone. They avoid it due to vanity.

*I was not happy at all but then I was really so disgusted of it that I wanted to forget as quickly as possible. (...) Of course, people then give up and also they often do not want to go back to it. Because it is extremely unpleasant for them, an emotional experience, and they want to just ignore it as quickly as possible. And basically push them out of their lives. (Female, 42 years old, university education, discrimination based on ethnicity)*

*Many people have the idea that to get in touch with lawyers, it would have to be really bad. It is an unknown area for them. They cannot imagine that a lawyer protects their interests. For some, a lawyer just costs a lot of money and deals with a bad aspect of life. (Female, 46 years old, secondary education, discrimination based on gender)*

*Well, it would have to be damn bad for me to go complain. (Male, 65 years old, primary education, discrimination based on physical disability)*

To look for a lawyer, to go to court - these are terms that some respondents associate with extreme life situations in which, they assume, they will never end up. They associate them with punishment for a serious criminal offence with a dispute over extensive property and so on. Therefore, it may not even occur to them that even they are in a situation where resolving it through the courts is a relevant option.

Some victims of discrimination perceive that the **environment is generally more inclined to discriminatory behaviour** – victims fear that they would not have any support and the surroundings would rather support the wrongdoer. The surroundings here refer to any potential witnesses or other parties involved in the situation, where discrimination occurred, as well as those who will potentially deal with the report.

*They mostly end up being either some kind of a misdemeanour or they tell you that they will not deal with it. But why would they anyway, when 70 % of the people, who work in public administration or even with the Police, themselves are those who discriminate? They are racists. (Female, 42 years old, university education, discrimination based on ethnicity)*

*They see that they have no support, that there are mainly men around the management core. They would deny everything and in the event of a dispute they would have many witnesses and supporters. (Female, 62 years old, university education, discrimination based on age and gender)*

Constant repetition of minor problems leads the discriminated persons to certain **inertia in the failure to address the situation**.

*They are accustomed to the fact that, for example, for a long time they have been viewed quite differently in the family. And that they have to gain their place themselves. Therefore, they do not even realize they could actually use a shield of a formal authority. It is better for a person to fight for themselves instead of complicating their life with some bureaucracy. (Male, 31 years old, university education, discrimination based on sexual orientation)*

The discriminated person experiences an internal conflict in the case that **the discriminating person helps them in life somehow**, though not sufficiently and in the same way as the majority society. Then, they have constraints to object to

someone who makes their life easier at least somehow and on whom they are dependent in some respect.

*If I am brave and complain under my own name, it can backfire. I am afraid that if I defend myself against an institution, which is behind it and is convinced that this approach is correct, then this institution will get back at me for being an arrogant lout who does not appreciate what little she gets. (Female, 30 years old, university education, discrimination based on sexual orientation)*

Defending oneself against discrimination requires some pride in self and determination to put up with everything. Discriminated persons often have **an impaired sense of self-worth**; they are, for example, not entirely at peace with their sexual orientation, disability or older age.

*Twelve days before the end of his probationary period, the director told him that she must terminate his employment because the parents did not like that she was employing a Roma. He was so mentally distressed from it that he did not even tell us at home because he was ashamed of it. So I told him that it is possible to file a complaint to the Czech School Inspectorate (...) but he did not want to go forth with it. He no longer wanted to be reminded of it. He perceived it so that the reason is very humiliating. (Female, 42 years old, university education, discrimination based on ethnicity)*

However, their own **pride** may at the same time manifest as a barrier to addressing discrimination in the sense that if the respondent feels that they are not quite welcome somewhere, they leave the situation and do not force themselves into it or do not even enter it. After an unsuccessful selection procedure, they, for example, take it as a fact that they were not hired because even if they eventually enforced their right and got the job, they would be in a disadvantageous position at work right away as unwanted, and that would be very uncomfortable and challenging. The victim is also not interested in cooperation with a property owner who is hostile to the person interested in renting.

*You know, we do not go where they do not want us, we avoid that. (Female, 45 years old, primary education, discrimination based on ethnicity)*

Finally, for some victims of discrimination, the feeling that they are not the ones, who should punish or judge the discriminating person, is a barrier. **They do not feel personal responsibility for a solution** or they even perceive the idea of reporting discrimination negatively as snitching.

*I am not a snitch so I will not go complain. (Male, 36 years old, university education, discrimination based on sexual orientation)*



*I leave it all up to the fate, it will find them. (Female, 46 years old, secondary education, discrimination based on gender)*

#### II.4.2.2 Lack of information

The obvious major cause of failure to address discriminatory behaviour is the **lack of information and knowledge of the extent of one's rights**. Victims often do not even know that their rights were restricted and they could defend themselves. These are not only uneducated victims; even university educated people do not necessarily have to know the current text of the laws, which they could use in the given situation, until they thoroughly address the situation. However, the lower education and knowledge of the extent of rights, the more apparent methods of discrimination are tolerated and not addressed by the victim. Not only the availability of information, but also the ability to truly understand this information play a role here. This applies in particular to persons discriminated against on grounds of race and ethnic origin.

*Many people do not know at all that there is anything called the Labour Code which is also accessible on-line now so it is not a problem to look it up. And the question is whether they also understand the language in which it is written. So that the information is also understandable. (Female, 46 years old, secondary education, discrimination based on gender)*

*Most people are not sufficiently aware of their rights. They are convinced that they do not have those rights or that they should not even have them and they do not dare to demand them. They do not know that there is a way that they could use. This may also mean that this person knows what rights they have in the Czech Republic but they may not know, for example, that it is possible to appeal to the International Court of Human Rights, where they can sue the state as an entity that discriminates against that person. (Female, 30 years old, university education, discrimination based on sexual orientation)*

*Well, of course, that most Roma people do not know that there is an anti-discrimination law, that there is an Ombudsman. Therefore, it might be even good to do a publicity campaign and print leaflets that are understandable for these people saying that this exists. (Female, 42 years old, university education, discrimination based on ethnicity)*

*Mostly they do not know their rights. They do not know how to defend themselves or what to do against it if nobody tells them. (Female, 40 years old, university education, discrimination based on ethnicity)*

It is also important to realize that this is not just about the ability to find the information needed, although it also plays an important role when considering defence against discrimination. Today, it is really not a problem for most victims to

search for the necessary information. If they are motivated and have basic computer skills, then they are able to search to what they are entitled and whom to contact. **A basic overview of information** is also important, for example at least a slight knowledge of the Labour Code and anti-discrimination provisions **which helps the discriminated person to realize that what they are facing already qualifies as discrimination.**

*I personally have no problem finding out whom to contact. (...) The options are always the same, but someone, who steps outside once a year, will simply not have such general knowledge. (Male, 28 years old, primary education, discrimination based on physical disability)*

*I believe that if I or someone else wanted to report something, then we are definitely able to find out where to go. When someone wants to find something and it concerns them, then today they always find it. I do not believe that they would not eventually find the information; they would not know where to go. (Female, 24 years old, university education, discrimination based on sexual orientation)*

*They may not even know that they are discriminated against, and then they perhaps do not even know where to complain. Those old people really do not know. It would suffice if sometimes the media stood up for them a little bit by saying that it is simply discrimination. (Female, 62 years old, secondary education, discrimination based on age)*

For some people, a barrier is **the lack of information about assisting institutions, lack of knowledge of places**, where discrimination can be reported, and their **unavailability**. People from small towns do not see the option, how to address their situation in their area, because consulting services and institutions supporting minorities are concentrated in large cities. When considering seeking help, distance is a considerable barrier for them because they would also need time off from work during working hours besides reimbursement of travels expenses. Many respondents also have absolutely no idea what type of institution to contact, with whom to address the situation. Mainly foreigners have an insufficient knowledge of places where people can seek help.

*At that time, I was not too familiar with who deals with these matters, if anyone exists. The awareness of people in this country that there may be some institutions that may provide some help to you for free or eventually even stand up for you is minimal. (Female, 46 years old, secondary education, discrimination based on gender)*

*I addressed this with the head of the department. Well, and with whom will I address it? (...) I was here, I wrote to the mayor. But the mayor left after the*

*elections. (...) If nothing happens, then I will write to the President. I will not leave it like this. (Female, 67 years old, university education, discrimination based on nationality)*

*No. I did not go. Because I don't know where. I wanted to go report it somewhere because it is not good, it is not right. It should not be like that. (...) We do not know where. To the Police? I do not know. An attorney? I do not know. There must surely be some associations, some organisations but we do not know where to go. (Male, 31 years old, secondary education without school-leaving exam, discrimination based on nationality)*

**Limited access to the Internet** not only does enable the victim to use some on-line defence resources but it also cuts the victim off the supply of general information or the possibility of quickly becoming familiar with institutions providing assistance and finding their contact information.

*There are various options on the Internet. And it is important to mention that there are people who are not on the Internet. I have a friend, he lives a happy life, he can take care of himself, but he does not have a phone, the Internet or an e-mail address. He does not have anything. No Facebook. Whoever wants to find him must go to his home address. Done deal. And these people, when they need help, will not look for it on-line. That is why pensioners still keep responding to a flyer on the wall. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*If you are not a person, who can work with the Internet, which is something that my generation does not always know how to do, you will not even think of digging deep into something and looking for help. (Female, 46 years old, secondary education, discrimination based on gender)*

#### II.4.2.3 Prioritising other solutions

A common reason, why a respondent did not report discriminatory behaviour, is the fact that they preferred **dealing with their current life situation**. This is typical in that case that a person was disadvantaged when looking for housing or employment. If they were rejected somewhere for prohibited reasons, it is not their priority to punish the wrongdoer, it is more important for them to solve their main problem, that is to find another job or housing.

*No. I did not complain to anyone. I deal with it by looking for a job. I do not let it be and keep looking. I have a job but I am looking for a normal one in my field. And I keep hoping. (Female, 43 years old, university education, discrimination based on nationality)*

*They just overlooked it and looked for another flat. It seemed to be secondary to them, redundant. We needed to find a place to live as quickly as possible,*

*we did not want to make a mistake with such a person. (Male, 36 years old, university education, discrimination based on sexual orientation)*

Victims do not report discrimination if such reporting even represents **a risk in addressing their significant current life situation**. Here, the priority for them is addressing this situation and reporting is only possible for them possibly after resolving the situation, if they were not threatened by the subsequent investigation process. At that moment, however, the situation is closed and not current for them, and therefore reporting does not solve anything in their personal lives. Only a few people then decide to report discrimination "only" in the interest of the society. Persons, for whom the situation was concluded unfavourably and who would therefore not lose anything, if they went ahead and complained, chose to end their life in extreme cases.

*A person, who has yet to undergo treatment or is in the middle of treatment, definitely cannot defend themselves because if they defend themselves in this situation and challenge the state for discriminating against them, the state will proceed to revenge and end the treatment altogether. Then, only those, who have undergone it or whom it does not concern, but have sympathy with us. Most rejected people commit suicide. (Female, 30 years old, university education, discrimination based on sexual orientation)*

A strong barrier to reporting discrimination is also formed in cases when the victim begins to defend themselves. However, such defence is unsuccessful and it seemingly confirms to the discriminated person that nothing can be done about the situation. For example, in the work environment, the discriminated person addresses their employer or another supervisor. If this person does not resolve or deals with the situation to the detriment of the complainant, the discriminated person is **under the impression that they have already done something to resolve the situation**, although with no result, and then situation is then not addressed thoroughly. It should be noted that the discriminated person is in a weak position here and may have a tendency to believe that nothing can be actually done about it.

*We used to go to a disco and they would not let us in because we are Romani. So we called the Police, they arrived. Do you think they did anything? They did nothing. The Police told them something, but they would not let us in. They told us that we should leave, that it would not lead anywhere. So, there is no use to deal with the Police. (Female, 40 years old, university education, discrimination based on ethnicity)*

Some of the institutions, in which discrimination may occur, even head towards this feeling. For example, they have an **in-house counsel**, who is also available to employees, but the lawyer obviously acts in the interest of the employer. So in case of a dispute between the employee and the employer, they try to protect the

employer. In some institutions, clients may turn even to an **internal "ombudsman"** but even then it is not guaranteed that they will reach their rights here. On the other hand, it may happen the victim of discrimination will lose the need to continue to address the situation in contact with a seemingly neutral person on the grounds of the institution.

*Well, it is true that I simply trusted the lady because it can no longer be changed. And as I said, I went to the lawyer and he pretty much did not give me advice. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*Institutions may have some their internal ombudsmen or institutions that should deal with complaints, but their real motivation is more like sweeping it under the rug. I even initiated it once but obviously there was no effort to deal with it but instead there was an effort to somehow cover it up. And it seems that these complaint institutions within those institutions are more like PR instead of a bumper where one can get angry, let it all out, but they will very diplomatically and nicely talk one into not opening up in the media or addressing it further. (Male, 33 years old, university education, discrimination based on nationality and religion)*

Some of the discriminated persons opt for a downright **inappropriate method of defence**. For instance, victims of discrimination from vulnerable social groups slip towards arguments and threats under the influence of emotions, others will bribe the official who, they believe, does not provide everything that they should. Then, the respondents feel like they have done everything they could and do not proceed to constructive defence.

*I could have not gone there then. I would have set it up for her not to work at the school. But my husband went there, he threatened her that she should never touch our boy again, and that was it because she was afraid. ... (Her husband continues) I said: "So either you will behave to me as you should, and if not, I will take it higher and you will no longer work here. Neither you, nor you. You can count on that. I will forward it to the Ministry of Education and you will see what I will do with it!" (Female, 40 years old, university education, discrimination based on ethnicity)*

*She is so explosive that she scolded them and then she felt good. She was satisfied that she did something about it. (Female, 42 years old, university education, discrimination based on ethnicity)*

*I always compensated for it by informal influence. I always found someone who knows someone and thanks to that I had favoured treatment. (...) If you are intelligent enough, you start to operate in the way that works here. That*

*means that if you want something from the lady at the office, you just go there with a smile and bring chocolates. For example. You basically bribe her and thus win her over and personal sympathies then work. (...) Defence in confrontational manner does not work in the Czech Republic. Realistically, you can only defend yourself by obtaining certain status benefits. Or simply in an informal connection that you just win the person over or if you have an acquaintance. (Male, 33 years old, university education, discrimination based on nationality and religion)*

#### II.4.2.4 Fear of failure and the consequences

Fear of failure among respondents results, among other things, from the fact that the discriminated person is in a weaker position in a dispute. They have the **respect of strong counterparties**. These are often individuals facing the pressure of the organisation. The victim also perceives the disparity between their minority group and the majority background. They believe that discriminating person would use more power against them: it would be able to afford more expensive attorneys and they would also have individual formally independent persons on their side in deciding because judges, inspectors and police officers are usually members of the majority society.

A strong employer is better versed in similar situations and perhaps has a very good idea of whether the conduct, which is perceived as discrimination by the injured party, is also demonstrable as discrimination or if they can safely practice it. It also has many options how to respond to a complaint of a discriminated person in an undesirable way.

*Of course, fear plays a major role. When in a dispute with something that is stronger than them, people in principle have a feeling in advance - probably legitimate - that they would lose. (Female, 30 years old, university education, discrimination based on sexual orientation)*

*Perhaps it was fear. What can I do against a large organisation? If I go against them publicly, I do not believe that I could win. They have better lawyers, they can afford it. Will I give testimony against them somewhere in court? I am not brave enough for them despite being quite assertive. (Female, 33 years old, university education, discrimination based on gender)*

The respondents feel that it would be very difficult to **prove a discriminatory motive**. They doubt that evidence or presumptions, which are available to them, would succeed in court. They are often not informed of the fact that the burden of proof of the different behaviour of the discriminating person is usually on them and the discriminating person must then justify such different behaviour - prove that it had

other than a prohibited motive. Other discriminated persons are aware of the reverse burden of proof in their case but are convinced that the discriminating person would easily come up with another reason for its behaviour and discrimination will not be proven. Moreover, even proving actual different behaviour may be difficult for the discriminated person. This is not made easier by the fact that inspection authorities announce their visits in advance.

*This is difficult to prove. When working as a waitress, you cannot use a recording device. Maybe that day the person will be in a good mood and will not tell me anything. (Female, 46 years old, secondary education, discrimination based on gender)*

*The director could bring up many other reasons. She could say that he did not work well or that he neglected something. Those, who discriminate, always have plenty of options how to cover it up or make it look like it did not happen on discriminatory grounds. (Female, 42 years old, university education, discrimination based on ethnicity)*

One of the strongest barriers, and probably the strongest e.g. in employment, are **concerns relating to the consequences** - revenge, pressure from the surroundings, deterioration of personal or professional situation, and drawing unwanted attention. Regardless of whether the discriminated person would win the case, they would have to face reactions of the counterparty. There would be a further deterioration of relations with the wider circle of people or worsening of the working conditions, which is difficult to prove, which in turn will make the life of the discriminated person even more unpleasant than resignation and looking for one's own, another solution. In the event of a lost dispute, the situation could turn against the discriminated person due to accusations of defamation. The discriminated person is further concerned that in addition to a loss in the specific situation their complaint would discourage other potential contractual partners (employers, landlords) as well.

*If they complain, their life will be even worse and nobody will deal with that. Everyone will just say – oh yeah, the Romani are discriminated against again. (Female, 40 years old, primary education, discrimination based on ethnicity)*

*Once I stand up to the employer, it is absolutely assumed that the employment will end. If I turn to the Ombudsman, to the Labour Inspectorate, these people will address it, that is great. I will be even more traumatised. And I will know that the employer will make sure to fulfil the conditions for immediate termination of employment. And those can be always fulfilled. I will come to work ten minutes late three times and at that moment I will get a stamp. Or I will be assigned objectively impossible tasks from the employer that I have to perform during the week, I will fail to perform them and my employment will be*

*terminated immediately. So I would rather deal with it than lose my job. (Male, 36 years old, university education, discrimination based on sexual orientation)*

*I thought about filing a complaint of inappropriate discriminatory behaviour, but then I thought that he could cause a lot of trouble to me in my third year. I did not know whether he would sit in on the final state exam. If I would have had to attend his lectures, I probably would not have. (...) If someone decides for a complaint or even a legal action, they must count with the consequences. So you must have a back door, a second option. Well, I will file this lawsuit, I will go for it but in the meantime I am looking for another job because I know that I am leaving. (Female, 42 years old, university education, discrimination based on ethnicity)*

*If I go against them, I will close all doors everywhere. Or would I achieve that they hire me, but would you like to work there if everyone were watching you after you did this? That would have been so mentally demanding that I backed out. (Female, 33 years old, university education, discrimination based on gender)*

*They did not go report it. Because the girls will not get healthy and they will need additional benefits and everything. And then, they will always be considered as those, who complain, and it will be worse from then on. And there will be more inspections from social services. (Male, 21 years old, secondary education without school-leaving exam, discrimination based on physical disability)*

*Once the awareness is insufficient, another time there is a lack of information. And out of those things they can do as they say: to deport you or to terminate your residency permit or something. (Female, 67 years old, university education, discrimination based on nationality)*

**Fears of drawing unwanted attention** concern not only persons who have been subjected to discrimination on the basis of a hidden characteristic - here, for example, a person who hides their homosexual orientation in the wider public will not use defence that would endanger discretion in this area. Some respondents do not want to draw negative attention to the place, where discrimination occurs, e.g. the company where they work. The reason may be loyalty, positive relationship with other employees or clients, or the fear that the bad light pointed at the environment, in which (or in connection with which) discrimination occurred, will be somehow reflected on them because they are or were part of this environment. Other respondents do not like attention of the people around them as such; they do not want to expose themselves or their loved ones to any arguments.



*The Chairman said that they are looking for an apology. I say: "Please, I do not want you to publish anything about the kindergarten. I will just accept this here now, we agreed, we will draw a thick line behind it and I do not want anything." Because for me, the kindergarten is mainly about the children. I do not need to pull the kindergarten into this. (Female, 62 years old, secondary education, discrimination based on age)*

*The lawyer wanted me to go to court but I did not want to do it. I was in the organisation for a long time and I had some loyalty. We did a lot of things well, there were many things that I enjoy. And I also thought it was just ridiculous, I was ashamed of that organisation, and I did not want to take it to the public like that. In my CV, I would have an organisation that has such reputation. (Female, 39 years old, university education, discrimination based on gender (maternity))*

*Out of respect for him, I did not want to dig into this. I was afraid that it could then unravel so that it would get out of hand and it would get somewhere where I did not want it to go. (Female, 62 years old, university education, discrimination based on mental disability)*

*I think that those people mainly think that it may not help. Or maybe they are also ashamed of it a little. (...) Well, it is shame, or maybe fear. (Female, 29 years old, secondary education without school-leaving exam, discrimination based on sexual orientation)*

A typical fear of adverse consequences is specifically **fear of a deterioration in working conditions or complete loss of job** after reporting discrimination in the workplace. Despite the injustice they experienced, some victims want to stay in the same company and maintain a bearable working atmosphere. They are dependent on steady income, they often lack financial reserves, or are repaying loans. Others will look for work in the same or related field, and believe that the information about who reported what to whom will spread easily. It is difficult for the discriminated person to remain hidden – in a company, it is usually well known, who was not satisfied with the relevant situation, and it is usually not a problem to figure out who turned to the inspection authority.

*I wanted to stay in banking and I was worried that it would turn against me. (Female, 33 years old, university education, discrimination based on gender)*

*I believed that they would come up with something against me, that there is always a reason for termination of employment, if they want to, so I gave notice myself. I was worried about the future possibility of finding a job, I did not want to have a bad record on my CV. Workplace is a place, where people do not defend themselves and where they still put up with everything because*

*everyone is worried about their jobs. They are afraid of losing their job, not being able to find another one, or of not finding a job that is just as good. I even read once that the stress, when a person loses their job, is similar to the stress they experience when someone close dies or they break up with someone. (Female, 55 years old, university education, discrimination based on sexual orientation)*

The victim will feel the consequences of reporting discrimination immediately. Such information spreads quickly and in the case of not fully direct discrimination affecting a group of victims, the actor will soon find the probable reporting person. Therefore, the victim feels the adverse consequences of the reporting sooner than any benefits of the reporting – remedy or compensation.

*These consequences will fall on you immediately, they are much faster than the courts. Then they will take away part of your salary, they give you a worse job, they transfer you elsewhere, or send you home, they tell you that there is no work for you and you may not get any money at all. If you do not like it, leave. This happens in no time. (Female, 46 years old, secondary education, discrimination based on gender)*

The perceived adverse consequences of reporting discrimination can be both direct (fear of revenge directly from the person, whose behaviour was reported by the discriminated person, fear of the impossibility of further involvement in the same company or the field), as well as indirect (disclosure of secrets, unwanted attention). Both the victims as well as people, who are close to them, who are also affected by the situation, i.e. homosexual partner of the victim, tend to hide and not to address discrimination.

*I wanted to file a criminal complaint for libel, but it was in the town, where I live with my partner, and my partner told me that she would not let me provoke conflicts and disturb order in the town, where we had been accepted without any problems until then, and therefore she would not let me go complain. (Female, 30 years old, university education, discrimination based on sexual orientation)*

*Victims do not want to deal with it publicly because this would expose them to pressure from the outside. There is some communication about it that may not be in the favour of the person who fees discriminated against. They are afraid of disclosure, of being at the centre of attention and ending up alone if no one stands behind them. They naturally feel that the actor has the edge on them. (Female, 62 years old, university education, discrimination based on age and gender)*

#### II.4.2.5 Difficulty of a court process

Discriminated persons are also discouraged from pursuing a lawsuit by the idea of **high financial costs**. They are discouraged by the risk that they lose the lawsuit and will bear the costs themselves as well as by the necessity to first pay their own monies in case of success and only subsequently reach compensation.

*Then, there is one more barrier - the idea of the risk that they may eventually lose the dispute. The idea that they may have to pay CZK 50,000 as the cost of the proceedings; it is an unimaginable amount of money for them. (Male, 36 years old, university education, discrimination based on sexual orientation)*

*Maybe some of them may not have enough money to complain. They do not know where to go, what to do and they do not want to have any more problems because of it. (Female, 43 years old, university education, discrimination based on nationality)*

*To tell you the truth, I just do not have the money for courts, some fees. And I do not even have the money for an attorney and I would definitely need one against this pack. And I am not healthy enough to show up in court somewhere. (Female, 79 years old, secondary education, discrimination based on age)*

As mentioned above, respondents are discouraged from any official addressing of discrimination by concerns about the consequences of filing a complaint. Due to the lengthy court process, we cannot talk about marginal temporary complications which the victim is willing to put up with in the interest of the final outcome. The idea of **lengthy court proceedings**, with no guarantee of a favourable outcome, is significantly discouraging for the discriminated persons.

Respondents **need to address the situation immediately** and not only after a favourable court decision. And solutions through other organisations are not always quick and flexible enough to interfere with discrimination when it is still relevant. This further reinforces the already low willingness of persons discriminated against in the workplace to report the situation, because there need to find a job or keep their job immediately.

Besides the fact that after several years the conflict is no longer relevant, people assess the duration of a potential lawsuit even in terms of what they want to spend their time doing for such a long time in their life, in what they want to be involved, in what they want to invest their energy. They see a lawsuit as something unpleasant that is exhausting and ruins their mood, and therefore they do not want to spend so much time on it.

If the event that the litigation is prolonged, even the litigation costs increase and thereby the risk of high financial losses if the lawsuit is lost. The number of witnesses and other evidence are also dropping.

*Those people also think a little bit about the finality of human life and they also think about whether they will even live to see the justice. (Female, 46 years old, secondary education, discrimination based on gender)*

*My dad has been fighting an authority for about 10 years now, which is also one of the reasons why I decided not to fight, even though it was suggested to me that I might win. (Female, 33 years old, university education, discrimination based on gender)*

*For example, I have a friend who runs a civil clinic. She has a lawyer there once a week. And in order for a person to consult with the lawyer, they have to wait a long time. Most people cannot wait long when they have problems. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*When you want to complain about something, you give up in advance, because you say – 30 days, processing periods, bureaucracy, you simply throw in the towel because everything here requires a long wait. (Female, 24 years old, university education, discrimination based on sexual orientation)*

*Even if you seemingly succeed, the win is not 100%. That means that you may achieve it because you have already suffered damage. And that is extremely exhausting. Many people simply do not have the nerves to argue with those people for months and months about you being entitled to something. (Female, 25 years old, secondary education without school-leaving exam, discrimination based on physical disability (child))*

For some, the process of claiming a right is a truly demanding process; for example, when faced with a mobility disability and they are required to visit several institutions. The mobility handicap, which brought them more problems in terms of unequal treatment, also prevents them from defending themselves against such unequal treatment.

*Some people do not have the time or means for it. Honestly, imagine, for example, a mother of an 11-year-old immobile girl running around the authorities. (Female, 25 years old, secondary education without school-leaving exam, discrimination based on physical disability (child))*

*I am unable. During the fall, when my disc got out of place, my urinary and rectum sphincters were injured. I just cannot go anywhere. How could I get on the bus? (Female, 79 years old, secondary education, discrimination based on age)*

#### II.4.2.6 Uselessness of filing a complaint, unwillingness to invest energy

Respondents, who do not report discriminatory behaviour, often feel that it is unnecessary, that it would not solve anything. They feel like **discrimination happens normally and there is nothing that can be done about it**. This feeling is a common barrier to seeking help for people discriminated for ethnic reasons who face rejection in all areas of life. Characteristics, for which they are discriminated against, are obvious, cannot be hidden, and the victims do not expect that any solution to the situation can bring about positive change.

*One does not know how and what to do. And then they feel like nothing will be resolved anyway. It is the only emergency room in the area. So where else? To the school you must also take the bus. (Male, 21 years old, secondary education without school-leaving exam, discrimination based on physical disability)*

*I think, and I am not the only one, that there are more people like that so nothing can be probably done about this. Well, actually something can be done about it but that is rather an individual matter, it depends on who the actors and what cases these are, whether they have enough information and courage. (Female, 62 years old, university education, discrimination based on age and gender)*

In some situations, the respondent **does not see direct benefits for themselves in reporting**. They have little motivation to punish the discriminating person for the actual punishment (expose to sanctions) when they themselves will not benefit from the solutions, especially if the result of the dispute is uncertain. For many discriminated persons, filing a complaint at least in the interest of other vulnerable persons is currently weak motivation that will not help them overcome the "how would that benefit me" barrier.

*Anyone, who complains, does not benefit from it. No results. And if I know that someone went to complain and it yielded no results, why should I go as well? I do not have the time and nerves and stuff for that. (Female, 43 years old, university education, discrimination based on nationality)*

The victim does not deal with the problem actively also due to the belief that **the situation will calm down by itself**. For example, the discriminated person objects to specific apparent improper behaviour immediately and the offender shows signs of understanding, or even apologises. The discriminated person considers it a satisfactory solution and expects that the undesirable situation ended with that. However, this can be followed by a series of other hidden offensive actions against the discriminated person, which are difficult to prove, and the victim is therefore not determined to address them. They consider the initial situation long gone and in the

current difficult life situation they tend to blame themselves for not seeking legal assistance then.

*I had accurate information about to whom to report, and how to do it. I did not do it. I took it lightly. I thought that when he said he understood that it would be okay. I did not expect him to follow me, discredit me, and give me such a bad reputation. (Female, 55 years old, university education, discrimination based on sexual orientation)*

Discriminatory behaviour makes the victim's life difficult. The discriminated person **loses the necessary energy and enthusiasm** for a constructive solution. In the future, they operate with a limited amount of energy and time and consider in what to invest it – the choice usually falls on addressing the current life situation, such as looking for housing or employment. The victim perceives reporting discrimination as a challenging step, they immediately think about difficult acquisition of evidence, provision of materials, repeated visits to various institutions and so on. Meanwhile, they are struggling with the same energy loss in the superficial solution to their situation.

*I was so devastated because of all that that I just decided not to care anymore. I did not even have the strength to fight against it. (Female, 40 years old, university education, discrimination based on ethnicity)*

*I was so unhappy, desperate, that I simply had no more ideas. (Female, 62 years old, university education, discrimination based on mental disability)*

In the context of the above, it follows that **seeking help is a job for the victim of discrimination in which they are not interested**. It happens more often in the form of one-time discriminatory behaviour, e.g. in the workplace on grounds of gender, when the discriminated person must address their situation differently either way (to find another job). Devoting time to discriminatory behaviour at the same time and fairly resolving it then means extra work for them. With the prospect of an uncertain result, they see it as a waste of energy.

*I was too lazy to address it. (Female, 33 years old, university education, discrimination based on gender)*

### **II.4.3 Proposals on how to remove the barriers**

It is not easy to remove barriers and motivate victims of discrimination to file complaints. Firstly, the victims are not easy to locate, find or identify, and in some cases it appears that by filing a complaint the discriminated person would be at risk of a greater loss than if they just simply put up with the situation. In many cases, however, there are ways that could weaken the barriers to filing complaints.

Seeking help by a discriminated person is preceded by several steps. First of all, they must realize the discriminatory behaviour, verify it, get a sufficient degree of certainty that they are able to demonstrate it. They must also know who and how to contact, and finally they must have certainty that by reporting discrimination their situation will improve, or at least not deteriorate.

A frequent barrier to seeking help is the lack of knowledge of the extent of their rights. Any **awareness campaign** of assisting organisations should be based on that. The target group needs to find out to what they are or are not entitled. They can also use a description of typical examples of discrimination, which can be an impulse for the discriminated person to identify themselves with them and seek help.

An awareness campaign should ideally be directed to areas where attempts at discrimination can be predicted. For example, parents on parental leave would receive a leaflet with information about the rights and obligations in relation to the employer. People looking for a new job could notice information about discrimination in the workplace on job boards that would help them realize that their dismissal from previous employment or rejection by a previous potential employer were not okay. For seniors, who spend time in interest groups, an appropriate form could be a discussion, leaflets at doctors' offices etc. (Appropriate information channels are discussed in more detail in one of the following chapters.)

*It would be better to focus on the problems of these people. I would definitely focus on the places where these people spend time. Whether these are clubs or any other environment where they spend time. (Male, 36 years old, university education, discrimination based on sexual orientation)*

*The emphasis on the fact that it is okay to ask for such help, if necessary, and that it is available. Still, only very little is said about it. Not about sexual minorities, there is even too much being said about that, but about the fact that it also has its legal consequences and background, and people can defend themselves. For example, worse pay conditions for women, preference of men are in general awareness, but most gay people do not even realize the risk of discrimination. But it is understandable because homosexuality is not apparent. A future employer might not recognize it at first sight. (Male, 31 years old, university education, discrimination based on sexual orientation)*

Given the extent of the group affected by discrimination (wrong-doers, victims, bystanders), even a widely targeted mass campaign will be of major significance here.

At the local level, victims appreciate **information about the most available places** which one can contact if they face discrimination. For example, many affected persons have a clear idea of the fact that they cannot afford to consult with an

attorney, while in many assisting institutions legal assistance is available for a reasonable price or even for free.

*And awareness, or possibly accessibility, so that people know where to go and do not have to travel far away. So that people in every larger city know where to go. (Female, 50 years old, secondary education, discrimination based on disability (child))*

Persons at risk of discrimination, who do not have a sufficient supply of information on discrimination, (as well as those who have the information, but only lack the impulse for activity) could greatly benefit from **face-to-face contact** whether with a field worker or a person, for example, at contact points of state social support. Ideal contact persons could be experienced people from a similarly affected group who would be well versed in the rights and common problems at the border of discrimination. In addition to preventive educational activities, they could also detect previous cases of discrimination and help those affected overcome barriers to their solution – to pre-assess the situation, send them to the appropriate institution, principally support addressing discrimination at the expense of the usual "let it go" approach, which only conserves the current disadvantageous situation. Activities of field workers and cooperation of an official beyond the processing of ongoing agenda, with which the client came to the authority, overcomes the communication barrier in groups that are not very used to using the Internet and need **face-to-face impulse to any further solution** with the use of other communication channels at least in the first moments.

*Social workers could be close to this. These workers would seek out these people themselves and would ask whether they need any help. If they need to take care of something and are not successful. I think that first of all there must be communication. Then you can read something, look it up, this is another thing. But communication must come first. It must be someone who can communicate normally. (Female, 43 years old, university education, discrimination based on nationality)*

*Information should be definitely available from social services. To make sure that they know it at the social services. Maybe social workers will say it, that a Roma person should not be treated that way. (Female, 45 years old, primary education, discrimination based on ethnicity)*

A specific element that would help remove the barrier for part of discriminated persons would be **communication of the benefits of a one-time visit to the assisting institution** in comparison with endless decision-making and considering incomplete information. Even one quick consultation with the institution will help the discriminated person a lot without having to right away undergo any complicated and tedious process of inquiry.



An interesting idea was to create a **collection of solved cases** relating to discrimination. It could be a typical paper brochure or a series of published cases on social networks or servers that are visited by vulnerable groups.

*It would certainly be beneficial if any lawsuits would be won, if there was a constitutional judgement for this, which is then applicable across all levels of courts. But again – it would have to be published, released, distributed in the media somehow. Facebook for young people, Romea for the middle class. And maybe to make a collection of solved discrimination-related cases. From complaints, lawsuits, giving an explanation. (Female, 42 years old, university education, discrimination based on ethnicity)*

In the first steps, it would be beneficial for the discriminated person, if they had a better chance to verify **the objective content of different behaviours**, which they want to point out. Although the situation is apparent to the person, without available verifiable data they do not have sufficient confidence and certainty that different behaviour of the discriminating person can be demonstrated in the subsequent dispute. This applies, for example, to differences in remuneration of employees. An employee, who is convinced that they receive a lower salary for prohibited reasons than others, does not have the possibility to verify this assumption because the salaries of other employees are secret information. In the initial phase, therefore, an explicit offer could help eliminate barriers to those who are not sure to what extent the discrimination occurs. The offer of help can be thus formulated so as to appeal to the client in the initial stages of making the decision to seek help. Proper formulation is e.g.: "Do you believe that you have been discriminated against?"

*An accounting unit would probably have to start operating here that would be able to quantify the damage, whether financial or moral, for which the person could sue and demand remedy. And again, we are at the accounting department, again we are at the accounting documents in order to assess this. And everyone will tell you that it is personal data and they cannot disclose that. Then, they say that these are various bonuses and you are not entitled to them. That they are assessed only on certain activities. (Female, 62 years old, university education, discrimination based on age and gender)*

It could help the victims if they had an idea of the financial demands of the process of resolving discrimination. **It would be therefore useful to publish a summary of typical expenses** in case of a lawsuit, including the possibility of their reduction and alternative solutions to ensure that the discriminated people know what to expect. Often, they may find out that the unavoidable costs are not as burdensome for them as they originally thought.

A good step is to strengthen the powers of the Police when it comes to awareness of the Anti-Discrimination Act, which could be possibly followed by the

**establishment of anti-discrimination teams** (in the style of anti-corruption teams etc.).

*I could, for example, imagine that, as we have a Police anti-conflict team, there would be an anti-discrimination team. One per district may suffice. I am not saying at all departments that would probably be too much. But one per district, where these people could turn, and it would assess whether there really was discriminatory behaviour, whether it makes sense to go for a legal action. They would tell them right away: this was an offence, do you want to go for it? Or they would tell them right away: yes, this is good enough for criminal proceedings, then you have the option to continue with a lawsuit, etc. (female, 42 years old, university education, discrimination based on ethnicity)*

Another option for extension of services, which could help make the way to reporting easier for the victims of discrimination, is **the establishment of a specialised anti-discrimination phone line.**

*Maybe even a line, such as the Lifeline, where one would know that there is one particular number where they can call and someone will advise them how to proceed. Because I do not know if such a thing exists. They would then direct them where to go next. (Male, 21 years old, secondary education without school-leaving exam, discrimination based on physical disability)*

As stated above, a real barrier not only to reporting discrimination but also to the implementation of effective help may be the lengthy nature of a court procedure. Part of the respondents would therefore appreciate the possibility of summary **proceedings**, in which courts could decide in cases where it loses its relevance due to unwanted delays.

*I need this to be removed immediately. When I file a lawsuit, then I know that the court will decide in two years if I am lucky. Additionally, there will be an appeal procedure, which means that the specific protection will come in five years, but at that time I will probably no longer work there. And then I will have to start a new court procedure and claim damages. This is a major problem. For example, the usual practice in Great Britain is that, if I am not mistaken, each employment-related legal dispute is decided within two months. To ensure that there really is effective protection against any incorrect employment-related legal procedure of the employer. This does not exist in the Czech Republic and that is one of the major reasons why people do not want to defend themselves against discrimination. Because why would I defend myself against discrimination in employment, where I will know that I will eventually have to leave the job? (Male, 36 years old, university education, discrimination based on sexual orientation)*

In addition to the proposal for periods, within which the court should decide on employment-related legal disputes, the above respondent also mentions the **extension of competences of the Ombudsman** which could lead to a higher number of successful lawsuits and thus better motivation of the victims to file lawsuits against discrimination.

*In the area of discrimination, it is possible to imagine a group of those extended competences of the Ombudsman who could represent clients or file lawsuits in the public interest. But if the Ombudsman files a lawsuit in the public interest, on which the court would decide within three years, then it does not make any sense. (Male, 36 years old, university education, discrimination based on sexual orientation)*

One of the major problems in remedying discrimination is the **internal disagreement of part of the population with the contents of the Anti-Discrimination Act** and misunderstanding of the need to balance various disadvantages at the expense of absolute freedom to dispose of private property. Continuous education might be necessary in this field, especially in families. The society should then responsibly use the option to bring up this topic in the classroom. The ideal age for a discussion on discrimination varies according to the specific discussed different characteristics, but most of them can be discussed with pupils as early as in primary schools.

*I would start at secondary schools within social sciences. Not to emphasize only the case of men and women and racism, when it comes to discrimination, but to emphasize that there are plenty of forms. (Male, 31 years old, university education, discrimination based on sexual orientation)*

*This has to be here from the beginning. In families, but this also must be in schools. Some discussions or perhaps a party or something like that in those schools. They must simply talk about it. Even in some large companies, adults must also talk about this topic. (Female, 43 years old, university education, discrimination based on nationality)*

A fundamental shift can be brought only by a **societal change** in the perception of responsibility self and the surroundings.

*Well, and in the case of some people I think that perhaps people's way of thinking. (Female, 50 years old, secondary education, discrimination based on disability (child))*

*I also see a problem in that people follow a philosophy that simply irritates me: Let sleeping dogs lie. And if another person is suffering, ignore it to avoid problems. It is an approach that is becoming more prevalent because people are losing any empathy and compassion. Systematically, I see the philosophy*

*of caring only about ourselves. (Female, 30 years old, university education, discrimination based on sexual orientation)*

As prevention of raising passive non-defending population, it would be appropriate to **encourage the pupils/students so that they are able to deal with everyday life situations** and to know where it is currently possible to go but mainly where and how they can look up where to go. Here, it is possible to specifically recommend that protection against discrimination is covered rather at older age, i.e. at a time as close as possible to the risk period when they can encounter discrimination more often, and that is to ensure that the information is fresh.

*The foundation is that one must also try a little bit to find out where to find help. That is perhaps a thing that must be taught in school. But as I see children today, they are not afraid of anything. They are not afraid to complain even when it is not true. And so I think that this problem might gradually disappear. When this generation grows up, they will be assertive. (Female, 55 years old, university education, discrimination based on sexual orientation)*

It is also necessary to constantly work on a **welcoming image of the assisting institution** so that respondents do not perceive filing a complaint as an unpleasant task, where they will encounter a number of complications, as something that annoys them, about instead as a step when someone is welcoming and willing to help them and saves them worries.

*For people at the authorities to be nicer and approach it as a complaint of a citizen and not a Roma person. For them to take me as a citizen, like everyone else I have the right to complain about something. (...) She may say to you: "I think it is normal, it is not an insult." And at that moment, you are just angry and say: "You know what? Forget it!" And you go away. (Female, 40 years old, primary education, discrimination based on ethnicity)*

*Institutions do not have a good image here at all. Something modern – "Come here and we will take care of it". Here, you have the unpleasant lady behind the desk who tells you about a 60-day period. Just this idea discourages you from complaining." (Female, 24 years old, university education, discrimination based on sexual orientation)*

*There is no "service attitude" here. Instead, all the authorities have more or less a restrictively bullying approach. They require information beyond the law, they themselves tend to conceal information. The most essential factor for these institutions is this perceived role of the clerk – not as someone, who provides a service, but someone who is a guard of social standards. (Male, 33 years old, university education, discrimination based on nationality and religion)*

**The proposal to encourage the expansion of the network of assisting institutions** by facilitating the possibility to obtain grants for their establishment **has been dismissed**. People, who are discriminated against, are aware of the costs of the state for the operation of these institutions and the fact that the state is considering to whom to provide resources and how to defend it in public. In this case, one can argue the long-term unfavourable situation of certain groups of population that now deserve the support of the state to compensate for this situation. The idea of using fines for discriminatory behaviour to support institutions addressing discrimination was also dismissed.

*Then, it should be, of course, also supported by the EU that should take care of it because many states explicitly want to discriminate against their minorities and it is not possible to achieve that they voluntarily adopt an equal position to their minorities. (Female, 30 years old, university education, discrimination based on sexual orientation)*

The way to motivate the victims of discrimination to file complaints consists in simplifying that procedure for discriminated people. A person, who is discriminated against, can get help from a number of existing non-profit organisations and these sometimes themselves face barriers that prevent or complicate help for them. Another proposal therefore relates more so to these barriers on the part of institutions. One of the respondents, who herself faces discrimination and at the same time helps others address it, proposes **incorporating the protection of human rights and the protection from discrimination into the Social Services Act**.

*Social services are not provided only to Roma, but also to disabled persons and the elderly. And these are all easily vulnerable groups of the population. So why not incorporating the protection of human rights and the protection from discrimination directly into the Social Services Act? We all do it similarly anyway. Člověk v tísni does it, IQ Roma servis from Brno does it too, but it is difficult to look for projects. (Female, 42 years old, university education, discrimination based on ethnicity)*

The motivation to report discrimination may increase the possibility of **inspection** by the inspection authorities **without prior notice**. Prior notice reduces the chance that something will be proven to the discriminating entity, and therefore discourages the discriminated person from filing a complaint.

A significant barrier to reporting discrimination are concerns about the consequences for the reporting person, and therefore the discriminated person tries to stay hidden, and if it inconsistent with addressing the discrimination, they tend to keep the situation to themselves. Based on experience from their close ones, discriminated persons believe that even an anonymous investigation, e.g. in the work

environment, often results in revealing the complainant who is then in a very unpleasant situation. **Communication of the option to begin to address the situation with sure anonymity** could help them with that. The complainant could be sure that their first reporting and consultation are confidential. It should be safely under their control, at which point of the subsequent resolution of the situation their anonymity could be compromised so that they can decide whether they should continue to pursue the solution through official channels. The advantage is that at that moment they are more qualified to make this decision as they are enriched with information from the first consultation.

*There may also be concerns about the consequences. Because when a person lives somewhere, they complain and continue to live there, they may be afraid of being destroyed in that location. The problem for this is also that it is not done anonymously. The ideal option is the option to talk to someone, they accept it and it helps. But the older ones usually do not want to listen. And if I go there again, it will be hell. (Female, 43 years old, university education, discrimination based on nationality)*

*Anyway, I personally would not report it if it were something that concerns me. If it were not anonymous. (Female, 24 years old, university education, discrimination based on sexual orientation)*

## **II.5 AWARENESS OF RIGHTS, KNOWLEDGE AND CONFIDENCE OF ORGANISATIONS THAT PROVIDE ASSISTANCE TO DISCRIMINATED PEOPLE**

### **II.5.1 Knowledge of the Anti-Discrimination Act**

Most respondents, who participated in the survey, have at least a vague idea of the existence of legal legislation governing the issue of discrimination. Deeper awareness and knowledge of the relevant standards are, however, not generally widespread, not even among people with university education or persons who are not socially excluded. In addition to the **Anti-Discrimination Act**, the respondents mentioned the Constitution, or the **Charter of Fundamental Rights and Freedoms** or the **Labour Code**. **However, most often they generally mentioned that an act that bans discrimination (surely) exists.**

*Well, there is the Labour Code, right; which simply bans or tries to address discrimination in a certain way, I think. There is an anti-discrimination law, which we surely have, right. And that is about it, right? It is mentioned*

*somewhere, I mean in the Constitution, about equality. Right? Of citizens or so. And otherwise I do not know. (Female, 62 years old, university education, discrimination based on age and gender)*

*So I think that there is a law for that because those people have realized that without that there would have to be one, if everyone did whatever they wanted. (Male, 42 years old, primary education, discrimination based on ethnicity)*

*Well, sure. Specifically? I do not know. But I am sure there is one. (Male, 31 years old, university education, discrimination based on sexual orientation)*

*I would say there is one. Isn't it? Well, I would say that there must be one. After all, it is actually even in the Constitution. (Female, 62 years old, secondary education, discrimination based on age)*

*I do not know if it is the Constitution directly. I think that even directly the Constitution. Plus it is at least in the Labour Code a person must not be discriminated based on age, appearance, nationality, religion, orientation, etc. And something similar must be even in other laws. (Male, 28 years old, primary education, discrimination based on physical disability)*

*I have not studied it yet, I know it exists. It is the Anti-Discrimination Act. I am now unemployed so I am interested in slightly different things. But as I said, based on past experience I simply do not know. However, Aristotle argued that a bad constitution is better than none at all. Because there is at least something, we can at least criticize it, if nothing else. But I should read it, too; it is true when I share such wisdom. (Female, 46 years old, secondary education, discrimination based on gender)*

*I think that it exists but many people do not even know that it may exist. (Male, 59 years old, secondary education, discrimination based on age)*

However, there are differences between individual groups of respondents both in terms of legal awareness and legal knowledge, as well as in terms of confidence in anti-discrimination laws.

If citizens of so-called third countries or persons from these countries know about the existence of these laws, it is at a very general level, or they believe that the laws valid in the Czech Republic do not apply to cases where the victims of discrimination are not citizens of the Czech Republic or the European Union.

*I think that it does not exist but I have no information as to whether it exists or not. (Male, 36 years old, secondary education, discrimination based on nationality and religion)*

*I think so. I think that there is one but we do not know it. We do not know. (male, 31 years old, secondary education without school-leaving exam, discrimination based on nationality and religion)*

*Well no, it is in the European Union where we are not part of it. We are a third state, it is as simple as that. (Male, 28 years old, university education, discrimination based on nationality)*

Respondents discriminated against on grounds other than ethnicity or nationality (especially people with disabilities), however, approach the Anti-Discrimination Act with scepticism – they perceive it as "tailor-made" to the Roma ethnic minority.

*Well, such a law was certainly passed due to various minorities. But if a lot of people know it, then I do not think so. The certain group of population knows it very well. They refer to it non-stop. (Male, 35 years old, university education, discrimination based on physical disability)*

*If there is a law in the Czech Republic, which bans discrimination? I do not know, it is possible. Especially Romani. You know what? They are such cheaters, those who get money instead of people who really need it. (Female, 68 years old, secondary education without school-leaving exam, discrimination based on physical disability)*

There were also views that, on the other hand, the Anti-Discrimination Act contributes to positive discrimination, or that its wording directly leads discriminating persons or entities on how to bypass it, which then subsequently makes specific discriminatory behaviour legally unenforceable.

*Many of those laws that ban discrimination, I think, only create positive discrimination. For example, racial. I know many cases when the majority race was accused of racism, while many of those minorities are much more racist than the majority society, but I did not know it the other way around. Again, this in turn leads to some bad moors in the society. (Male, 37 years old, secondary education, discrimination based on physical disability)*

*The Anti-Discrimination Act itself is an example of a mockery of discrimination as a concept. And that means that when people know for real – oh yeah, there is an anti-discrimination law, but there are so many exceptions, and basically anyone can be discriminated against because the employer may say for example – I want to fire a woman because I do not want to have her there because she is a woman but I cannot put it in the papers that I am firing her because she is a woman. So this employer thinks – I will find another reason. And, for example, they will list the following reason: low work performance. Or they will list a difference reason: redundancy. Or they will simply think of a way*



*how to go around it. (Female, 30 years old, university education, discrimination based on gender identity)*

*After the experience that I have, although I sometimes confuse discrimination and corruption, I think that the law can always be circumvented. A law exists but it is just on paper and they will not tell you that you are old, they will not tell you that you are Roma, they will not tell you that you are this – they will put this somewhere on a list, and if you have to beat a dog, you will always find a stick. (Female, 54 years old, university education, discrimination based on age)*

The Anti-Discrimination Act is perceived as problematic also because it supposedly has the lowest priority.

*Basically, the Anti-Discrimination Act works where it is not in conflict with any other law because, unfortunately, this law is created so that it has the lowest priority, and all other laws have precedence over it which is a fundamental mistake. It should be exactly the opposite and the Anti-Discrimination Act should be superior to other laws. (Female, 30 years old, university education, discrimination based on gender identity)*

## **II.5.2 Ideas about what victims of discrimination can achieve in the Czech Republic**

Persons, who **have no knowledge of laws** that would prohibit discrimination, analogically have no idea **of the possibility** of any defence on the legal level, or the possibilities of any compensation. For the most part, these respondents are of Roma origin or disabled. This context, however, does not have to be generally applicable given the lack of representativeness of the sample in our research.

*I think that nothing. No. Dear friend, I am sorry, I apologize, nothing. No. (Male, 65 years old, primary education, discrimination based on physical disability)*

*It is very difficult based on what I heard. Very difficult. Because what those are – those who, for example, film the news on Prima and Nova, I watch this a little bit, so this results in great difficulties for them... The long duration of it. Maybe, that they reduced their benefits illegally and so on. They talked about that, because they set up the law a certain way and they dropped into a lower group without being able to affect that. Some of them were struggling for 2, 3 years. Mostly gentlemen went for it and they were quite mentally sick of it because it took long. (Female, 59 years old, primary education, discrimination based on physical disability)*

*No, I do not know such things. But okay. But even if I went to complain, tell me what would they solve with it? Nothing. Again. Discrimination. (Male, 50 years old, secondary education without school-leaving exam, discrimination based on ethnicity)*

Despite the awareness and knowledge of the possibilities of satisfaction, based on their experience some respondents talked at the same time about the fact that **enforcement is very difficult** or that the **consequences of defence against discrimination are just as unpleasant** as the discriminatory behaviour itself. These persons then underestimate the possibilities of compensation because it takes a long time before they achieve it, or because they can turn the opinions of other residents of the community, where they live, against themselves.

*Look, then, they put such a dog's head on him that they completely shoot him down from the other side. I am sorry but I can see it here. When you demand your rights, then you are an ungracious person, and that will be it. No one will be with you. If you were here crawling on all fours, no one will help you, and that's it. You will only cause difficulties as in a small village. It may get lost in the city, but in a small village... (Female, 79 years old, secondary education, discrimination based on age)*

*Today, only a few. Ethnic minorities have some opportunity to assert their rights, but sexual minorities have pretty much nothing. It is absolutely minimal there. (Female, 30 years old, university education, discrimination based on gender identity)*

*So, you seemingly achieve it, yeah, but you lose a lot of time, a lot of nerves, you are discussed everywhere, make a lot of enemies, then it is often a Pyrrhic victory. (Female, 54 years old, university education, discrimination based on age)*

*You may assert defence against cases of discrimination which the state does not support and are illegal. So when, for example, a person is disadvantaged in the work process because it is a member of a minority or if there is simply any unequal treatment which is to the detriment of the state, is already approved as illegal, then you can really get help. (Female, 30 years old, university education, discrimination based on gender identity)*

**Underestimation of own social capital** also appears as the cause of problematic enforcement.

*I have read about situations where these people defended themselves successfully. But they are really exceptions when simply – it usually concerns educated people, when they know, they have the experience – or experience. They have an idea of how it works, whom to turn to. I think that they simply*

*know what to do. Which is a plan. Right? Which I do not have. I doubt it – I have heard that somebody would just simply say that a mother with five children went to defend herself just because someone kicked them out from a public space. Right? I doubt it. I have never heard of that. These people just do not know how to defend themselves. Right? And they are afraid. They are afraid to express themselves because they are afraid of their personality. (Male, 37 years old, secondary education without school-leaving exam, discrimination based on ethnicity)*

In the case of respondents who have some awareness or knowledge about possible compensation, the most frequently mentioned possible outcomes of a successfully completed litigation in the case of discrimination are **remedy of the situation and prevention of further discriminatory behaviour** along with **financial compensation**. Victims of discrimination also expect an **apology, justice** and above all **moral satisfaction**. For some of them, satisfaction in the form of punishment for the wrongdoer is more important than financial compensation.

*If I was reporting someone? What happens to them? Well, an investigation begins. If their guilt were proven, I would say at least a fine. Minimal. As if it could even end up in prison eventually. (Male, 21 years old, secondary education without school-leaving exam, discrimination based on disability)*

Victims of discrimination based on **ethnic origin, race or nationality**, who are aware of the possible achievement of satisfaction, most often mentioned achieving justice, an apology, remedy of the situation and prevention of further discriminatory behaviour and financial compensation.

*I do not know. A win? (Laughs) Maybe in the form of an apology, sent as a letter. From the person, right, if they did not hire me and someone sent me a letter – I apologize that I did not hire you because you are Roma; that would not encourage me too much. But here is the thing. Making the person realize what it is about also basically helps something... (Female, 28 years old, secondary education, discrimination based on ethnicity)*

*Well, that would be good. At least they would apologize. (Female, 43 years old, university education, discrimination based on nationality)*

*Well, they can attain their rights under the Anti-Discrimination Act by a judgement that she was discriminated or a court decision, and may get some financial compensation. Because the level of discrimination can be financially graded. (Female, 42 years old, university education, discrimination based on ethnicity)*

*It depends – some compensation will be certainly possible if it is proven that the damage occurred. Certainly, an excuse if there was any damage to*

*honour. I think that if it is proven that there was some kind of a systematic or repeated behaviour that led to any further damage, it can be combined with criminal law. I cannot think of an example now. Maybe, I do not know, if the state sterilized women or so, then they can even look for some criminal consequences. I am not a lawyer, but I can imagine that this can be simply combined. It always depends on what the discrimination causes and in what context. Right? And it can be claimed in the bizarre way to remedy that, I do not know, someone does not want to hire me because I am Arab. And I will simply prove it to them, sue them and the court may order them to hire me, but what is that good for? (Male, 33 years old, university education, discrimination based on nationality and religion)*

People discriminated against **because of age** would mostly demand moral satisfaction, an apology, justice and prevention of any further discriminatory behaviour as well as financial compensation which is, however, not as important as the above remedies.

*First of all, there is the one major problem with proving discrimination. Specifically. One can look at it differently; the company may look at it differently. Or the representative of the company looks at it differently and at that moment there is a problem. I think that financial compensation does not play a role there. A role is played rather by whether you get a job or not. (Male, 59 years old, secondary education, discrimination based on age)*

*Well, those excuses? Previously, maybe, but maybe now even financial compensation, when a certain amount is demanded, you know, for damage. That is my opinion. And then, actually, if relevant, the return to the workplace or the like. It depends on the particular case. (Female, 62 years old, secondary education, discrimination based on age)*

*Well, I should be able to obtain compensation in terms of moral or some financial damages. I think that is basically why these people should contact anyone, you know, if they incurred damage due to dismissal from job or employment or damage to reputation or simply something like that. Right? All of which are moral and ethical issues. (Female, 62 years old, university education, discrimination based on age and gender)*

Financial compensation does not play an essential role even for victims of **gender discrimination (a category that also includes parenting or pregnancy)**. The respondents who participated in our survey most frequently encountered problems when looking for a job or returning to work after maternity leave. This group of victims is, at least in the context of our research, very clearly aware of the discrimination and they are also well aware of their rights. For them, the most important victory is moral satisfaction and prevention of the continuing discriminatory

behaviour even on the level of the entire society (here, a broader overlap of solutions to discriminatory situations is apparent as well as mainly in ethnic or religious minorities).

*So theoretically, one should be able to achieve that their case will be simply definitely reviewed. Therefore, if it is found that it is true, then not just that it is a judgement in the name of the republic, but basically – I do not know how to express it – a certain satisfaction. It does not have to be financial but it could be that the person's reputation is often damaged, and I am not even talking about the consequences for the mental and physical condition...But I am saying, it is just the feeling of satisfaction for that person. (Female, 46 years old, secondary education, discrimination based on gender)*

*If a person loses their job, financial aid is nothing compared to work. That is clear. And if it is like – I do not know – discrimination in general, she did not say that it does not help to get money when you are discriminated against based on religion or ethnic origin. That does not help at all. The only thing that helps is to change the society or part of the society that behaves badly. That is the goal. No money in it helps. (Female, 46 years old, university education, discrimination based on gender (maternity) and nationality)*

*Well, I do not quite know, certainly remedies. In my case, I would expect that either I will achieve that they take me back, that they would accept me back but we already talked about this here, I do not quite know how they would look at me so I was worried about it. Or perhaps I can get a higher compensation than severance pay. So that is what I, as a layman, would probably expect that may happen. But honestly – I did not care about the money; I would probably expect some satisfaction that they would at least get in trouble because of it due to the fact that they receive subsidies from the EU to support the return of mothers after maternity leave and so on. And since they build their advertising around it and win awards for the employer of the year one after another. I do not know how it works there then. I would quite like to know because winning the employer of the year award several times and receiving subsidies from the EU to have programmes for mothers returning after maternity leave – I have a different experience and I have other information that it does not really quite work like that. So I do not know how this is assessed. That really surprised me a lot. So I would probably expect some – some satisfaction that maybe a fine can be imposed on them or that they will be scolded publicly and told that this is not how it can be done. You know? Instead of them just getting away with it. (Female, 33 years old, university education, discrimination based on gender)*

Respondents with **disabilities** (including those who care for people with disabilities) would primarily expect a remedy. In addition, moral satisfaction, an

apology and possibly financial compensation. However, these persons see a fundamental problem in the length of the proceedings testing evidence, believing that they bear the burden of proof, while also fearing a possible revenge from the wrongdoer in cases where a remedy of the situation was ordered by a decision of the court – e.g. re-hiring.

*Do you mean a legal action against discrimination? Well, I suppose I should see that it is somehow resolved. And that if it concerns specifically that the little one would not be, for example, accepted by the school, then the result should be acceptance at the school... If some psychological damage is concerned, then it would probably have to be substantiated by some medical reports or something like that, right? (Female, 37 years old, secondary education, discrimination based on mental disability (of her child))*

*I would say that it depends on why I will sue. If it is for some compensation or regaining my job position, which I am not quite sure about regaining the job position here, well, maybe, they would have to re-hire me, but then, if it really was discrimination, they would look for a reason how to get rid of me again. (Male, 28 years old, primary education, discrimination based on disability)*

*An apology is important especially for people who are publicly active somehow because it clears their name. An apology is not a way for an ordinary person. For most people financial compensation – again, good. But it is not adequate to the costs associated with it that precede it, the time demands. And the result is so distant and uncertain that no one will go for it. If the system is simple and I know that I am entitled to these and will achieve them, then the people will go. If the system is complicated, I will not know at all what, when and if at all to do, then I will not go for it. (Male, 37 years old, secondary education, discrimination based on disability)*

*Well certainly – correctly it should be correction of the situation. And at least an excuse. Some moral satisfaction, if nothing else. Often, all you have to do is just simply say: "I am sorry, I did not know." You know? A person often does not need anything else. But I think that in many cases it is just about saying: "I am sorry." When I look at myself, in terms of behaviour of those people, whether because of the dog or Tomáš. No one has to see that the boy is autistic. It is not visible. A lot of people – we did not know until he was six or seven years old that the boy is autistic. You know? And often all I would like to hear is: "I am sorry, I did not know." You know? It may happen at the cash register that the boy just acts out. Or he is naughty. He basically starts with his episodes. You know? And the cashier starts: "You are a very naughty boy, why are you doing this? Do good boys do this? And such an embarrassment for your mum." For this situation, my psychiatrist told me one magical thing.*

*Look at the cashier and say: "You know, he is autistic." Although I do not like to say it, since she gave me this advice about two years ago, when there is a situation like this, I look at her and say: "You know, he is autistic." And suddenly the cashier stops talking and says: "I am sorry." Or maybe at least she leaves us alone. I know that it is hard for her. I know that maybe it is simply uncomfortable for her. But different people live among us. You know? And of course, I think that in certain types of permanent health damage financial compensation is perfectly adequate. (Female, 37 years old, university education, discrimination based on disability (of her child))*

*Well, certainly recognition of the request. Or not the request, but acknowledgement that it really is discrimination, it is not something I made up, that I am not just overly sensitive, but instead acknowledgement that it is discrimination. In my opinion, she should be able to achieve remedy of the situation. But again, here we face that there may be – I don't know – some financial compensations, if I were – I don't know – fired due to discrimination, after 5 years I would manage to prove that the dismissal was based on discrimination, then I could probably proceed with another lawsuit where I would claim damages and maybe loss of earnings. And then I would already be retired and then I would die. (Female, 40 years old, university education, discrimination based on disability)*

Respondents **discriminated based on religion** (in our research represented by Muslims) firstly mentioned an apology and remedy of the situation. However, they express disappointment over the fact that satisfaction will be only formal and in the end, i.e. in the behaviour of the majority towards them, there will be no positive change.

*I think that when that person will know that they will have a big problem, they will simply apologize, but they will not change. When they have to pay a high fine, and not even that I would get the money, I will now not seek compensation for me, but they will pay it for the state, the person will feel pain and they will not do it any longer. Another way is that they will want to behave differently without a fine, but then the thinking must be changed and I think it is the job of the state. They must teach people how to treat others better. But from the beginning, it is probably a fine, which is paid for anything, maybe for people in the hospital or those who are poor. I do not want anything. Verbal apology is okay, but it does not change a person, they can apologize all the time, just to do it. (Male, 36 years old, secondary education, discrimination based on nationality and religion)*

*Not really an apology. For them to simply treat us the same as local people. (Male, 31 years old, secondary school, discrimination based on nationality and religion)*

People discriminated against due to their **sexual orientation** mentioned more or less the same forms of compensation as other groups. It is mainly important for them that the wrongdoers are punished and that they no longer have to face similar situations. They would also demand an apology and in cases, when they suffer material loss (loss of earnings, damage to personal property etc.) based on discriminatory behaviour, also financial compensation.

*What the court would actually take as the result and how it would actually interfere. Well, I would be okay with just an apology and... Or for the person to tell me that they will just ignore me, that they will simply not continue doing what they are doing. (Female, 29 years old, secondary education without school-leaving exam, discrimination based on sexual orientation)*

*So we would hope and I would personally hope that the offender would be punished and that whatever is happening will stop happening, and they will apologize to me. And that I will just never have to do anything about it – that I will not have to deal with it. That I will actually get justice on my side. (Female, 24 years old, university education, discrimination based on sexual orientation)*

*My subjective opinion is that it will be quite difficult. That means, if anything – because it will be very difficult to prove and demonstrate etc. I think that they will not achieve too much. It is my opinion ... What is the victim actually trying to achieve? Instead, I think based on my experience that either an apology or actually a change in the behaviour of those other entities. Right? I do not really think about any financial compensation or anything like that, I do not think I talked with anyone about it or heard it. You know? Instead, it is rather about the settlement of interpersonal relationships. Wherever they may be. (Male, 31 years old, university education, discrimination based on sexual orientation)*

*Well, actually I do not know, but I think that in some cases it may be that it can be about money, especially if they lost any money due to the discrimination. Maybe salary or something. And it can be a remedy; they may get their job back that they lost previously. Well, I cannot think of anything else right now. (Female, 55 years old, university education, discrimination based on sexual orientation)*

*I think that they can succeed. When there is a specific decision from any specific court case, then I think that they can get some money. So, if someone defaced my door, then I would want them to fix my door and publicly apologize. And if someone, I will say it vulgarly, kicked my ass, then I would*



*probably want them to fully pay me, for example, for what I am missing at work. Or maybe hobbies that result from it, for example...So compensation. So it is only again about the person being alright and not having to pay for someone else's stupidity. And then certainly an apology, yeah. That would, that would be something like a satisfaction and a sort of public proof of that the door was defaced, so it is not right. (Male, 31 years old, secondary education, discrimination based on sexual orientation)*

### **II.5.3 Knowledge of organisations that provide support and advice to discriminated people**

As expected, persons with a certain level of legal awareness across the entire sample demonstrate a greater and more comprehensive knowledge of organisations engaged in the support and assistance to discriminated persons even if their experience with these organisations is not personal. It may be said that despite the barriers that stand in the way of resolving their own discriminatory situations, the majority of respondents knew whom to contact. Here, it should be noted that the respondents, who participated in the survey, are not a representative sample of all persons with similar characteristics.

Most often, the respondents spontaneously mentioned non-governmental organisations, often working locally, and absolutely naturally those that deal with the issues associated with the characteristics of the respondents as well as situation, in which the discrimination occurs or occurred – e.g. Roma people from Brno know IQ Roma servis, disabled persons mentioned Liga vozíčkářů, Paraple or Apla, people discriminated against based on gender or age in employment matters mentioned Alternativa 50+ or Job Centrum. There are also charity organisations and associations, citizens counselling centres or specific lawyers and attorneys from the ranks of people close to the respondents.

*So certainly the Ombudsman's office deals with these issues. I am sure. (Female, 62 years old, university education, discrimination based on age and gender)*

*The citizens counselling centre. I would just approach it through counselling...Then another excellent place is – Liga vozíčkářů, they have a counselling centre, which is also excellent. I am a little bit lost in this area. Whether it is a civic association or a non-profit organisation. And they sort of point you in the right direction. Or they also give you a lot of advice. (Female, 54 years old, university education, discrimination based on age)*

*ROI, if it still exists, I think, something like that. It is an association of Roma or something like that, right? It was written there, I forget, what are they called?*

*There deal with discrimination there, they address housing issues of Roma people. It is in Prague, I do not know right now what they are called, I forgot. (Female, 35 years old, primary education, discrimination based on ethnicity)*

*These include our organisation Poradna pro občanství, občanská a lidská práva (Counselling Centre for Citizenship, Civil and Human Rights), then it is Člověk v tísni (People in Need), Amnesty International, the Czech Helsinki Committee, and IQ Roma Servis in Brno also do something in this area. Romea also had its anti-discrimination phone line, but now they also do not have funds. Well, I don't know. Then there is the Kocáb's company Nadace otevřené společnosti (Open Society Foundation), which was founded by Kocáb. Hmm, now I cannot think of anything else. (Female, 42 years old, university education, discrimination based on ethnicity)*

#### **II.5.4 Knowledge of the Public Defender of Rights**

The position of the Public Defender of Rights is quite sovereign in terms of a question about an organisation addressing the issues of discrimination in the public sector – here, all respondents, who managed to answer this question, mentioned this office. In terms of characteristics of respondents, those were mainly people from majority ethnic backgrounds; respondents of different ethnic groups thought of the Office of the Ombudsman only if they had any previous experience with it – whether personal or mediated; and also after asking a question regarding the knowledge of the existence of the office.

*Well, I would probably turn to them, or many people turn to them to make a sort of a comparison itinerary, as they say, basically how the problem looks even from the perspective of other people, you know, because the Ombudsman means lawyers, you know, who just provide this advice, so I think that they are quite knowledgeable and that they explain to the person what the situation is and what the chance of address or not addressing the problem is. (Female, 62 years old, university education, discrimination based on age and gender)*

*Well, I would probably contact the Ombudsman. I – I honestly do not know which authorities under them. The Ombudsman is simply the highest one, so I would probably try this. I would probably only think of the Ombudsman. (Female, 33 years old, university education, discrimination based on gender)*

*And Ombudsman, so public rights, that is how I know it from TV. (Male, 28 years old, secondary education, discrimination based on physical disability)*

*It would therefore be the protector of rights. Because I think the Ombudsman has it even in the jurisdiction, hopefully. (Male, 59 years old, secondary education, discrimination based on age)*

The Office of the Ombudsman is then perceived very positively and seen as beneficial; often it is the only organisation within the "state" sector where discriminated persons can reach remedy of their situation, even though they do not see their real chances as very high; first because of the high number of motions and complaints, which must be addressed by the office, and also because, as mentioned earlier, the respondents often trivialize their own experience with discrimination and perceive it as a natural part of their life destiny.

*I think that is such a high office that they may not even address such stupid problems. (Female, 31 years old, secondary education, discrimination based on physical disability)*

*I may have even misjudged the severity in this new situation, if it is even adequate to me going to the Ombudsman. (Female, 31 years old, secondary education, discrimination based on physical disability)*

*The Ombudsman is a big person for me, like a government person. To get to the Ombudsman – that would have to really be something. You know? (Male, 50 years old, secondary education without final school-leaving exam, discrimination based on ethnicity)*

**Table 8: Knowledge of organisations**

<b>Reason for discrimination (respondent characteristics)</b>	<b>Mentioned organisations providing support and advice to discriminated people (Organisations mentioned multiple times are in bold)</b>
Ethnicity, race or nationality	ROI, Svaz Romů (Association of Roma), K-Centrum, charity, Sovy (Owls), Romea, IQ Roma Servis, <b>Citizens Counselling Centre</b> , People in Need, Amnesty International, Czech Helsinki Committee, Open Society Foundation, <b>Public Defender of Rights</b> , the Office for Refugees, Rozum a cit (Sense and Sensibility) and generally <b>NGOs</b>
Age	<b>Public Defender of Rights</b> , Citizens Counselling Centre
Gender (including pregnancy or parenthood)	<b>Public Defender of Rights</b> , Alternativa 50+, Job Centrum, <b>Citizens Counselling Centre</b> , gender studies, Labour Office, generally NGOs, Centre for Migration Issues
Disability (physical, sensory or mental)	<b>Public Defender of Rights</b> , charity, Ministry of Labour and Social Affairs, generally foundations and <b>NGOs</b> , Liga vozíčkářů, Fénix, <b>Paraple</b> , <b>APLA</b> , People in Need, <b>National Disability Council</b> , Citizens Counselling Centre, Helppees, social

	services, municipal office
Religion, belief or worldview	Public Defender of Rights, Citizens Counselling Centre, generally NGOs
Sexual orientation	<b>Public Defender of Rights</b> , Centre for Integration of Foreigners, La Strada, Proud, the Police, lawyers, generally <b>NGOs</b>

### II.5.5 Places to which the victims of discrimination would probably turn for help and the reasons for preferring these places

An analysis of the barriers to reporting experiences with discrimination showed that the victims often refuse to complain and/or address the specific discriminatory situations at the institutional level. However, in all cases, there can be a breaking point when the victim decides to defend themselves through official channels.

*I either resolve it myself or let it go... (Male, 28 years old, secondary education, discrimination based on disability)*

*My dear, I will tell you the truth, no one. I tell you this from my heart, really honestly. No one. Because I do not like the Police, I do not like them. Because I have a bad experience. The Ombudsman is a big person for me, like a government person. To get to the Ombudsman – that would have to really be something. You know? A lawyer, that is one of the best ones. You know? But again – where to find a lawyer. You know? Now, all the time to discuss it with them, fill out forms, I don't know what all. It is – maybe here is the problem. That is the problem, that is it. I think. Because, if you show this paper to a Roma, like to me right now, and what is it for you such... Court, then there are some unions – I do not know which unions. Well, non-governmental organisations, I don't not know what it is. Non-profits, well, IQ. So that is what it is, right? (Male, 50 years old, secondary education without final school-leaving exam, discrimination based on ethnicity)*

*Well, I think that few people would dare to take this step, to go complain in this matter. No, no Romani would go. I think not. They do not like it, our people to deal with the courts or go anywhere. I would definitely go, if someone was offending me, or because of work, I would have a job and would lose it only because of this, because I was discriminated against, then I would definitely fight, because I would not just leave it like that. Because I realize that it cannot be done without a job. And a person, who has a job and loses this job because of something so stupid, then it is stupid. (Male, 42 years old, primary education, discrimination based on ethnicity)*

It appears to be better to start from the other end. The place, to which the respondents would usually not directly turn, are the **courts** due to the inadequate length of proceedings, frequent lack of evidence and absence of factual evidence of

discrimination or the possibility of quantifying the damage. The costs of legal services also play their own role. Those, who would like to turn to lawyers, and do not have any lawyers among their friends and family, or do not know about citizens legal counselling centres, declared that they cannot afford it due to financial reasons.

*Then, it probably depends on the context, to which it would relate. And I would go gradually. That means, if it happens that the clerk would – if it was a clerk – then I would just simply go and handle it with the clerk's direct supervisor and would document the entire procedure. If I were at risk of any harm or incurred damage due to the authority, then I would file a lawsuit with a court. Or to the Administrative Court and the Supreme Administrative because it may take 2 years but I have a chance that something will happen. (Male, 33 years old, university education, discrimination based on nationality and religion)*

*I do not know. I imagine a lawyer that I first give them a large amount of money and then I want something from them. So, I would probably not go to a lawyer. (Female, 31 years old, secondary education, discrimination based on physical disability)*

The **Police** takes on quite a contradictory position – for example, for Roma respondents it is, on the one hand, the manifestation of the part of state power, which itself largely discriminates (more often based on mediated experience).

*They will draw up some kind of paper with you... And that's it – they tear it into pieces or file it and that's it. You know. And that's about it. Do you know what happened here? Well, a boy was simply high, the first patrol arrived, they grabbed him, put him in one of those rooms, those that are at the police station. It is such a small room, you know, everyone is staring at you there until they draw up the papers and things like that. Well, they like released him and then he began to act crazy. You know. He started to just act crazy. And they calmed him down by calling the doctor and the doctor gave him an injection. He gave him an injection, not one, but two. That's right; his heart did not make it. Right? But before they gave him the injection, they calmed him down by beating him. They just beat him up. But outrageously. Therefore, they killed him. And nobody did anything about it. When the parents came there then and asked what happened, they said – I don't know what they told them then? (Female, 40 years old, secondary education without school-leaving exam, discrimination based on ethnicity)*

*Because they are rude. You know? When they see a Romani, they all are as if – I don't know why, it looks like the Police all agreed to be like that against Romani. I do not know that it is because of that stupid skin, I do not know why. I do not understand. Do you understand? We all are made of flesh and bones,*

*for God's sake. Jesus Christ. (Male, 50 years old, secondary education without final school-leaving exam, discrimination based on ethnicity)*

On the other hand, there are opinions that the Police are closest and you can complain about anything there.

*I would try the Police. I have no problem with them. (Female, 45 years old, primary education, discrimination based on ethnicity)*

*At first glance, the Police attracted my attention because they are most available; they are even in the smallest towns and offer non-stop service... (Female, 30 years old, university education, discrimination based on gender identification)*

The powerful image of the Police, which would be contacted by a fifth of the respondents in this survey in the first instance, also contributes to the feeling of safety of the victim who decides to report the discrimination.

*To the Police and the Ombudsman. It can also be a lawyer but I would go see a lawyer only for a little something. So. And I would go complaint or so to the Police and the Ombudsman. Some associations, not really. I would definitely not go. Inspection, yes. I think that it is – they are those where – but that is my opinion – where they help me. They can tell me how to proceed, what to do. You know, I will have some protection. Maybe the Police. (Female, 43 years old, university education, discrimination based on nationality)*

*The Police – it is protection, I chose it last, not because it would be lower, but I feel that the court and the lawyer are stronger. But the Police are a force, protection of a person. (Male, 36 years old, secondary education, discrimination based on nationality and religion)*

Certain part of the respondents – in this case across the sample regardless of personal characteristics – also believes that the Police are not a body, which should resolve discriminatory situations, unless the situation escalates, for example, by attacks.

*To the Police? And what? If I came there and said: "Listen, they did not let me in somewhere", then they will throw around legal regulations and as the owner they have the right not to let you in. I think that it would end. And the Ombudsman would probably not reject me; they would address it with me. But they may resolve my situation. You know? But nothing more. A lawyer, an attorney, that is about money. And the court does not respond until the last phase, if I wrote to the court that someone did something to me somewhere, it would end up somewhere in Strasbourg or somewhere there probably. Well. And this would take years. Right? (Male, 37 years old, secondary education without school-leaving exam, discrimination based on ethnicity)*

*And the Police, unions, inspection bodies as if I – I know that they are trustworthy but in my eyes they are a little bit more because let's say the Police would address a not downplayed case, something really bigger, what the Police should address. (Male, 28 years old, primary education, discrimination based on physical disability)*

*The Police – there I am saying that it would have to be really bad. There would have to be like violence. Then, I might go to the Police. (Female, 29 years old, secondary education without school-leaving exam, discrimination based on sexual orientation)*

*And the Police, well, it will probably happen eventually. Once again someone attacks me like that, and then I will probably do it. (Female, 37 years old, university education, discrimination based on disability (of her child))*

The position of other specific institutions and organisations (**lawyers and attorneys, unions, NGOs and associations**) is similar – it also depends on the situation and to a large extent also on the social capital and circle of friends and family of individual respondents.

*Definitely a lawyer and also the court, but through a lawyer, of course. (Male, 28 years old, secondary education, discrimination based on physical disability)*

*First, I would not search on the Internet, but I would call a friend-lawyer and I would consult with them. You know. But this would be thanks to the fact that I know lawyers. You know? So I would use my social networks first. I would definitely not get on-line first and search for an authority. You know? Second place? That would depend on what they would advice me to do. There is not second choice for me. Well, if no lawyer in the entire Czech Republic would not be available by coincidence, then the Police. Hmm. But I have a clear concept that the situation must be resolved by pressure. You know? Therefore, I thought of these more direct and more extreme ways. You know? Rather than some unions or inspection bodies. It evokes my situation which is not yet critical for me. I would reach for this only in a critical situation that I suggested earlier. And so I am thinking a lawyer and the Police. (Male, 31 years old, university education, discrimination based on sexual orientation)*

*So, I would probably contact a lawyer, or maybe even an NGO. And then, they can help you get a lawyer if they are interested in the case, I think. (Female, 39 years old, university education, discrimination based on gender (maternity))*

*I am considering discrimination at work because this is how I will rank it. So, always the appropriate union organisation, if any exists. So definitely unions, when we agree or even disagree with the unions and I will not like it, then there is surely the Labour Inspectorate, if there has been a violation. At that*

*time, I will definitely be interested in finding out whether there is an NGO that I do not know. (Female, 25 years old, secondary education without school-leaving exam, discrimination based on physical disability (of her child))*

**Public authorities**, which would be contacted by victims in the case of addressing discriminatory situations, are on the other hand the **Office of the Ombudsman** and **inspection bodies** also according to the situation, in which the discriminatory behaviour occurred or occurs.

*So if it happened, I would first go to the inspection authorities. So I would go to the Czech School Inspectorate, State Inspectorate, yeah, commercial inspectorate, I would definitely contact them. Unions certainly not. That does not come to my mind. NGOs for sure, it would try to find something on the Internet. The court and a lawyer in serious, really serious cases. Well, and the Ombudsman, I am saying we tried that but do not know how far – it also takes long. (Female, 37 years old, university education, discrimination based on disability (of her child))*

The Ombudsman is seen as the highest instance, it therefore depends on the character of particular individuals, on how their own problems are addressed – if they are used to proceeding from the "bottom" or from the "top levels".

*Well, it depends on what area. Right? Of course, a motion can be filed to the Ombudsman in all these areas but first, in every complaint procedure, one should proceed from the lowest authority and continue higher if they do not succeed. Right? So, when it is in the area of employment, then there is the Labour Inspectorate, then I think the Labour Inspectorate, then the Ombudsman, if they give a positive opinion, then I would even proceed with the anti-discrimination lawsuit. Well, it varies. You can also complain about realtors to the Czech Trade Inspection, the Association of Realtors. It depends on the area and then you have to use the complaint mechanism from the lower instance to the highest one. And then, the final stop is the court. (Female, 42 years old, university education, discrimination based on ethnicity)*

*Well, I would probably contact the Ombudsman. I – I honestly do not know which authorities under them. The Ombudsman is simply the highest one, so I would probably try this. I would probably only think of the Ombudsman. With the kindergarten. The Ombudsman decided that mothers, who are at home, cannot be discriminated against in comparison with those who go to work. In connection with this, I heard. Well, I heard about the Ombudsman, you know, on television when the people contact them. Exactly, that it is the last option, when decision is made. That is why I am now really surprised that I do not know which authorities can decide under the Ombudsman. But it is in my mind that the Ombudsman is the person who then decides at the end. That it is list*



*the last stage, where you turn and they decide. (Female, 33 years old, university education, discrimination based on gender)*

*I think that the Ombudsman cannot be bothered with everyone because it is the instance where one really thinks that it is serious, that they are in the right and they cannot achieve it here at these instances. (Female, 54 years old, university education, discrimination based on age)*

A respondent who cared for a close person suffering from the Alzheimer's disease created an interesting **classification of individual authorities in terms of the level, at which discrimination is addressed** – from system measures to solutions to specific situations. System measures fall within the scope of the Ombudsman, who in cooperation with NGOs and associations paves the way for legislative action. Somewhere in the middle of this hierarchy are unions and inspection authorities, which may, through decrees and orders "from above", prevent discriminatory behaviour. And at the end, closest to the actual actors, are the Police and advocacy that can solve specific situations when they occur.

*Because this is a system – perhaps the unions would help even before the Ombudsman. In the fight against bullying. I do not know. I have no experience with them. But maybe they would be quite effective. Against discrimination, I think. Unions definitely have the right to assist in the drafting of collective agreements, where discrimination may be somehow prohibited. You know? So to get it into those legal materials. The Police may prevent that particular conduct. But otherwise, it will not resolve it systemically either. Not the Police. A lawyer neither. The lawyer can point out this or that – I said that, intimidate. NGOs and the Ombudsman can help to systematically prepare it for others, I think. (Female, 62 years old, university education, discrimination based on mental disability – husband)*

## **II.5.6 Credibility of the Ombudsman and the Ombudsman's position within other institutions and organisations dealing with discrimination**

Although for half of the victims of discrimination, who participated in our survey, the Ombudsman does not operate among the first places, to which they would turn with their cases, **the Ombudsman's credibility is very high across all studied groups of respondents**. In absolute numbers, the most significant (29 votes) cause is the Ombudsman's erudition and involvement.

*Well, now it is a little bit – Ombudswoman Šabatová, I would say, I trust her more than the previous Ombudsman. Maybe because of her opinions. He was a bit somewhere else with his opinions than the previous one. And even when it comes to discriminatory behaviour in terms of gender. There, completely*

*because she understands it more. And she certainly has a good team there. She understands it. (Female, 39 years old, university education, discrimination based on gender (maternity))*

The Ombudsman also has great trust of victims, who would not turn to them, for example, because his decision-making power is limited and only a recommendation, or because the Office is too distant for a "regular person".

*I trust the Ombudswoman but she has no competences. She always only issues opinions or recommendations. She cannot decide; she does not have decision-making powers. She will not resolve my dispute. (Female, 42 years old, university education, discrimination based on ethnicity)*

*Ombudsman! Well, yeah, but who would dare to go to such a person! Ombudsman! ...I would trust the Ombudsman the most. Yes, him, him. At least the Police. (Male, 50 years old, secondary education without final school-leaving exam, discrimination based on ethnicity)*

*Not the Ombudsman, I prefer dealing with those who can investigate eye to eye. I do not like it via e-mail. But he is probable the most trustworthy from all of those. (Male, 21 years old, secondary education without school-leaving exam, discrimination based on disability)*

The same is true if the respondent disagrees with the opinion of the Ombudsman in a matter other than the one which relates to the respondent's personal situation.

*And trust? The Ombudsman has relatively high trust, but I think that sometimes, sometimes they defend the rights of certain groups so much that they restrict the rights of others. See the recent case of burqa. I live in a certain society, and if someone wants to wear it, yes, they have the right to wear it. But I live in a certain culture and society, in which I want to see the person's face. If I go to a Muslim country, they will also demand certain rules from me. And if I think this, that it is the case where I prefer certain rights to other rights. And I do not think about it, about inclusion in the cultural and social context. (Male, 37 years old, secondary education, discrimination based on disability)*

Here, it is also important to mention that the question of credibility of the Ombudsman was asked only after the Ombudsman's mission was described to the respondents who did not know about the Ombudsman's existence (or did not think of it spontaneously). The very brief presentation of the function and mission of the Ombudsman raises a high degree of trust even in persons who in some cases did not even know where to turn in case of discrimination (not to mention about the Ombudswoman).

*No, I have not heard of him... Now, that you have explained it to me, I feel that it is protection of my right, specifically for me...Greatest trust in the Ombudsman, then the court, lawyer and the Police. I would not go to others. (Male, 36 years old, secondary education, discrimination based on nationality and religion)*

The second highest trust is placed in **lawyers** (11 votes), because they are paid to defend the interests of their clients, along with **NGOs** (10 votes) that perform their activities, on the contrary, due to their conviction of fighting for the right thing without the idea of profit.

*So a lawyer in the sense of an attorney, I have great trust if I have the money for it. This is a strictly commercial matter. (Male, 37 years old, secondary education, discrimination based on disability)*

*I trust non-profits the most. It is because there are people there who are doing it out of interest, who simply love it and downright enjoy it, and have a genuine interest in helping. (Female, 30 years old, university education, discrimination based on gender identity)*

In terms of the **degree of credibility of individual organisations and institutions** dealing with issues of discrimination **according to the characteristics of the victims**, then people discriminated against based on **ethnicity**, race, nationality or **religion** have most trust in the **Ombudsman** or **lawyers**.

*The first one is the Ombudsman. I feel that it is protection of my rights, specifically for me. Court – the word seems to me as an attitude, power, a representative of justice. Lawyer – also something like the court, wants to prove it, believes me, and speaks for me, as if the lawyer were in my situation. (Male, 36 years old, secondary education, discrimination based on nationality and religion)*

*Ombudsman - they can tell me how to proceed, what to do. (Female, 43 years old, university education, discrimination based on nationality)*

For persons facing discrimination based on their **age** or **gender**, who participated in the survey, the Ombudsman is clearly the most trusted place that can help them solve their problems.

*I really trusted that Mr. Motejl. I really had no other ideas. I did not have the energy for the court. (Female, 79 years old, secondary education, discrimination based on age)*

*Ombudsman – should stand up for people. (Male, 59 years old, secondary education, discrimination based on age)*

*I trust more the Ombudsman than a lawyer. And I think that now, because she is a woman, she is perhaps more sensitive to such things. At least for women, discrimination based on gender, I think that she is. (Female, 46 years old, university education, discrimination based on gender (maternity) and nationality)*

*And even when it comes to discriminatory behaviour in terms of gender. That is completely because she understands it more. And she certainly has a good team there. She understands it. (Female, 39 years old, university education, discrimination based on gender (maternity))*

Respondents from the ranks of the victims of discrimination based on **disability** (or their caregivers) also mainly trust the Ombudsman; then also NGOs, lawyers and inspection bodies.

*Well, Mrs. Šabatová was here. And Mrs. Šabatová then told me to write it to her, that they want to somehow amend a law in the House of Parliament, that the more motions of this type there are, that... So Mrs. Šabatová I know a little, so there would certainly be trust. (Female, 59 years old, primary education, discrimination based on disability)*

*And more so in the moment, when I received the decision to reject the appeal and it said that no other remedies can be filed. So at that moment, the word Ombudsman flashed in my mind as rescue, yes. (Female, 37 years old, secondary education, discrimination based on mental disability (of her child))*

*Trust. So if I forget about finances, then I would probably trust my lawyer the most. If it was a case, where it just is like that, then definitely a lawyer. (Female, 37 years old, university education, discrimination based on disability (of her child))*

*Inspection bodies, because they respond the best, very quickly. And I even reached some remedies. NGOs provide practical advice. Although the Ombudsman is good, yeah, he gives you advice, but more or less what to do next, so it is again only for the long run. (Female, 40 years old, university education, discrimination based on disability)*

Persons, who have become targets of discriminatory behaviour due to their minority **sexual orientation**, mostly trust NGOs. The reason is that these organisations and associations accompany them basically on a daily basis and provide them with advice also in other areas of life. Therefore, an important role is played by long-term experience and often personal ties and, last but not least, the conviction that they carry out their activities out of interest and altruism.

*On the right, we have non-governmental organisations and we would go there first. Because for me, this is basically also about the trust and support. Then*

*the Ombudsman would be second because I am not entirely sure if I would go all the way up to the Ombudsman. I would rather try to resolve it through NGOs. (Female, 29 years old, secondary education without school-leaving exam, discrimination based on sexual orientation)*

*I know specifically the organisation Proud. I'm not sure if it is just – I think that this particular organisation deals not only with discrimination regarding sexual orientation, but it deals with the family and relationships in general as well. Strong trust, because it is actually more personal. You know? And here the Ombudsman, it is something where you have to go somewhere to an authority, so neutral. (Female, 24 years old, university education, discrimination based on sexual orientation)*

*Well, if I consider it like this, then I would maybe first opt for non-governmental organisations and associations or the Ombudsman because I would expect that this person would have some experience and I would just tell them a story, where they will tell me right away, whether it can be resolved, also in terms of the law, if this is addressed. Because I expect, I would expect that it will be someone, who will be automatically on my side, to either tell me that my idea is unrealistic or that it will really be addressed, and that this person already has such experience. I trust non-governmental organisations the most because I assume that an NGO was established to help people. It is not a fictional institution. (Male, 31 years old, secondary education, discrimination based on sexual orientation)*

*There are some lesbian organisations... I would like to justify it. It is because there are people there who are doing it out of interest, who simply love it and downright enjoy it, and have a genuine interest in helping. (Female, 30 years old, university education, discrimination based on gender identity)*

**Table 9: Preferred and most trusted organisations**

Reason for discrimination (respondent characteristics)	First mentioned organisation, to which the respondents would turn for support and advice in a discriminatory situation (Organisations mentioned multiple times are in bold)	Most trusted organisations (Organisations mentioned multiple times are in bold)
Ethnicity, race or nationality	<b>Police, Public Defender of Rights</b> , inspection bodies, lawyer, NGOs	<b>Public Defender of Rights, Police, NGOs</b> , inspection bodies, lawyer, court
Age	<b>Public Defender of Rights</b> , NGOs, court	<b>Public Defender of Rights</b>
Gender (including pregnancy or parenthood)	Public Defender of Rights, NGOs, inspection bodies,	<b>Public Defender of Rights</b> , inspection bodies

	lawyer	
Disability (physical, sensory or mental)	<b>Public Defender of Rights, Police, NGOs, inspection bodies, lawyer, unions</b>	<b>Public Defender of Rights, Police, NGOs, inspection bodies, lawyer, unions, court</b>
Religion, belief or worldview	<b>Public Defender of Rights, lawyer</b>	<b>Public Defender of Rights, lawyer</b>
Sexual orientation	<b>NGO, Police, lawyer</b>	<b>NGO, Public Defender of Rights, lawyer</b>

Generally, it can be said that the awareness of the existence of anti-discrimination standards is substantially higher than their detailed knowledge, which applies across various groups of actors. Knowledge of organisations offering help and counselling in discriminatory situations is mostly at the level of non-governmental organisations and associations, again across individual groups of actors. Specific designated organisations are based on the causes of discrimination (i.e., characteristics of the actor) and the situation in which discrimination occurs. When the actors were asked about a public or governmental organisation dealing with discrimination, they most frequently mentioned the Ombudsman and inspection bodies. The order of institutions or organisations providing help and counselling in discriminatory situations is unclear with regard to the preference of trust and usability. A key factor in selecting a particular place is again the characteristic of the actor as well as the particular situation; just as well as personal or mediated experience with the specific institutions or organisations. Generally, the lowest number of actors would turn to the court in case of discrimination, and the attitude towards the Police is significantly ambivalent. Among the actors, the Ombudsman enjoys a high degree of credibility, although many of them perceive the Ombudsman as a last resort, where they can reach justice.

My measures as the Public Defender of Rights should therefore be in the future directed at expanding the legal knowledge and initiation of an awareness campaign with case studies, in which those situations should be defined, where discrimination occurs, and relevant organisations and institutions dealing with discriminatory behaviour in the given situations assigned to these situations. The target groups should be informed about the procedures for filing motions in a simple and accessible form and corresponding contact information should be provided to them as well.

## **II.6 ACCESS TO INFORMATION, INFORMATION COMPETENCE**

Due to the low level of awareness concerning where to go and who to address if they are affected by discrimination, the level having been ascertained via a representative qualitative survey, the aim was to find out up to what extent the low level of awareness is caused by insufficient or difficult access to information available on the Internet. The survey also focused on the information competence of people who have experienced some sort of discrimination as well as on their ability to use this information to their benefit.

### **II.6.1 Common sources of information**

Nowadays, people who are afflicted by discrimination find most information they need for their everyday lives on the **Internet**. The majority of the respondents attach the Internet absolutely irreplaceable value and their approach is almost uncritical.

*Actually, you can't do without the Internet nowadays [...] People who don't have Internet connection are in a great disadvantage as they have no access to laws or information provided by the Ombudsman. Nothing, you see? You're lost. You can't even access manuals or instructions how to go about it. You see? (Female, 25 years old, secondary school education without A-levels, discriminated based on gender (motherhood) and impairment (of her child)).*

*For me, personally, only on the Internet. Just the Internet. No radio, no TV, no newspapers either. Just the Internet. I rarely buy the paper or magazines, and I watch TV even less. I search everything online. (Male, 31 years old, secondary school education without A-levels, discriminated based on nationality).*

The second most frequent source of information was **media, especially TV**.

*Modern times – the Internet. When I was at home, I got some quite useful information on TV. There were various programmes, like “Sama doma” (Alone at Home), where they gave advice to mothers sometimes. But then, when you get back to work, you don't have time to watch these programmes. (Female, 33 years old, university education; discriminated based on gender)*

*Whenever I need some information I simply find it, you see? On the Internet, in the paper, you know? I can find some information on TV quite often. You get a lot of information on TV. But we usually search the web. (Female, 40 years old, secondary education without A-levels, discriminated based on ethnicity)*

People who face discrimination also find it important to have an opportunity to **discuss the situation with other people**, especially if there is someone with a similar previous experience.

*I live in a circle formed by my job and family and the place I live and the information is like a snowball there. So – if I want some information, I find it online in case friends or family can't help – but I can find it, I ask someone trustworthy. It is also crucial to be able to listen, not only speak. And to be able to sort out the information and you need common sense and to be able to put – that's the sociology stuff – to put things in context. (Female, 54 years, university education, discriminated based on age)*

*If I know someone who has some first-hand experience, I ask the person for advice. (Female, 46 years, secondary education, discriminated based on gender)*

Generally, the **Internet** is seen as a great aid and source of virtually any information; however, some respondents warn of **chaotic arrangement** and **intricacy** of information which can be found there and also the necessity to assess it **critically**.

*You can find everything online but it is also a dump site of all which is not used anymore or which is wrong, so you have to be careful not to study any old stuff. For example, web sites of ministries are good, 'cause they are supposed to be up-to-date if you need to find something. (Female, 54 years, university educated, discriminated based on age).*

*Well, searching for information – it depends, you know. It happens very often that not all links are functional and clear, not all people understand. And looking for various information – it depends. Sometimes you search for ages before you find it. I don't know, when you look for a specific web page it must be programmed in such a way that you only need to enter one key word to find it; sometimes you spend over 5 or 6 minutes thinking about the word to enter to find what you need. I came across situations, when I was helping my father doing the accounts, he's a farmer, and because I don't understand all this stuff I had to search some information and it came to me that that's the Internet and you kind of have to be a detective and come up with the key words in such a way that you find the laws you needed and stuff. (Female, 33 years, university education, discrimination based on gender)*

Apart from being a detective when searching for information online, another problem is associated with **the elderly** as **using computers** or learning to use new technologies generally is quite a **challenge** for them.



*Take for example my father, who is 86. My father has Internet connection, he uses e-mail and even internet banking, but I dare say, sometimes it's more trouble than worth because he gets somewhere, then he is unable to leave the page and he runs some nonsense – his friends keep sending him stuff. So, his computer is bugged and if you send him an attachment, he can't open it. Internet banking is a nightmare, because my Mum has no idea how it works and she has no paper bank statements. So, she wants to pay, she makes a mistake and pays twice. There are a lot of complications with the Internet in my family; they all need someone to come and help, as they cannot manage. On the other hand, he writes e-mails to friends. There is a lady in her 80s and, because she's on a wheelchair, we helped her get a computer and she learnt how to use e-mail and stuff; but she has arthritis and stuff, she has difficulties using the mouse. Some people have Parkinson, some have problems clicking the mouse, you need fine motor skills and that's the problem of the elderly people. And even though they can cope mentally, they can't do all the stuff. (Female, 54 years, university education, discrimination based on age)*

On the one hand, there is a tendency to rely excessively on the information people get online or from media, on the other hand, there are also views that the Internet is a bad master, rather than a good servant and you must verify everything you get from the Internet in various sources.

Of course, there are also people who have no access to computers or the Internet either because they themselves do not want to or due to some physical disability or material insufficiency. However, even these people tend to seek information online, using a mediator; the mediator can be a social worker, or their relatives or friends and people they trust.

*It depends. TV, or if the Internet, I usually have it searched because I can't use it myself well, but I have it searched [...] I can't do that myself, I am not technically minded so I've given up. [...] I walk directly downstairs to the office girls, the social workers. And I have it searched there. Yes, directly there. It is faster and simpler. Because it's also the solution. (Female, 59 years, basic education, discrimination based on disability)*

Very rarely respondents do not search the Internet for information intentionally and they try to get it elsewhere.

*Well, I do not search it online, there's too much information. When I need help, I need it fast. I think logically which of the government bodies is competent to deal with it and I address them directly. If I don't know, what to do with my tax return I walk to the Tax Office. I do not call, I go there personally. (Female, 55 years, university education, discrimination based on sexual orientation)*

## **II.6.2 Affordability of the computer and Internet and computer literacy**

Nearly all the respondents have a computer at home and they use it on everyday basis, both for work and for entertainment. The majority of them also have the Internet connection and those with no online access go to public places where they can get online for free.

*Not at home, but I go to the library, so that I can use it. I have a computer at home, just without the access to the Internet. I have a laptop, actually. So, I go to the library or to a shopping mall where Wi-Fi stuff can be used for free. I can connect and play with the stuff. It's expensive and I don't have spare cash now. (Female, 46 years, secondary school education, discrimination based on gender)*

It seems, that the reason of low information level on discrimination and how to deal with it is not represented by insufficient access to the Internet, but rather missing public awareness on the matter. The majority of the respondents said they use the Internet primarily as a source of information, then to communicate with people (some respondents said that they only communicate through e-mails) and then to buy online and find entertainment. For more information, see Table 10.

**Table 10: Using the Internet**

	<b>1st place</b>	<b>2nd place</b>	<b>3rd place</b>	<b>4th place</b>	<b>Not at all</b>	<b>Total</b>
<b>Getting information</b>	30	13	1	1	6	51
<b>Communication</b>	12	24	7	1	7	51
<b>Entertainment</b>	3	3	12	18	15	51
<b>Purchasing or selling</b>	0	4	19	14	14	51

The majority of the respondents have no difficulties with computer skills with respect to the above-mentioned activities (gathering information, filling in forms, sending e-mails, chatting and online communication, typing, and downloading various files). Some find typing and filling in forms difficult, but mainly due to difficulties with understanding the contents, rather than due to technical complexity of the forms. These were often people with low education levels who do not use computer at work on daily basis, or people who do not use computers at all due to their physical disabilities. Taking look at the chart, it is obvious there are seven respondents in the group who do not use the Internet for any of the given activities. However, even these respondents usually have someone who can help should they need; most of the time they can ask their children or grandchildren, who are familiar with these new technologies as they come across them more often than their parents.

### **II.6.3 Appropriate method in the case of discriminatory behaviour**

Most respondents say that in case they are interested in further information about discrimination and how to defend against it, they will search online again. Some would use a search engine and would try to understand the links.

*If I wanted to get more information? I would find the information online. I would enter something like “discrimination” or “fight against discrimination” or similar stuff. Or I would, I would probably use a longer sentence, because it usually pays because you find better responses. You get more options and references. I am not naive, if you write “discrimination“ you can get links to some pills that promise to increase your mental capacity and stuff like that. And it would be nice to get more accurate search. I guess, I would end up with a web site or some options and I would scan it fast and get the one which would seemed to be the most trustworthy because of its name, or certifications, or country, like European Union, or stuff. (Male, 31 years, secondary school education, discrimination based on sexual orientation)*

Others would try to find a non-profit organization online, which focuses on discrimination, and they would ask for advice how to proceed. Many respondents said they would address the public defender of rights' office.

*Definitely on the Internet, I try to get information by myself, then I search online for contacts of some non-profit organizations and then I can simply visit that organization and talk to the people there to see what I can do and what the options are. And also, because I have a few friends who are pretty active, I mean active in these things concerning the organizations, like Prague Pride, so maybe they could help. (Female, 24 years, university education, discrimination based on sexual orientation)*

*Well, I would probably search the Internet to find the contact to the ombudsman, where I can make a complaint. Or I would – I would search something which appeared on my mind first, and as I have already said, I would probably find other links there. There I would find further contacts. So, the first that sprung to my mind was ombudsman. I would then try searching that and I guess I would find more options on the web site. I bet many people would think about the public defender of rights first, so probably that particular web site – I don't want to say it must be there, I have actually never seek it, but it might be there. (Female, 33 years, university education, discrimination based on gender)*

At the end of the interview, the majority of the respondents knew clearly what discrimination is and that there are institutions that you can address in the case you face discrimination.

#### II.6.4 Suggestions for focus and design of the information campaign

As the respondents come from various social classes, they have substantially different views on the way and method their group in particular should be informed about discrimination and possibilities they have to fight it.

On the one hand, there is the opinion that if some information is put on the **Internet**, it will be found by people there; however, it does not seem to be sufficient enough.

*I think that nowadays online. Because many people use the Internet and if they want some information... The truth is I do not know whom to address... I mean, where to look for the information. And computer came to my mind but as you say people have to find it themselves. I mean people use the Internet quite a lot. (Female, 40 years, secondary school education without A-levels, discrimination based on ethnicity)*

Emphasis is put on using **social networks** as well.

*I think that using social networks to post some information is a good idea, because you know where to go to make a complaint, so I think that a Facebook commercial might not be a bad idea. Because there are dozens or thousands – even millions of people – are online all the time! See? And I think that such information would be the fastest information on Facebook and similar social networks. It would aim for the young people, but as I've said it would go fast. And one tells another and it spreads like wild fire. And people simply would learn about it. That they can do something. (Female, 28 years, secondary school education, discrimination based on ethnicity)*

Most respondents believe that information accessible online is insufficient as...

*... People don't read. Especially not disabled people, they don't read. So if you have some addresses in some notices sounds like a good idea but it is not intensive enough, I'd say. I mean, discussions should be held. Discussions with people, even probably individual talks are more efficient than talking in groups. (Female, 62 years, university education, discrimination based on mental disability)*

Apart from **field workers**, who can inform (potential) victims of discrimination about their rights and options, various **offices** were suggested, which would get help closer to people. One office in Brno is not sufficient, it is necessary for every city or town to have a person people know about who can help and give advice – this view was frequent not only in Romani respondents who, in some cities, need help in other areas of their lives too, not only in connection with discrimination, but also in the case

of non-Romani people who feel that help is inaccessible. In the case of the Public Defender of Rights, the awareness is enhanced by an aura due to which the person of the Defender of Rights seems to be infinitely distant. The respondents also tend to think that the Defender is all alone in the office.

*You actually won't go to Brno. No time. Because you have to be at work and loads of other duties. I don't know, I didn't know the office is there. Actually, he can be away. You'll go there and he might be out of the office. On a meeting or stuff. (Female, 37 years, secondary education, discrimination based on ethnicity)*

Placing **information brochures and leaflets** would be appreciated, according to some respondents, especially the Romani people.

*We need it to be – I don't know, possibly it could be in brochures? Somewhere in hospitals. The brochures might be placed. Or in job centres, in special schools or schools with Romani, Romani kids. Or they might be in bus or train stations. So that the people who need it because of their ethnic origin or people who are ill, or the elderly, may access it. See? Brochures are terrific idea, available for everybody. In public. Not in a specific paper or on TV, like they just say it. In brochures and all the public places. There are loads of commercials and adverts – I have no idea how much it can be for the government. But at least half of the problems could be avoided like this!*

*So, definitely there should be – there shouldn't be just a phone number. Where you should call. There should be a thorough description what to do and how to – how to proceed in various situations. For example, do you face discrimination at work? Do they discriminate you if you're not given the job? You can, for example, get papers from the job centre, they'll have to call themselves and you'll come with the papers. So that they can't reject you and stuff. Or, probably you were not allowed to a place 'cause you are a Romani? Or there is no wheel-chair accessible entrance? Take your phone, call us and we'll tell you what to do. Or there might be some sections based on which we can defend ourselves when you pick up the phone. In short, to have some arguments. (male, 37 years, secondary education without A-levels, discriminated based on ethnicity)*

However, brochures as such are not enough; it is also important to have a **direct contact** with people who can spread the information.

*Brochures, workshops. In other words, communicating with people. To organize somewhere – to put it bluntly, to meet and to communicate. Like twenty people would be enough, they might talk about it and these Romani will*

*spread it and you get a hundred. I mean, like this. (Male, 37 years, secondary education without A-levels, discriminated based on ethnicity)*

Leaflets and brochures seem to be useful in the case of the elderly. It is important to have them in **strategic places** where people normally come.

*Because old people go to see doctors quite often. So placing them there is a good idea. And maybe some shops, you know, supermarkets. 'Cause old people are crazy about leaflets they get. They read them, so that is the right way, you know – and letterboxes, I usually throw it away, but when I hear them talking they say leaflets are free for them to read. So that something must be done – to prevent it. See? Something like that. Like the media – to promote legal help for – telling you where to go. For the elderly, etc. or there might even be, I don't know, placed some – you can have it, they tend to see their doctors very often, so at the doctor's, in their waiting rooms, they go there and speak about things. Especially in villages, if you go to see the doctor it's a special occasion, you go there to have a chat. They actually don't need any medical treatment; they want to have a chat there. If you put there a poster, then they will read it, you know. Or there are the visits, kind of – I don't know. (Female, 62 years, secondary education, discriminated based on age)*

As has already been mentioned, **advertisements in public transport** is considered good strategy; firstly, due to the fact that there are many people every day, secondly, people often notice advertisements in public transport.

*Masses are best informed on TV and the stuff you find in the tube. So, even if some people don't have a TV set, they use the tube or tram or they go by bus, because they need to get to work. I think, that these short spots, or adverts [...] No leaflets. No. The glass-fronted adverts in the tube. I bet many people would find a short spot on TV interesting, especially if made in a funny way – or not funny really, just interesting, you know. So that's TV and adverts in public transport. [...] Public transport, I think, it's a good idea to advertise there. There you have – one carriage, and you have there about 30 advertisements, put all together. Just think about how many carriages there are every day and how many people. So that is a large space, really. (Female, 24 years, university education, discriminated based on her sexual orientation)*

Yet another aspect which could increase the awareness of people according to our respondents is **using examples** and **getting famous people involved** in information campaigns.

*A kind of education, I just can't think of any particular solution. Some campaigns maybe ... I don't know. Maybe even some specific cases are necessary. For example, quite recently the public defender of rights made*

*public some cases to let people know, from the Office of the Government, because there used to be some cases actually, they were just decided in favour of the defendant. People need some examples. (Female, 39 years, university education, discriminated based on gender (motherhood))*

*Maybe some examples on TV, like if somebody complained, he didn't have to pay anything and stuff. Perhaps it can also be solved this way. To broaden it this way. Nowadays, people are so fed up with the TV that they don't even turn it on, you know. So... Maybe I would use a regular commercial. Do you face discrimination? Address the public defender of rights, it's for free. (Female, 62 years, university education, discriminated based on mental disability)*

*And then I'd say get some VIP people. My children, they adore various famous people, some of the even don't deserve it, apart from being famous. But if the famous person, even though the fame might not be well deserved, speaks everybody listens to them. If a famous person – a singer or somebody, speaks about that at concerts or on YouTube, somebody will hear it. (female, 40 years, university education, discriminated based on physical disability)*

However, there were also opinions among the respondents that it is not sufficient enough to inform about discrimination and about defences against it. On the contrary, the **society must be changed** and people should be educated in such a way, that discrimination is prevented.

*I definitely believe that it makes sense to inform people about how to go about and inform authorities and officers, I mean a simple training of social intelligence. In other words, how but rather as though – training of social skills related to negotiating and communication, you see. It makes sense, it has value. But to inform someone about an anti-discriminatory helpline and that you can defend yourself at the court or stuff, there's no value. But how to deal with officers, in hospitals with doctors and some kind of educational problem, real training, I mean. Train situations using some instruction videos. To put it bluntly, to train what to do, it makes sense. (Male, 33 years, university education, discriminated based on nationality and religion)*

*I think, that it is important to educate, educate and educate people. Unfortunately, I have to say, only our kids – the generation of our parents and perhaps even our generation too must die first, in order for the situation to change, because we have been affected by communism and 40 years is not enough. Like it has been 25 years since the revolution and it still remains deeply rooted. [...] I don't think that anything else but prevention, you must speak, speak and speak about it. Nothing else helps. It must stop being a taboo. To discontinue many things related to disabilities and similar stuff. It*

*must stop being a taboo, because it has been a taboo now. (Female, 37 years, university education, discriminated based on disability (of her child))*



### **III. BARRIERS TO DEFENCE FROM DISCRIMINATION AS VIEWED BY NON-PROFIT ORGANIZATIONS**

Non-profit organizations are among the key actors who participate in promoting equal treatment in the Czech Republic. They provide free legal counselling to victims of discrimination who are therefore not dissuaded by the legal costs which otherwise represent one of the most significant barriers to the access to legal aid. Aside from this, it may be presumed that in this case, the barrier of general mistrust towards the system of national authorities is at least partly eliminated, since non-profit organizations act outside of the public administration and the court system. Owing to this, they often operate as the place of first contact where the victims of discrimination come to seek advice, and only then they decide whether to turn to the Public Defender of Rights, administrative bodies or the court. The NPOs therefore have direct experience with people who were discriminated against, but for various reasons did not want to resolve the situation through legal means; in other words, they are in direct contact with people who are threatened by the phenomenon of underreporting of discrimination.

For this reason, I contacted non-profit organizations which are concerned with people (or groups of people) strongly threatened by discrimination, and I asked them to communicate their experience and views on discrimination and its underreporting. The approach used here was a survey<sup>14</sup> and the data collection method was an open-question questionnaire. I contacted a total of 49 non-profit organizations which provide assistance to various groups of people threatened by discrimination (these primarily comprised of organizations. After repeated requests, a total of 19 non-profit organizations filled in the questionnaire<sup>15</sup> (eight of which are concerned with members of ethnic, national or religious minorities, five are concerned with helping the disabled, two are helping the elderly, two are focused on helping women and two are helping persons with minority sexual orientation).

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<sup>14</sup> A method of social scientific research based on mass collection and analysis of data.

<sup>15</sup> The organizations concerned were: TransForum, Život90; PROUD – Platform for Equality, Respect and Diversity; Centre for Civics/Civic and Human Rights; NKC – Women and Science, Sociologic Institute of the Academy of Science (r. i.); IQ Roma servis c. a.; Helpes – Centre of Dog Training for the Disabled p. s. c.; DROM, Roma Centre; Refugee Aid Organization; Alternativa 50+, p. s. c.; TOGETHER – JEKHEANE, p. s. c.; Czech Union of Hearing Impaired; Czech Organization of AIDS Help, r. o., Agency for Social Integration of the Government Office. The remaining four organizations wished to stay anonymous.

### **III.1 GROUPS OF PERSONS MOST THREATENED BY THE PHENOMENON OF UNDERREPORTING OF DISCRIMINATION**

It is obvious that the risk of discrimination is not the same for the entire Czech population, and that the threat rate of underreporting of discrimination differs across the individual groups of people. The non-profit organizations most frequently mentioned the groups of people with characteristics that are listed by the Anti-Discrimination Act<sup>16</sup> as prohibited grounds for discrimination. According to their experience, it is especially women, senior citizens, disabled persons, the Roma, third-country nationals, and members of sexual minorities. Within these groups, the respondents provided closer specification of the characteristics of persons who are particularly concerned by the phenomenon of underreporting of discrimination, or also mentioned in which aspects of life these persons are typically discriminated against.

#### **Women**

- Women with small children and women on maternal leave
- Single mothers
- Women aged 50+
- Young career seekers
- Women seeking promotion
- Discrimination in the labour market in particular
- Mobbing and sexual harassment in particular

#### **Senior citizens**

Discrimination in the labour market in particular **Disabled persons**

- Sick persons, e.g. HIV positive (these persons are concerned or worried about revealing their health status to employ any potential protective mechanisms)
- Persons with mental disability
- Hearing-impaired persons who are not able to “hear” critical information and realize they are discriminated against
- Owners of assistance, guide and signal dogs

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<sup>16</sup> Act No. 198/2009 Coll., on Equal Treatment and Instruments of Legal Remedy to Discrimination and on Changes to some Acts (Anti-Discrimination Act), as amended by Act No. 89/2012 Coll.

## **Roma**

- Compulsory school-attending Roma students (or kindergarten students), where the student is being discriminated against by the teacher/tutor
- Discrimination in the labour market and in access to housing

## **Foreigners**

- Third-country nationals are discriminated against in combination with other causes: their nationality, racial or ethnic origin or religion
- Discrimination both in contact with national authorities and the private sphere, in particular labour aspects

## **Members of sexual minorities**

- Trans-persons and (visually) gender-nonspecific persons (hate speech, discrimination at workplace)
- Gay males (targets and witnesses of hate speech and verbal abuse)
- Trans-children and youths (and potentially in consequence their family members); trans-people who are at the same time parents of underage children; persons in transitional (neutral) stage (i.e. the period before official recognition of gender change); persons with alternative attitude towards treatment (i.e. those who do not undergo operation and are therefore not allowed to change their gender officially)

## **Members of religious minorities**

- Banning from communities (prohibition of free distribution of religious literature – applying the market regulations of cities and townships which prohibit peddler and doorstep selling and offering of goods and services)

The respondents also listed children, homeless persons, persons with lower education, poor people threatened by social exclusion, socially excluded people or victims of domestic violence among groups threatened by the phenomenon of underreporting of discrimination. On the other hand, the group of people which encounters the lowest barriers in access to justice are the persons with *“education in law or persons in managerial positions – with the potential to resolve their issues (financial means, legal knowledge, knowledge of possibilities and barriers), or people with the support of non-profit organizations (umbrella organizations) or other specialists”*, as mentioned by the NPO Alternativa 50+.

## **III.2 PRINCIPAL BARRIERS IN VICTIMS' ACCESS TO LEGAL PROTECTION FROM DISCRIMINATION**

As mentioned before, it appears that a large number of victims of discrimination (including harassment, victimisation, instructions to discriminate, and abetting to discriminate) in the Czech Republic rather prefer not to resolve the situation and, for diverse reasons, do not complain about the discrimination. The low number of cases of reported discrimination as recorded by the administrative authorities, the Public Defender of Rights, or the courts are most likely an acknowledgement of the high rate of popular unwillingness to use legal remedies to fight discrimination than of the virtual non-existence of discrimination in the Czech Republic. When analysing the question of what the most significant barriers preventing discriminated persons from reaching legal aid consist of, I followed the survey<sup>17</sup> of Slovak Centre for Civic and Human Rights from 2012 that operates with four levels of barriers:

- Barriers on the level of lack of information;
- Barriers on the level of individual decision-making;
- Barriers on the social level;
- Barriers on the level of anti-discrimination legislation, its enforcement and court decisions.

### **III.2.1 Barriers on the Level of Lack of Information**

The first barrier that prevents the victims of discrimination from asserting their rights consists of a simple lack of information. Almost all the contacted non-profit organizations said that the low legal awareness, lack of knowledge of anti-discrimination law and very low awareness are frequently an issue. The victims of discrimination are primarily lacking the information where to turn to for help (which authorities and institutions may provide advice and legal aid, where to receive free legal aid), information on potential defence, on instruments of providing evidence of discriminating treatment and on what they may assert. The discovery of the fact that, according to the NPOs, many victims of discrimination are not even aware of being discriminated against or harassed is extremely important. One of the contacted organizations described the following situation:

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<sup>17</sup> Diskriminácia na Slovensku. Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou. Available at: <http://poradna-prava.sk/wp-content/uploads/2012/11/Publik%C3%A1ciu-si-m%C3%B4%C5%BEEetstiahnu%C5%A5-tu-105-MB.pdf>

*“[...] The surveys of sexual harassment showed that there are very unclear notions of what constitutes sexual and gender-motivated harassment among the victims themselves. E.g. what liberties their teachers may or may not take. Above all, there is no information how to behave in such cases, who to turn to, etc. There are virtually no catchment or support structures, and such as the organizations may have, are usually not able to react well, as they are poorly prepared for such cases. They therefore often participate in “sweeping the issue under the carpet”, marginalizing the issue etc. This logically undermines their trustworthiness in such cases.” (National Contact Centre – Women and Science, Sociological Institute of the Academy of Sciences, r. i.)*

A similar problem was described by the Refugee Aid Organization which also pointed out that it is not sufficient for the victims of discrimination to learn about the anti-discrimination law only through non-profit organizations. The clients are usually informed about discrimination only after they turn to the NPO for a completely different reason. This therefore does not constitute *“general preventative information, but providing the information after finding out that the foreigner fell victim to discrimination. Given the lack of experience of the staff, there are very few of such cases, and the majority of the victims of discrimination remain unidentified.”*

Certain groups of persons, for instance the elderly or people with sensory deficiency not only lack sufficient information regarding discrimination but also have more obstacles in their way to find this out. The non-profit organization Life 90 pointed out that *“many seniors do not know how to use the Internet where they could find the relevant information, and they do not have sufficient information about their rights.”* Visually impaired persons encounter similar issues, as not all the information (e.g. online) is accessible to them.

As it appears further, the lack of information concerns the entire society, i.e. not just people from marginalized (disadvantaged) groups, but also people who communicate with them from a position of superior power, or those who should be helping them. According to some of the non-profit organizations, there is a deficit in sufficient training on the area of discrimination, particularly among teachers or social workers, and it may happen that they even do not realize their discriminatory behaviour (e.g. they do not understand the specifics of the culture and customs of various minorities, and they interpret their behaviour as a lack of discipline), or they may have a relaxed attitude towards resolving discrimination. Two of the NPOs also pointed out the poor information of the staff of various institutions regarding anti-discrimination legislation, and not communicating the clients' rights to them.

### **III.2.2 Barriers on the Level of Individual Decision-making**

Apart from general lack of information, the victims of discrimination often encounter barriers on the level of individual decision-making. From the viewpoint of the non-profit organizations, it appears that the principal problems are concerns and apprehension about the worsening of the current situation and potential retaliatory measures. The respondents also listed among the barriers the insufficient faith of the victims in their own abilities, and low self-esteem (particularly among seniors, the Roma or disabled persons) – this is often connected to loneliness and lack of support from the family or their close ones, or lack of pride of their own identity. The victims of discrimination also often suffer from psychological barriers; they (quite understandably) do not wish to come back to the act of discrimination and try to forget about the issue as soon as possible. They often have to resolve a number of other issues which they perceive as more significant (e.g. housing, medical issues or financial affairs), or they consider discrimination to be a routine part of their lives.

More barriers on the individual level are concerning the apprehension of court trials and general mistrust towards the system of national authority. The victims of discrimination are afraid of losing the court battles, associated high costs and subsequent lack of finance, and the incurred psychological burden. They often do not trust the institutions (e.g. the police or the courts), they are apathetic and convinced that nothing can change, or they do not want to find themselves in the position of complainants who cause problems due to the negative image of discrimination.

### **III.2.3 Barriers on the Social Level**

Another type of barriers that prevent the victims of discrimination from asserting their rights are the barriers on the level of the entire society. According to a significant part of the non-profit organizations, human rights are often marginalized in the Czech society, and the society suffers from a number of stereotypes and misconceptions.

The Centre for Civics and Human Rights has mentioned that *“the social awareness is not conclusively and rigorously averse towards all forms of discriminatory behaviour. In other words, it is not shameful to discriminate in the Czech Republic; on the other hand, sometimes the discriminatory behaviour is directly or indirectly supported with reference to ‘the victim deserving it and it being their own fault’.”*

A part of the non-profit organizations are therefore apprehensive towards presenting the results of their work, since certain minorities whom they help are not a preferred group, so the media presentation may lead to racist and xenophobic

activities. The general public is also from time to time subjected to “scare tactics” that the prohibition of discrimination would lead to abolishing the freedom of speech, or to “positive” discrimination of certain groups of people. The supreme political representatives are not active enough either, and there is a lack of support from them, both moral and financial.

### **III.2.4 Barriers on the Level of Anti-discrimination Law, its Enforcement and the Court Decisions**

The last sphere of barriers is concerning the anti-discrimination legislation, its enforcement and the court decisions. The non-profit organizations listed as the most frequent issue the protracted character of court proceedings and the lack of stability in their decision-making: they face up to the lack of application, i.e. a low number of precedents and the corresponding legal uncertainty.

As mentioned by the Drom – Roma Centre organization, *“there are only a few court decisions (and even fewer of those in favour of the victims) on the given issue, and there is a widely held belief that the issue of discrimination is not worth resolving, since the prospects of prevailing in the lawsuit are rather shaky for the victims.”* Another frequently mentioned barrier in the court decisions is the burden of proof of discriminatory behaviour; the discrimination is often very difficult to prove and the entire process is unpleasant for the victims of discrimination.

Financial costs are a barrier too. The discrimination proceedings are subject to court fees and to covering the expenses of the adverse party (or their part) in the event that the lawsuit has been lost. The costs of the proceedings are high and may be devastating for the unsuccessful clients. This is also associated with the barrier of the missing qualified and widely available legal aid for the victims of discrimination.

Aside from this, the non-profit organizations also pointed to the fragmentation and duplicity of legislation in the area of discrimination. In their opinion, the legislation is overly complicated and imperfect,<sup>18</sup> it has been undergoing many amendments and its wording is too complex and incomprehensible. The protection of privacy of the potential complainant is not designed well, either: the TransForum organization mentioned that *“filing a discrimination lawsuit also presents an undesired coming-out,*

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<sup>18</sup> For instance, as noted by the TransForum organization, the Anti-Discrimination Act contains vague wordings from which uncertainty stems; *“how will the potential litigation be judged (instead of a vague formulation of “gender identity”, it would be more suitable if the Act specifically ruled that gender discrimination also includes discrimination based on planned or executed sex change)”*. Another NPO also objected that homophobia and transphobia are not explicitly listed as aggravating motives.

*i.e. making [the complainant's] personal history public with regard to the sex change they underwent, and subsequently becoming a potential target of further discrimination and loss of privacy". A similar barrier was listed by the Czech AIDS Help Society: "HIV-positive persons are concerned/worried about the disclosure of their health status in case of potential use of any protective mechanisms (e.g. court proceedings regarding the issue, media publicity, revealing the fact to other persons)."*

Another mentioned issue is the low trust in the court decisions in discrimination trials, as the judges often demonstrate the same prejudices as the majority society. Disabled persons also have to face diverse communication barriers during the court proceedings. The Czech Union of Hearing Impaired, for instance, noted that *"hearing-impaired persons who cannot understand spoken word even with the best aids are entitled to sign language interpreting or simultaneous transcription provided in the court. Unfortunately, the Ministry of Justice prefers some automatic recognizers which are worthless. The courts understand the needs, and try to provide both simultaneous transcription and sign language interpreting (unfortunately there are too few good sign language interpreters)."*

Some non-profit organizations also said that they consider the powers of the authorities which fight unequal treatment to be weak, or that the barriers also consist in the insufficient collection and evaluation of information regarding the current state of affairs [e.g., the Platform for Equality, Respect and Diversity (PROUD) noted that *"the police do not monitor the homosexuality of the perpetrator or the victim, or only in the context (field) of sexual deviations"*].

### **III.3 PROBLEMS AND BARRIERS OF THE NON-PROFIT ORGANIZATIONS IN HELPING THE VICTIMS OF DISCRIMINATION**

Apart from investigating the barriers which dissuade the victims of discrimination from resolving the situations through legal means, it is also important to survey the barriers encountered by the non-profit organizations themselves when helping the victims of discrimination, and what should change so that they could do their work better.

It is noteworthy that the majority of the NPOs are concerned in this regard by the fact that most of their clients do not have sufficient understanding of discrimination and do not realize they are its victims, and after being informed, they do not wish for various reasons or do not have the energy to turn to lawyers and



courts. As noted by the Together – Jekhatane organization, the paradoxically largest barrier is *“probably that the victims of discrimination do not wish to resolve the situation in question, and the most frequently given reason is ‘so it doesn’t turn even worse’.*” The clients are also dissuaded by the protracted resolving of their complaint, or they may not have quite realistic expectations, and they believe that discrimination may be resolved immediately. They often have a number of other issues which they perceive as more important than discrimination and which they wish to resolve at higher priority.

The second frequently mentioned type of barrier concerns financial and personal security. The non-profit organizations brought up the general lack of funding which threatens their operation, or which causes them to be unable to provide better facilities to their clients or help them litigate or to cover the expenses of the adverse party. There is also the issue of unsecured continuity of financing of consulting activities, a lack of long-lasting subsidies focused on fighting discrimination, as well as the increased administrative requirements of the projects. A part of the NPOs also noted that helping the victims of discrimination directly is not the key aspect of their activity, so they do not have enough capacity or expertise to resolve this issue.

The third type of barriers is mostly an issue on the systemic level: the non-profit organizations said that their work would be made easier through better cooperation with various institutions, or higher engagement of the staff of these institutions in the fight against discrimination. As noted for instance by the Helpes – Centre for Dog Training for the Disabled, the issue is *“lack of interest, and often poor knowledge of the legislation by the expert staff (social agenda workers, labour office workers, teaching staff etc.).*” Another barrier lies in the imperfect or lacking legislation and increased difficulty of providing evidence of discrimination.

### **III.4 REMOVING OR MITIGATING THE BARRIERS IN VICTIMS’ ACCESS TO LEGAL PROTECTION**

Apart from identifying the persons threatened by the phenomenon of underreporting of discrimination and identifying various types of barriers in access to legal protection, the key question is also how to remove or at least mitigate these barriers. The proposals presented by the non-profit organizations may be classified into two principal groups: primarily, the important issue consists in improving public education and awareness (among the disadvantaged groups where there is higher risk of experiencing discrimination; among groups which can or are obliged to help the victims of discrimination; among the general public), and secondarily, there are systemic changes to be undertaken (legislation; direct help to victims of

discrimination; structure of the organizations tasked with helping the victims of discrimination).

### **III.4.1 Education and Awareness**

Almost all the non-profit organizations agreed that a more intense education and awareness activity is a useful tool to dismantle the barriers. In their opinion, it is especially important to increase the legal awareness for potential victims of discrimination, so that they understand what discrimination constitutes in the legal sense and what options there are to defend oneself. Among the proposals, there was e.g. organizing an awareness campaign, education activities or debates, or creating manuals which would summarize what discrimination is and what options there are for defence. These activities need to be designed so that they are accessible to all persons (for instance, it is necessary to remove information barriers for hearing-impaired persons).

Aside from potential or real victims of discrimination, it is also necessary to focus on awareness and education for the groups which come into contact with them, or which could or should be helping them. In this respect, the non-profit organizations proposed focusing on deeper information for judges, teachers, the police, medical personnel, administrative officers or employers. The trainings should be focused on the topic of discrimination so that the members of the aforementioned groups would recognize it better, would be more sensitive to it, would avoid it more thoroughly and could assist its victims more effectively.

The third group which needs to raise its awareness and information is the broadest one – it is the entire society. Discrimination needs to be established as a significant issue of the whole society (a public denunciation of discrimination by public figures might help here); it is also necessary to *“guide the society towards solidarity with the victims and threatened groups, and to denunciate the discriminating persons”*, as noted by IQ Roma Service. Aside from this, it is necessary to concentrate on abolishing prejudices and stereotypes. Several of the NPOs remarked that public support of celebrities or publishing some victorious proceedings might be a useful specific method of spreading the awareness. This could make the victims of discrimination less sceptical and less convinced of their lack of chance to succeed.

### **III.4.2 Systemic Changes in the Sphere of Helping the Victims of Discrimination**

The second group of proposals to remove obstacles in access to legal aid consists of proposals of systemic changes. This concerns the sphere of direct help

for specific discriminated persons, development of organizations that should provide this help, and ultimately changing the legislative framework.

With regard to direct help for victims of discrimination, the NPOs proposed ensuring availability of social services for persons which require support in contact with institutions. They also listed establishing widely available free legal aid, or creating and promoting qualified consulting centres, online consultations or a non-stop hotline for victims of discrimination so that they can receive immediate legal advice and help. Apart from this, the access of victims of discrimination to the courts may be made easier by creating a financial fund which would serve as a guarantee of covering the costs of the litigation for victims of discrimination in the case of an unsuccessful trial result. In one case, there was a proposal to create self-help groups for persons with a characteristic which increases the risk of discrimination (e.g. for HIV-positive persons).

Apart from direct help for the victims of discrimination, it is also necessary to develop the infrastructure which should provide or facilitate this help. In this regard, the NPOs particularly proposed reinforcing the cooperation of the organizations which fight discrimination (including the organization of various trainings) and their overall financial and personal reinforcement (e.g. launching a regular grant call for organizations which help the victims of discrimination).

Among the proposals, there were some unique ones: to create a special authority which would be concerned with issues of hearing-impaired persons, or creating anonymous suggestion boxes in various organizations (both public and private), where the victims of discrimination could address their suggestions, or subscribing to the principle of non-discrimination and refusing various forms of discrimination through codes of conduct. On the public administration level, it would be helpful if discriminating procedures were abolished (the respondents however did not mention any particular example), and the personal responsibility of specific workers was increased.

The last sphere of proposals on the systemic level was concerned with the anti-discrimination legislation, its enforcement and court decisions. Several non-profit organizations proposed extending the powers of the Public Defender of Rights (e.g. the possibility to represent the clients in litigation, authority to impose sanctions). Further proposals were concerned with simplifying the legal framework, establishing adequate sanctions for discrimination (including a potential temporary increase in sanction value), better integration of EU legislation into Czech legislation, passing the Free Legal Aid Act or increasing the potential for law enforcement (including its more resolute promotion).

## **IV. MONITORING THE COURT DECISIONS AND THE ACTIVITIES OF ADMINISTRATIVE BODIES**

### **IV.1 COURTS**

Within the framework of the survey, I asked all district and regional courts for cooperation which consisted not just of filling in the questionnaire, but also to provide anonymous copies of anti-discrimination decisions. It is necessary to stress right here that the authority of the Public Defender of Rights does not cover the courts, according to the provision stipulated in section 1, paragraph 7 of the Public Defender of Rights Act. In the following part, I tried to demonstrate some of the basic issues, with particular respect to the doctrine and case law of the Court of Justice of the EU (CJEU). Within the scope of analysed questions, I also investigated the supplied decisions, and I placed some decisions of Czech courts alongside the CJEU case law. In some cases, I could not avoid evaluating the decisions themselves; this however does not at any rate concern evaluating the factual accuracy or raising doubt as to the supplied decisions themselves.

The issue of underreporting of discrimination is applicable to the judicial sphere as well. The causes for not filing anti-discrimination lawsuits are quite specific. Apart from the barriers on the level of the lack of information, the apprehension of the uncertain result of the potential litigation and the associated expenses may play some role.

A certain level of unpredictability of the decision is obviously related to the character of the litigation. In the case of anti-discrimination legislation, the impact of the unpredictability of the decision may be crucial. The bearer of the discriminatory characteristic is usually a member of a marginalized group, and the social relations within the substantive scope of the anti-discrimination legislation are sensitive as well. Within the sphere of labour law, the victim may be concerned with primary existential issues (related e.g. to losing their job) instead of claiming their rights through the court with uncertain results. The unpredictability of the litigation decision is also related to the lack of national case law. In such cases, a “vicious circle” is created inside the anti-discrimination legislation, as the victim of discrimination lacks the motivation to turn to court due to uncertainty of the decision, while the courts do not have the possibility to “create” the case law, as the victim does not turn to them with the suit.

The “vicious circle” is being disrupted to some extent by administrative courts which are dealing e.g. with the legitimacy of sanctions imposed by administrative

bodies for acts of discrimination. With regard to the principle of unity and consistency of the application of legislation, the court decisions in the sphere of administrative justice might indicate the court decision in civil law. The aforementioned situation shows that this method of interpretation also depends on the victim of discrimination turning to the administrative body which investigates their claim thoroughly, and if they establish discrimination, they impose a sanction against which the sanctioned entity defends through an administrative court.

I believe that there are three essential barriers for the victim of discrimination (it should be noted that they are closely related):

- Uncertain results of the court proceedings;
- Problematic taking of evidence;
- And financial expenses related to the suit.

The uncertain result of the litigation is to some extent related to the low number of court decisions in discrimination suits. The victim of discrimination therefore does not have the possibility to rely on more extensive case law and is not able to initiate the litigation with a certain degree of certainty. Even their legal representative may not be able to help in this respect. It should be noted that some concepts may be interpreted without national case law using the CJEU case law, but with respect to the different substantive scope of the Anti-Discrimination Act and the individual Directives<sup>19</sup>, the CJEU case law is generally applicable in the sphere of labour law. Particularly in the spheres of providing healthcare, education, goods and services, i.e. in the spheres not covered by the CJEU case law, the victim of discrimination has only a minimal, if any, chance to rely on European case law.

The taking of evidence in discrimination proceedings is problematic as well, since the victim of discrimination can hardly provide evidence of the inner motivation of the potential perpetrator of discrimination, aside from exceptional situations where the discrimination is obvious e.g. in a contract, terms and conditions etc. For this very reason, the institute of so-called shared burden of proof has been established, which is however embedded in Czech legislation rather shakily, as it does not cover the

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<sup>19</sup>The Anti-Discrimination Act prohibits discrimination based on any discrimination grounds, pursuant to the provision of section 2, paragraph 3, in all aspects of life listed in the provision of section 2, paragraph 3 of the Anti-Discrimination Act; the European directives provide selective protection. As such, discrimination in the sphere of labour law is prohibited in general; in the sphere of access to goods and services, it is prohibited when based on racial or ethnic origin or gender; in other spheres (healthcare, education etc.), it is prohibited only when based on racial or ethnic origin.

victims of discrimination in all areas listed in the provisions of section 1, paragraph 1 of the Anti-Discrimination Act.

The potential plaintiff also has to take into account another risk; though they may reasonably feel to be a victim of discrimination, it is not impossible for the potential defendant not to have committed an act of discrimination (i.e. the unfavourable treatment was caused by a non-discriminatory motive). This issue has of course deeper roots, as it may stem primarily from problematic communication between the alleged victim of discrimination and the alleged perpetrator (especially in labour relations). Only during the course of the proceedings may the plaintiff then receive information from which it results that no discrimination occurred; in such a case, not even withdrawing the action may have an effect, and they are required to cover the expenses of the litigation. The fact itself that the potential victim of discrimination does not have sufficient information may dissuade them, despite the provisions of section 133a of Act No. 99/1963 Coll., Civil Procedure Code, as amended (CPC), from suing or any other attempt to claim their rights.

The last barrier, i.e. the barrier of financial expenses, is related to this. The victim of discrimination may be in a precarious social situation, and particularly when they contest discrimination related to terminating their employment contract, they may not be willing to risk the potential financial expenses related to the litigation itself and to the uncertain result of the court proceedings. Apart from the court fees, they have to factor in the costs of legal representation while being aware that the suit may take long (so the costs of representation will not be immediately “covered” even in spite of prevailing in the lawsuit), and in the case of loss, also the expenses of the adverse party which may often exceed the litigated sum.

#### **IV.1.1 Court Decisions – Database**

##### **IV.1.1.1 Database of the Ministry of Justice of the Czech Republic and decisions provided by the courts**

Since 2010, the Ministry of Justice of the Czech Republic (hereinafter “the Ministry”) has been recording a database of court decisions in which discrimination was contested. For the purpose of this survey (and to compare the database of the Ministry with the decisions provided by the courts themselves), I have requested access to this database. In the first table, the Ministry records the number of anti-discrimination lawsuits (Table 11). In the second table, the file references and the courts which heard the case are recorded (Table 12).

#### **Table 11: Number of anti-discrimination lawsuits**

Type of suit	Region									Year
	Prg	CB	SB	WB	NB	EB	SM	NM	CZE	
Employment lawsuits with motive of discrimination based on gender (females) and suppression of rights pertaining to females, as per sections 238 to 242 of the Labour Code	1	0	0	0	0	0	2	0	3	2010
Termination of employment related to gender-based discrimination	0	0	0	0	0	1	0	0	1	
Wage discrimination based on gender	0	0	0	0	0	0	0	1	1	
Lawsuits according to Anti-Discrimination Act (Act No. 198/2009 Coll.) (unless the case is listed in the "employment suits" group)	x	x	x	x	x	x	x	x	x	
Employment lawsuits with motive of discrimination based on gender (females) and suppression of rights pertaining to females, as per sections 238 to 242 of the Labour Code	0	0	0	0	0	0	0	0	0	2011
Termination of employment related to gender-based discrimination	0	0	0	0	0	0	0	0	0	
Wage discrimination based on gender	0	0	1	0	0	0	1	0	2	
Lawsuits according to Anti-Discrimination Act (Act No. 198/2009 Coll.) (unless the case is listed in the "employment suits" group)	0	0	0	0	0	0	0	0	0	
Employment lawsuits with motive of discrimination based on gender (females) and suppression of rights pertaining to females, as per sections 238 to 242 of the Labour Code	0	0	0	0	0	0	0	0	0	2012
Termination of employment related to gender-based discrimination	0	0	0	0	0	0	0	0	0	
Wage discrimination based on gender	0	0	0	0	0	0	0	0	0	
Lawsuits according to Anti-Discrimination Act (Act No. 198/2009 Coll.) (unless the case is listed in the "employment suits" group)	0	2	0	0	0	0	0	2	4	
Employment lawsuits with motive of discrimination based on gender (females) and suppression of rights pertaining to females, as per sections 238 to 242 of the Labour Code	0	0	0	0	0	0	0	0	0	2013
Termination of employment related to gender-based discrimination	0	0	0	0	0	0	0	0	0	
Wage discrimination based on gender	1	0	0	0	0	0	0	0	1	
Lawsuits according to Anti-Discrimination Act (Act No. 198/2009 Coll.) (unless the case is listed in the "employment suits" group)	7	0	0	0	0	1	1	0	9	
Employment lawsuits with gender-based discrimination motive	1	0	0	1	0	0	0	0	2	2014
Employment lawsuits with discrimination motive towards some employees with special labour conditions – disabled employees (section 247 of the Labour Code)	0	0	0	0	0	0	0	0	0	
Employment lawsuits with discrimination motive towards some employees with special labour conditions – female employees, employees-mothers, employees in custody of a minor or other individual (sections 248 to 252 of the Labour Code)	1	0	0	0	1	1	0	0	3	
Employment lawsuits with discrimination motive towards some employees with special labour conditions – juvenile employees (sections 243 to 247 of the Labour Code)	0	0	0	0	0	0	0	0	0	
Wage discrimination based on gender	1	0	0	0	0	0	0	0	1	
Other lawsuits emergent in relation to employment-based discrimination motive	2	0	1	0	1	0	0	1	5	
Lawsuits according to Anti-Discrimination Act (unless the case is listed in the "employment suits" group)	3	0	1	0	0	0	2	0	6	

**Table 12: File references and the courts**

File reference	Court	Year
6 C 51/2011	DC Beroun	2012
47 C 46/2012	DC Brno-city	2014
34 C 590/2009	DC České Bud.	2011
18 C 147/2012	DC Děčín	2014
16 C 16/2010	DC Frýdek-Místek	2014
107 EC 346/2011	DC Havlíčkův Brod	2013
8 C 239/2004	DC Hradec Král.	2010
4 C 1129/2001	DC Jihlava	2013
18 C 210/2009	DC Karviná	2010
11 C 190/2003	DC Kroměříž	2011
25 C 404/2010	DC Olomouc	2012
28 C 87/2012	DC Olomouc	2012
5 C 295/2008	DC Prostějov	2010
5 C 84/2012	DC Rokycany	2014
7 C 162/2011	DC Tábor	2014
30 C 118/2012	DC Trutnov	2014
19 C 203/2010	DC Ústí n. Labem	2014
7 EC 596/2011	DC Vyškov	2014
7 C 311/2003	DC Zlín	2010

File reference	Court	Year
32 C 52/2013	MC Prague	2014
11 C 81/2013	RC České Bud.	2014
27 C 161/2007	CC Prague 1	2010
23 C 116/2009	CC Prague 1	2013
38 C 113/2010	CC Prague 1	2013
42 C 326/2010	CC Prague 1	2013
23 C 171/2012	CC Prague 1	2014
142 EC 38/2012	CC Prague 1	2014
20 C 357/2009	CC Prague 1	2014
23 C 11/2006	CC Prague 1	2014
23 C 63/2009	CC Prague 1	2014
17 C 107/2012	CC Prague 1	2014
23 C 94/2010	CC Prague 1	2014
18 C 244/2011	CC Prague 2	2013
10 C 205/2010	CC Prague 4	2013
5 C 222/2010	CC Prague 7	2013
99 C 138/2011	CC Prague 9	2013
152 C 4/2011	CC Prague 9	2013
116 EC 126/2011	DC Prague-West	2012

In the following table, I have attached the list of decisions received from the courts themselves, or decisions known to me from my own activities (Table 13 and Table 14).



**Table 13: Decisions of courts of the first instance  
(Listed by areas. The highlighted decisions were held in the lawsuits that had been filed prior to the effective date of the Anti-Discrimination Act.)**

Area	Ground	Form	File ref.	Court	Decision
Housing	Ethnicity	Direct	25 C 404/2010	DC Olomouc	Dismissed
Housing	Not identified	Direct	29 C 404/2007	CC Prague 8	Discontinued
Housing	Gender	Direct	13 C 312/2011	CC Prague 6	Dismissed
Outside the scope	Not contested	Not identified	14 P 87/2008	DC Sokolov	Other
Outside the scope	Gender	Not identified	14 Nc 45/2008	DC Sokolov	Other
Not identified	Not identified	Not identified	19 C 40/2012	CC Prague 4	Discontinued
Not identified	Not identified	Not identified	28 C 265/2013	CC Prague 8	Discontinued
Not identified	Not identified	Not identified	17 C 107/2012	CC Prague 1	Discontinued
Not identified	Not identified	Not identified	20 C 357/2009	CC Prague 1	Discontinued
Not identified	Not identified	Not identified	23 C 11/2006	CC Prague 1	Discontinued
Remuneration	Not claimed	Direct	10 C 37/2014	DC Sokolov	Dismissed as inadmissible
Remuneration	Not claimed	Direct	20 C 369/2013	DC Hradec Králové	Dismissed
Remuneration	Not identified	Not identified	23 C 171/2012	CC Prague 1	Discontinued
Remuneration	Not identified	Direct	11 C 42/2008	DC Sokolov	Discontinued
Remuneration	Not identified	Direct	7 C 162/2011	DC Tábor	Discontinued
Remuneration	Gender	Indirect	23 C 94/2010	CC Prague 1	Dismissed
Remuneration	Gender	Direct	78 EC 1342/2011	DC Blansko	Dismissed
Remuneration	Age	Direct	18 C 128/2008	MC Brno	Dismissed
Remuneration	Age	Direct	7 C 97/2011	DC Sokolov	Dismissed
Work conditions	Other	Direct	23 C 63/2009	CC Prague 1	Discontinued
Work conditions	Other	Direct	8 C 154/2013	DC Pířbram	Dismissed
Work conditions	Gender	Harassment	19 C 203/2010	DC Ústí n. Labem	Dismissed
Work conditions	Gender	Sex. harassment	21 C 48/2005	MC Brno	Dismissed
Work conditions	Disability	Harassment	27 C 161/2007	CC Prague 1	Discontinued
Work - other	Other	Direct	18 C 244/2011	DC Prague 2	Dismissed
Work - other	Not identified	Not identified	23 C 116/2009	CC Prague 1	Discontinued
Access to employment	Ethnicity	Direct	47 C 46/2012	MC Brno	Discontinued
Access to employment	Ethnicity	Direct	27 C 73/2012	CC Prague 6	Dismissed
Access to employment	Ethnicity	Direct	7 C 207/2012	DC Prague-East	Dismissed
Access to employment	Ethnicity	Direct	42 C 326/2010	CC Prague 1	Dismissed
Access to employment	Ethnicity	Direct	38 C 113/2010	CC Prague 1	Dismissed
Access to employment	Other	Direct	37 C 2/2011	CC Prague	Granted
Access to employment	Other	Direct	4 C 1129/2001	DC Jihlava	Granted
Access to employment	Not identified	Direct	6 C 51/2011	DC Beroun	Discontinued
Access to employment	Gender	Direct	14 C 301/2010	DC Brno-Countryside	Dismissed
Access to employment	Age	Direct	30 C 165/2008	MC Brno	Dismissed
EC termination	Not identified	Direct	19 C 49/2012	CC Prague 4	Discontinued
EC termination (§52 c)	I. Disability II. Worldview	I. Harassment II. Direct	28 C 97/2012	CC Prague 8	Dismissed
EC termination (§52 c)	Other	Direct	17 C 64/2014	CC Prague 1	Granted
EC termination (§52 c)	Not claimed	Direct	15 C 136/2009	DC Sokolov	Dismissed
EC termination (§52 c)	Not claimed	Direct	11 C 190/2003	DC Kroměříž	Dismissed
EC termination (§52 c)	Not identified	I. Harassment II. Direct	36 C 236/2013	DC Plzeň	Dismissed
EC termination (§52 c)	Age	Direct	25 C 61/2012	DC Karviná	Dismissed
EC termination (§52 c)	Age	Direct	85 C 145/2009	DC Ostrava	Dismissed
EC termination (§52 c)	Age	Direct	25 C 127/2012	CC Prague 2	Dismissed

Area	Ground	Form	File ref.	Court	Decision
EC termination (§52 c)	Age	Direct	5 C 2/2013	DC Prostějov	Dismissed
EC termination (§52 c)	Age	Direct	17 C 122/2012	CC Prague 1	Dismissed
EC termination (§52 c)	Age	Direct	17 C 117/2012	CC Prague 1	Granted
EC termination (§52 g)	Not claimed	Direct	16 C 16/2010	DC Frýdek-Místek	Granted
EC termination (§55)	Nationality	Direct	40 C 288/2014	CC Prague 9	Discontinued
EC termination (§55)	Not claimed	Direct	9 C 11/2012	DC Sokolov	Dismissed
Civil service	Not identified	Direct	30 A 11/2010	RC Hradec Králové	Granted
Civil service	Not identified	Direct	30 Ad 11/2010	RC Hradec Králové	Dismissed
Education	Religion	Direct	5 C 228/2013	CC Prague 7	Dismissed
Education	Not identified	Direct	10 C 205/2010	CC Prague 4	Discontinued
Education	Not identified	Direct	5 C 222/2010	CC Prague 7	Discontinued

**Table 14: Decision on appeal**

File reference	Court of Appeal	First instance file reference	Court of the first instance	Decision of the first instance	Decision on appeal
49 Co 319/2013	RC Brno	78 EC 1342/2011	DC Blansko	Dismissed	Set aside
49 Co 58/2005	RC Brno	11 C 190/2003	DC Kroměříž	Dismissed	Overtured
49 Co 192/2012	RC Brno	4 C 1129/2001	DC Jihlava	Granted	Overtured
12 Co 261/2012	RC Ostrava	25 C 404/2010	DC Olomouc	Dismissed	Affirmed
16 Co 232/2013	RC Ostrava	25 C 61/2012	DC Karviná	Granted	Affirmed
16 Co 26/2016	RC Ostrava	16 C 16/2010	DC Frýdek-Místek	Granted	Affirmed
16 Co 241/2001	RC Ostrava	85 C 145/2009	DC Ostrava	Dismissed	Overtured
61 Co 418/2014	RC Plzeň	36 C 236/2013	DC Plzeň	Dismissed	Affirmed
15 Co 552/2009	RC Plzeň	15 C 136/2009	DC Sokolov	Dismissed	Affirmed
23 Co 311/2014	RC Praha	8 C 154/2013	DC Příbram	Dismissed	Affirmed
23 Co 585/2013	RC Praha	7 C 207/2012	DC Prague-East	Discontinued	Affirmed
11 Co 171/2014	RC Ústí n. Labem	19 C 203/2010	DC Ústí n. Labem	Dismissed	Affirmed
23 Co 318/2013	MC Prague	25 C 127/2012	CC Prague 2	Dismissed	Affirmed
21 Co 423/2013	MC Prague	5 C 228/2013	CC Prague 7	Dismissed	Affirmed
70 Co 375/2012	MC Prague	18 C 244/2011	CC Prague 2	Dismissed	Affirmed
62 Co 277/2011	MC Prague	38 C 113/2010	CC Prague 1	Dismissed	Affirmed
62 Co 489/2014	MC Prague	17 C 64/2014	CC Prague 1	Granted	Overtured
62 Co 317/2012	CC Prague	23 C 94/2010	CC Prague 1	Dismissed	Affirmed

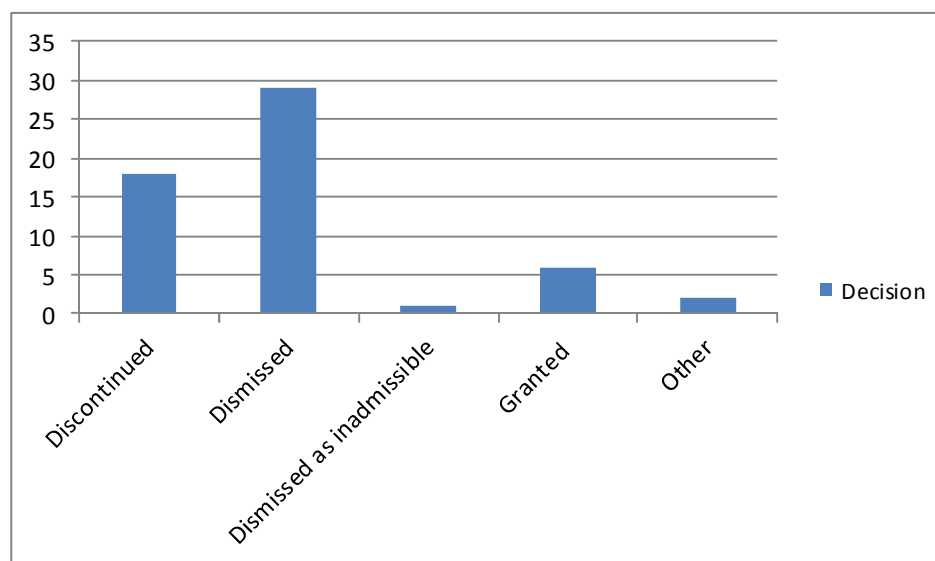
#### IV.1.1.2 Summary

### Database of the Ministry of Justice of the Czech Republic as Compared to the Decisions Provided to the Public Defender of Rights

The aforementioned tables clearly indicate that the database of the Ministry does not contain all the decisions provided to me by the courts. Some courts did not provide any decisions to me, though usually because they do not have any anti-discrimination lawsuits on record. Yet I am aware of some rulings in anti-discrimination lawsuits from my own activity for which I had not received the decisions over the course of this survey. I can therefore claim with certainty that neither the Ministry database, nor the list I had compiled for the purpose of this survey is complete. To sum up, I would like to add that I did not enter in the list any decisions requested from the courts based on the Ministry database where it subsequently showed that they were not concerned with discrimination (and the courts submitted the decisions to the Ministry by mistake).

The table and the subsequent chart indicate that most of the lawsuits were dismissed (29); the proceedings were discontinued in 18 cases, and dismissed as inadmissible in one (1) case. In two (2) cases, the lawsuit was terminated in “another” manner, as the matter was beyond the scope of the jurisdiction of the Anti-Discrimination Act (i.e. it was not necessary to deal with the substance of the discrimination complaint). The courts held in favour of the plaintiffs in six (6) cases; in some cases however, the court granted the lawsuit as such (invalidity of employment termination), but not the discrimination complaint. Only in one case, the court awarded monetary damages in the amount of CZK 51,000 (€ 1,889).

**Chart 10: Court decisions**



### Discrimination Lawsuits by Areas

The most lawsuits were taken to court in the area of labour law (41), followed by education (3) and housing (3), two (2) lawsuits were lodged in the sphere civil service; in two (2) cases, the area was not identified, and in two (2) cases discrimination was contested but the merit was outside the scope of the Anti-Discrimination Act.

The most frequently represented area was that of labour law. I have therefore focused closer on the discrimination claim in the individual “stages” of employment. The highest count of discrimination claims was related to filing an action for unlawful dismissal (15), with the most frequently contested cause for termination was so-called redundancy pursuant to the provision of section 52 c) of the Labour Code (10 cases). In ten (10) cases, a lawsuit was filed for discriminatory rejection of a potential employee; in nine (9) cases, discrimination was claimed based on wage inequality and in five (5) cases, the plaintiffs perceived discrimination in working conditions.

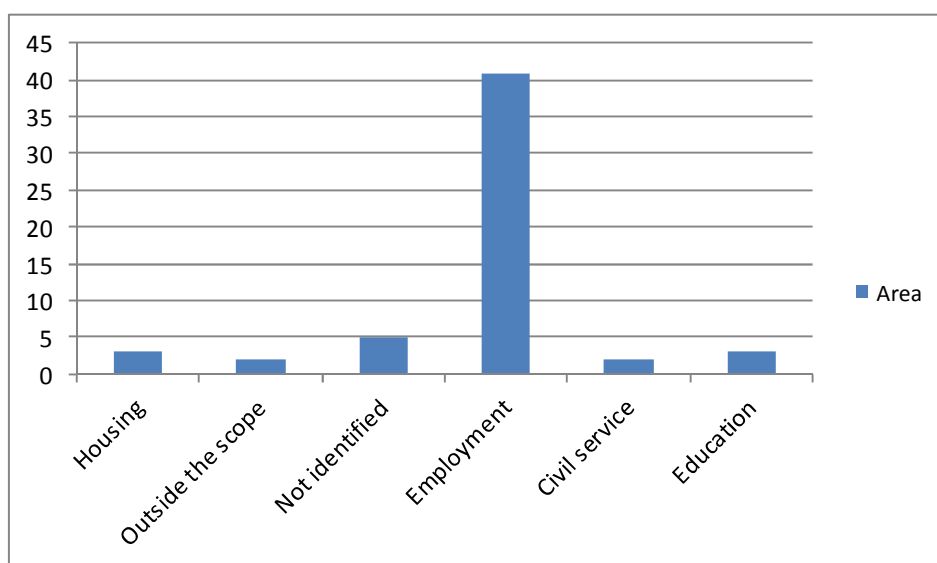
**Table 15**

Comparison by area	
Areas	Count
Housing	3
Outside the scope	2
Not identified	5
<b>Employment</b>	<b>41</b>
Civil service	2
Education	3
<b>Total</b>	<b>56</b>

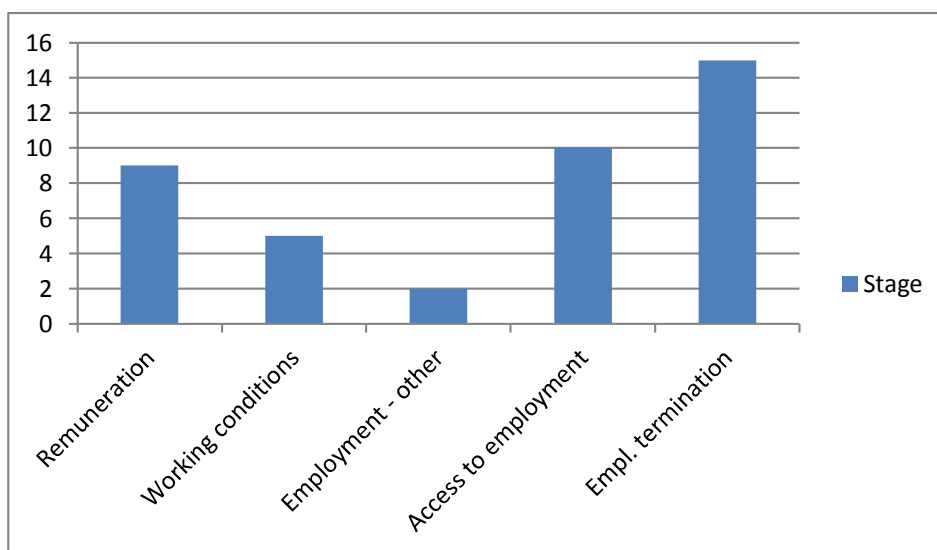
**Table 16**

Discrimination in employment	
Stage	Count
Remuneration	9
Working conditions	5
Employment - other	2
Access to employment	10
Employment termination	15
<b>Total</b>	<b>41</b>

**Chart 11: Comparison by area**



**Chart 12: Discrimination by employment**



### **Forms of Discrimination and Grounds for Discrimination**

The form of discrimination was often not specified in the proceedings (judging from the reasoning behind the decision). In a vast majority of cases (43), it was, according to the description of the act, a claim of direct discrimination, while in one (1) case, indirect discrimination was claimed. In nine (9) cases, the form of discrimination was impossible to deduct from the description of the circumstances of the case, in four cases (4), harassment was contested, and in one (1) case, sexual harassment was alleged. In two (2) cases, there was a combination of forms of discrimination, i.e. of harassment and direct discrimination.

The most frequently alleged ground for discrimination is age (9), followed by gender (7) and ethnicity (6). In two (2) cases, discrimination based on disability was claimed. The other grounds for discrimination according to the provision of Section 2, paragraph 3 of the Anti-Discrimination Act, i.e. nationality (1), religion (1) and worldview (1) were each alleged just once. In one (1) case, multiple grounds were alleged; in particular, both worldview and disability.

In six (6) cases, there was a different ground alleged for the unequal treatment. Among the “other” grounds, I have listed the unambiguously defined different status, which is however not a ground for discrimination as understood by Section 2, paragraph 3 of the Anti-Discrimination Act. In the other lawsuits (24), the ground for inequality was not alleged clearly or was not identified.

The average financial sum of requested compensation for non-pecuniary damage in the areas of labour law is CZK 261,944 (€ 9,702). The highest requested

sum in the area of labour law was CZK 1,000,000 (€ 37,037); the lowest was CZK 10,000 (€ 370).

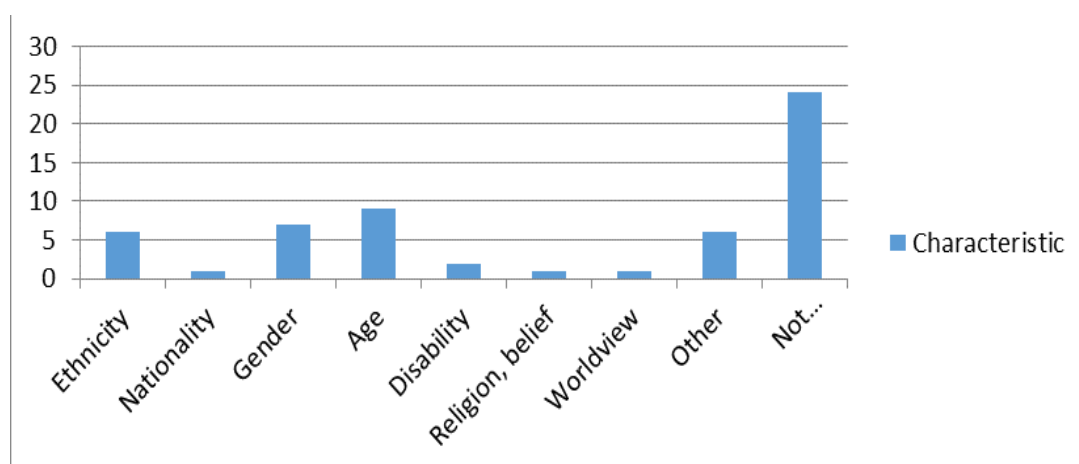
**Table 17**

Distribution of discriminatory grounds	
Ground	Count
Ethnicity	6
Nationality	1
Gender	7
Age	9
Disability	2
Religion and belief	1
Worldview	1
Other	6
Not contested/identified	24
<b>Total</b>	<b>57</b>
Multiple grounds	1

**Table 18**

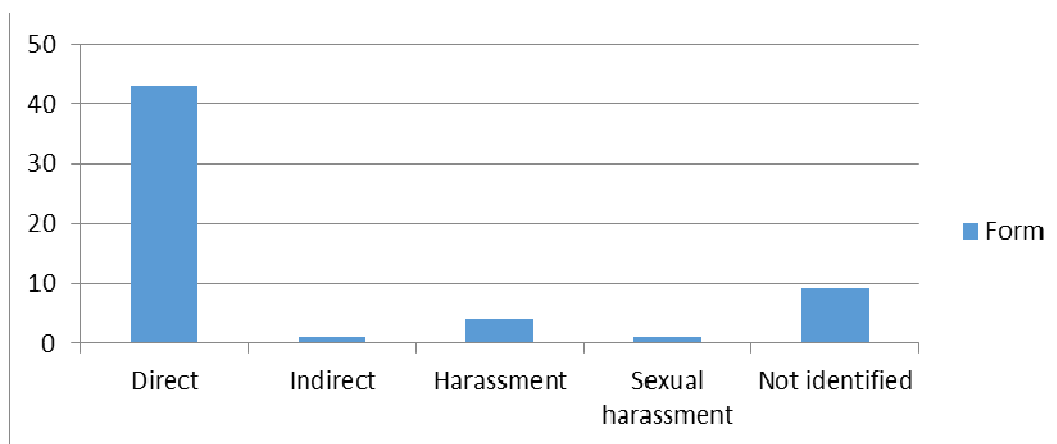
Distribution of forms of discrimination	
Form	Count
Direct	43
Indirect	1
Harassment	4
Sexual harassment	1
Not identified	9
<b>Total</b>	<b>58</b>
Combination	2

**Chart 13: Representation of discrimination grounds**



**Ground**

**Chart 14: Representation of forms of discrimination**



#### **IV.1.2 Decision-making activity of courts**

In the part concerned with courts, I have focused on the specific barriers in access to justice, and on the reasons for underreporting of discrimination, not on barriers in general (e.g. low awareness). Apart from the financial costs and the problematic incorporation of the institute of shared burden of proof, I have also analysed the taking of evidence of discrimination in the case of employment termination due to redundancy, pursuant to the provision of Section 52 c) of the Labour Code, since the cases of unlawful dismissal were predominant among the court decisions (see Table 16).

##### **IV.1.2.1 Subsidiarity of the material satisfaction and the costs related to filing a lawsuit**

In this part, I have focused on the costs related to filing a lawsuit and on the possibility to claim “material satisfaction” for potential discrimination. It is the factor of the legal expenses related to civil lawsuit that could, in contrast to the potential reality of irrecoverable compensation for the non-pecuniary damage, present a substantial barrier in the access to justice for the victim of discrimination. In many cases of alleged discrimination, it will not be possible to demand claims of terminating the discrimination or eliminating the consequences of discrimination (e.g. in the case of employment termination, unless the victim files a lawsuit for unlawful dismissal together with the allegation of discrimination). If the victim of discrimination files a lawsuit and seeks to recover monetary compensation for non-pecuniary damage, they are required to pay court fees of CZK 2,000 or 1 per cent of the litigated amount

in the case they demand monetary compensation of non-pecuniary damage to the sum higher than CZK 200,000.<sup>20</sup>

With regard to the frequently uncertain (from the victim's point of view) decision in the lawsuit (see above), the amount of the court fees presents another obstacle for the victim of discrimination to defend themselves. This is also related to the persistent issue of difficulties when seeking qualified (free) legal aid.<sup>21</sup> The victim of discrimination, who may be in a complicated economic situation (whether due to being a member of a marginalized group, or due to losing their job because of discrimination) have to consider the expenses for court fees, legal aid, and also to cover the expenses of the counterparty in case they lose.

### **Granting Monetary Compensation for Non-pecuniary damage in CJEU Theory and Case Law**

In the case of violation of rights and duties that follow the right to equal treatment, or in the case of discrimination, the victim has the right, according to provision of Section 10, paragraph 1 of Anti-Discrimination Act, to seek the termination of discrimination, removal of the consequences of discriminatory action and granting them fair satisfaction. The provision of Section 10, paragraph 2 indicates that should none of the forms of redress appear adequate, particularly due to the discrimination resulting in significant impact on the reputation or dignity of the person, or their respect among their peers, the victim of discrimination has also right to monetary compensation of the non-pecuniary damage. This legislative measure *“is adequate to the process of civil protection provided by general courts.”*<sup>22</sup> The legislators therefore resolved incorporating the claims of the provision of Section 10 of the Anti-Discrimination Act by using the concept incorporated in section 13 of Act No. 40/1964 Coll., Civil Code, as amended<sup>23</sup> (hereinafter the “old Civil Code”). Similar to the provision of Section 13 of the old Civil Code, the provision of Section 10 of the Anti-Discrimination Act provides for the material satisfaction as a subsidiary remedy.

Clearly, the provision of Section 10 of Anti-Discrimination Act has to be in concord with the transposed Directives and, by extension, with the CJEU case law. In

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<sup>20</sup> The Public Defender of Rights already proposed modifying the court fees in the case of filing an anti-discrimination lawsuit in their Summary Report for 2012, available here: <http://www.ochrance.cz/zpravy-o-cinnosti/zpravy-pro-poslaneckou-snemovnu/>.

<sup>21</sup> The Czech Bar Association has enabled looking up attorneys by their specialization. The system of looking up attorneys is available at: <http://vyhledavac.cak.cz/Units/Search/search.aspx>, however does not allow to look up attorneys who specialize in anti-discrimination legislation in the version 1.23.8.0 (9th June 2014).

<sup>22</sup> The Statement of Reasons to Act No. 198/2009 Coll., on Equal Treatment and Legal Remedies to Discrimination (Anti-Discrimination Act).

<sup>23</sup> The old Civil Code was abolished with effect as of 1st January 2014.



this respect, the chosen wording is not adequate (at least when using grammatical interpretation). The provision of Article 15 of the Directive which implements the principle of equal treatment of persons regardless of their race or ethnicity<sup>24</sup> indicates that the “[M]ember States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.” A similar regulation is incorporated in the provision of Article 17 of the General Framework Directive<sup>25</sup> and Article 8d of the Gender Directive.<sup>26</sup> The monetary compensation of non-pecuniary damage (or adequate compensation) therefore contains the following components:

- Preventative;
- Compensatory;
- Punitive.

For instance, the CJEU judgment of 10th April 1984, Case C-14/83, Sabine von Colson and Elisabeth Kamann v. Land Nordrhein-Westfalen, legally represented by Bezirksregierung Münster, requires that *“if a member state chooses to penalize breaches of that prohibition by the award of compensation, then in order to ensure that it is effective and that it has a deterrent effect, that compensation must in any event be adequate in relation to the damage sustained and must therefore amount to more than purely nominal compensation such as, for example, the reimbursement only of the expenses incurred in connexion with the application”*. If neither the sanction nor concession of the expenses incurred in relation to seeking employment is satisfactory, a mere moral satisfaction can hardly hold. The CJEU judgment also indicates (Von Colson, Article 23) that the sanction *“must have a true deterrent effect on the employer.”*

Apart from this, the existence of the punitive component (and therefore the priority of material satisfaction) may be deduced from the CJEU judgment in the

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<sup>24</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>25</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>26</sup> Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

*Feryn* case.<sup>27</sup> In this case, the CJEU investigated the statement by the CEO of the Feryn Company for a newspaper article which inferred that he would not employ any applicant of Moroccan origin. Even though in this case no specific victim of discrimination was identified and the lawsuit was filed by the Belgian Centre for Equal Treatment, the CJEU held that the statement itself represents direct discrimination. It also conceded that in this case as well, the sanction should be effective, appropriate and dissuasive. The sanction may therefore consist of the finding of discrimination being stated by a court or a relevant administrative body, together with an appropriate measure of publicity whose costs are to be covered by the defendant, or in the form of sanction or awarding damages to the benefit of the authority which was a party to the proceedings.

The material satisfaction, in accordance with the provision of Section 10, paragraph 2 of the Anti-Discrimination Act, should in concord with European legislation fulfil not just the compensatory function, but also the preventative and punitive functions.<sup>28</sup> According to European legislation, the punitive function takes priority. The Directive and the CJEU case law speak of “sanction”, and leave to the member state the form of sanctioning the discrimination of the particular victim (i.e. whether to incorporate the sanction into the “awarded damages”, or choose another system of sanctions). In the case of the Czech Republic, the sanction thus takes form of the monetary compensation of non-pecuniary damage, and should not inherently represent a subsidiary remedy, but it should be usually awarded to the victim of discrimination alongside another form of redress.

The aforementioned causes in anti-discrimination lawsuits make it apparently impossible to rely on the case law which interprets the interference with personal rights pursuant to the provision of Section 13 of the old Civil Code, even though the legislator constructed the provision of Section 10 of the Anti-Discrimination Act on its basis.<sup>29</sup> Some difference in the approach towards appropriate satisfaction may be observed, for instance, in the judgment of the Supreme Court, according to which *“monetary compensation fulfils primarily the function of satisfaction, though the purpose of the preventative value cannot be denied to a just, law-conforming compensation.”* Even if *“the affected individual has exposed themselves to a potential*

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<sup>27</sup> CJEU Judgment of 10th July 2008, case C-54/07 Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV

<sup>28</sup> Cf. also Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. Antidiskriminační zákon (Anti-Discrimination Act). Commentary. 1st edition. Prague: C. H. Beck, 2010, p. 301.

<sup>29</sup> Cf. also Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. Antidiskriminační zákon. Commentary. 1st edition. Praha: C. H. Beck, 2010, p. 298 – 299.

*discriminatory action, the extent of their personality rights is not diminished, nor does it rule out the injustice of the potential impact upon their personal integrity.*<sup>30</sup>

In any case, the provision of Section 2957 of the Act No. 89/2012 Coll., Civil Code (hereinafter the “new Civil Code”) presumes that the method and amount of appropriate compensation have to be defined in such a way that even notable circumstances are redressed, which entails wilful damage as a consequence of the discrimination of the victim with respect to their gender, health status, ethnicity, religion, or other similarly significant ground. The chosen wording therefore has to be spanned by interpretation.<sup>31</sup>

It is clear from the decisions that I received during the survey that the courts (in the case they deal with the provision of Section 10 of the Anti-Discrimination Act) employ the grammatical interpretation, and the compensation of non-pecuniary damage is subsidiary in their interpretation.<sup>32</sup> At the same time, they rely on the case law from the area of personality protection, and emphasize that the material satisfaction pertains to the victim of discrimination in such cases, where *“the impact upon reputation, dignity or respect of the person among their peers is such that a mere apology or other form of non-financial redress is not satisfactory.”*<sup>33</sup>

### **The Amount of Litigated Monetary Compensation of Non-pecuniary Damage**

The decisions which I had available indicate that the litigated amounts are quite variable. The highest litigated amount which was subject to the decision over the observed period (i.e. between 2010 and 2014) was CZK 1,500,000 (€ 55,556); the issue concerned was ethnic-based discrimination in access to housing, and the lawsuit was dismissed.<sup>34</sup> The second highest litigated amount was CZK 1,000,000 (€ 37,037); in one case, the lawsuit was dismissed<sup>35</sup>; in the second case, the

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<sup>30</sup> Judgment of the Supreme Court of 7th October 2009, file ref.: 30 Cdo 4431/2007.

<sup>31</sup> Similar to the compensation for incurred non-pecuniary damage pursuant to the provision of Section 31a of Act No. 82/1998 Coll., on Responsibility for Damages Caused by Exercise of Public Authority by Decision or Incorrect Official Process, and on Change of the Act of Czech National Council No. 358/1992 Coll., on Notaries and their Activity (Notary Code); see the statement of civil and commercial collegium of the Supreme Court of the Czech Republic of 13th April 2011, file ref.: Cpjn 206/2010.

<sup>32</sup> Decision of Regional Court in Prague of 18th February 2014, ref. no. 23 Co 585/2013 – 147, the Decision of Regional Court in Ostrava of 26th July 2012, ref. no. 12 Co 261/2012 - 263

<sup>33</sup> Decision of Regional Court in Prague of 18th February 2014, ref. no. 23 Co 585/2013 – 147

<sup>34</sup> Decision of District Court in Olomouc of 5th March 2012, ref. no. 25 C 404/2010 – 233

<sup>35</sup> Decision of County Court for Prague 6 of 11th March 2014, ref. no. 27 C 73/2012 - 156

proceedings were discontinued due to non-payment of court fees to the amount of CZK 10,000 (€ 370).<sup>36</sup>

A female plaintiff who alleged sexual harassment at the workplace claimed monetary compensation of non-pecuniary damage in the sum of CZK 300,000 (€ 11,111); the lawsuit was dismissed.<sup>37</sup> A plaintiff who sought satisfaction for non-hiring due to age alleged that he was not appointed to two posts by the defendant. He claimed compensation of non-pecuniary damage in the sum of CZK 100,000 (€ 3,703) for the first vacancy and compensation of non-pecuniary damage to the sum of CZK 150,000 (€ 5,556) for the second vacancy; the lawsuit was dismissed.<sup>38</sup>

Apart from an apology, the plaintiff claimed monetary compensation of non-pecuniary damage in the amount of CZK 150,000 (€ 5,556) from an employee who was alleged to harass at the workplace; the lawsuit was dismissed (due to the lack of standing to be sued).<sup>39</sup>

In the case of alleged discrimination due to gender (maternity) in access to employment, the plaintiff claimed CZK 100,000 (€ 3,703); the lawsuit was dismissed.<sup>40</sup> In the case of alleged discrimination in remuneration based on age, the plaintiff claimed compensation of non-pecuniary damage in the sum of CZK 20,000 (€ 5,400), in addition to compensating for the wage differences between the plaintiff and a comparable individual for the vesting period; the lawsuit was dismissed.<sup>41</sup>

The individual claims to monetary compensation of non-pecuniary damage and their sums are listed in the following table.

**Table 19: The decisions prior to the effect of the Anti-Discrimination Act are highlighted in grey.**

Area	Ground	File reference	Court	Requested sum		Decision
Housing	Ethnicity	25 C 404/2010	DC Olomouc	CZK 1,500,000	€ 55,556	Dismissed
Not identified	Not identified	28 C 265/2013	CC Prague 8	CZK 1,000,000	€ 37,037	Discontinued
Employment	Ethnicity	27 C 73/2012	CC Prague 6	CZK 1,000,000	€ 37,037	Dismissed
Housing	Not identified	29 C 404/2007	CC Prague 8	CZK 500,000	€ 18,519	Discontinued
Employment	Ethnicity	7 C 207/2012	DC Prague-East	CZK 500,000	€ 18,519	Dismissed
Employment	Not identified	6 C 51/2011	DC Beroun	CZK 500,000	€ 18,519	Discontinued

<sup>36</sup> Resolution of County Court for Prague 8 of 13th January 2015, ref. no. 28 C 265/2013 - 233

<sup>37</sup> Decision of the Municipal Court in Brno of 2nd June 2008, ref. no. 21 C 48/2005 - 384

<sup>38</sup> Decision of Municipal Court in Brno of 10th August 2011, ref. no. 30 C 165/2008 - 263

<sup>39</sup> Decision of District Court in Ústí nad Labem of 25th September 2013, ref. no. 19 C 203/2010 - 138

<sup>40</sup> Decision of District Court for Brno-Countryside of 29th November 2012, ref. no. 14 C 301/2010 - 61

<sup>41</sup> Decision of Municipal Court in Brno of 16th May 2012, ref. no. 18 C 128/2008 - 240

Employment	Ethnicity	47 C 46/2012	MC Brno	CZK 500,000	€ 18,519	Discontinued
Employment	Ethnicity	42 C 326/2010	CC Prague 1	CZK 500,000	€ 18,519	Dismissed
Employment	Ethnicity	38 C 113/2010	CC Prague 1	CZK 400,000	€ 14,815	Discontinued
Employment	Gender	21 C 48/2005	MC Brno	CZK 300,000	€ 11,111	Dismissed
Employment	Age	30 C 165/2008	MC Brno	CZK 250,000	€ 9,259	Dismissed
Employment	Not identified	11 C 42/2008	DC Sokolov	CZK 150,000	€ 5,556	Discontinued
Employment	Not identified	19 C 203/2010	DC Ústí n. Labem	CZK 150,000	€ 5,556	Dismissed
Not identified	Not identified	20 C 357/2009	CC Prague 1	CZK 104,212	€ 3,860	Discontinued
Employment	Nationality	40 C 288/2014	CC Prague 9	CZK 100,000	€ 3,703	Discontinued
Employment	Gender	14 C 301/2010	DC Brno-Countryside	CZK 100,000	€ 3,703	Dismissed
Employment	Not identified	7 C 162/2011	DC Tábor	CZK 100,000	€ 3,703	Discontinued
Employment	Other	37 C 2/2011	MC Prague	CZK 51,000	€ 1,889	Granted
Employment	Not claimed	10 C 37/2014	DC Sokolov	CZK 50,000	€ 1,852	Dismissed as inadmissible
Employment	Age	7 C 91/2011	DC Sokolov	CZK 34,000	€ 1,259	Dismissed
Employment	Age	18 C 128/2008	MC Brno	CZK 20,000	€ 740	Dismissed
Employment	Not contested	8 C 154/2013	DC Pířbram	CZK 10,000	€ 370	Dismissed

### **Further Expenses Related to an Anti-Discrimination Lawsuit**

The expenses incurred by the litigation obviously represent a financial burden for both parties to the proceedings; for the victim of discrimination, the vision of loss associated to the necessity to cover both own expenses and the expenses of the adverse party may often represent a significant element of demotivation. In the decisions which I had available, the courts usually do not award covering the litigation expenses to either party. To illustrate, I have listed some of the examples of expense compensation which the plaintiff was ordered to pay.

In the case of the allegation of discrimination in access to employment based on ethnicity, the plaintiff sought monetary compensation of non-pecuniary damage in the sum of CZK 1,000,000 (€ 37,037); the lawsuit was dismissed and the plaintiff had to cover the defendant's costs in the sum of CZK 24,684 (€ 914).<sup>42</sup> The lawsuit of a woman who sought monetary compensation of non-pecuniary damage for harassment in the workplace in the sum of CZK 150,000 (€ 5,556) was dismissed, and the plaintiff had to cover the incurred expenses of the litigation in the sum of CZK 21,013.6 (€ 778).<sup>43</sup> She had to cover further CZK 10,424.40 (€ 386) for the expenses incurred in the appeal procedure which she lost. Overall, she had to cover more than one fifth of the requested sum.<sup>44</sup>

<sup>42</sup> Decision of County Court for Prague 6 of 11th March 2014, ref. no. 27 C 73/2012 – 156.

<sup>43</sup> Decision of District Court in Ústí nad Labem of 25th September 2013, ref. no. 19 C 203/2010 – 138.

<sup>44</sup> Decision of Regional Court in Ústí nad Labem of 12th June 2014, ref. no. 11 Co 171/2014 – 163.

A plaintiff who sought compensation for non-pecuniary damage in the sum of CZK 20,000 (€ 740) for age-based discrimination in remuneration was required to cover the defendant's expenses of the litigation in the sum of CZK 34,320 (€ 1,259). A lawsuit for unlawful dismissal which entailed, among other, a claim by the plaintiff to compensation of non-pecuniary damage in the sum of CZK 34,452 (€ 1,259), was dismissed as well. The plaintiff had to cover the adverse party's expenses of the litigation in the sum of CZK 142,877.16 (€ 5,292), i.e. approximately four times as much as he sought in compensation for non-pecuniary damage.

I have to emphasise that the aforementioned comparison should not call into question the decisions themselves, nor the awarded expenses of the defendant. Its target was merely to demonstrate that the expenses related to the potential loss may exceed the claims of the plaintiff, and have a negative impact upon the decision to defend one's rights. Particularly for victims of discrimination in the area of labour law, finance may be the a dominating element of motivation (with regard to e.g. current loss of means of support as consequence of discriminatory termination of employment). The negative factor of motivation may be reinforced, should the courts strictly adhere to the grammatical wording of the provision of Section 10 of the Anti-Discrimination Act.

#### IV.1.2.2 Issue of evidence and sharing the burden of proof

The goal of the so-called transfer or sharing of burden of proof is to facilitate the procedural status of the (potential) victim of discrimination; this however does not indicate that the victim is completely relieved of the burden of proof and that furnishing the evidence lies entirely on the defendant. The goal is to relieve the victim of discrimination of the obligation to prove something (a motive) that usually cannot be substantiated. In the case of alleged discrimination, the plaintiff does not prove the motive of the defendant; on the other hand, the defendant does not prove that they "did not discriminate", but proves another motive for their action or behaviour. The individual stages of contention and evidencing when applying the provisions of section 133a of the Civil Procedure Code should be approximately as follows:<sup>45</sup>

**Plaintiff:**

- Claims that unusual or unfavourable treatment occurred (*burden of allegation*);
- Proves, or does not prove, that unusual or unfavourable treatment occurred (*burden of proof*);

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<sup>45</sup> See the Judgment of the Constitutional Court of 26th April 2006, file ref.: Pl. ÚS 37/04.

- Claims that it was motivated by a discriminatory cause (*burden of allegation*);

**Defendant:**

- Claims other motive for the contested action (*burden of allegation*);
- Proves, or does not prove, other motive for the contested action (*burden of proof*).

**Sharing the Burden of Proof in Relation to the Alleged Discriminatory Ground**

This legislative regulation is somehow contentious, as it does not provide equal procedural protection to all victims of discrimination pursuant to the Anti-Discrimination Act. According to the original regulation,<sup>46</sup> the transfer of burden of proof occurred in the case of alleged gender-based discrimination in the area of employment. The regulation was subsequently expanded with additional discrimination grounds. The last significant change<sup>47</sup> of the provisions of Section 133a of the Civil Procedure Code was passed together with the Anti-Discrimination Act.

As indicated previously, the procedural regulation does not follow the substantive protection from discrimination. In the Anti-Discrimination Act, discrimination is prohibited for any of the causes grounds in the provision of Section 2, paragraph 3 of the Anti-Discrimination Act, in all areas listed in the provisions of Section 1, paragraph 1a) – j), while the provision of Section 133a of the Civil Procedure Code binds the transfer of the burden of proof on a combination of a particular area of life and a particular discrimination ground.

If discrimination is therefore alleged for any of the grounds listed under the provision of Section 2, paragraph 3 of the Anti-Discrimination Act (except nationality), in the areas of employment or other dependant activity including access to these, profession, enterprise or self-employment, the burden of proof is always shared. In the areas of access to goods and services, the burden of proof is only transferred, if discrimination is alleged based on racial or ethnic origin or gender. “Nationality” was dropped entirely from the list of discrimination grounds, and would have to be subsumed by interpretation under ethnicity, otherwise this ground (which is in other respects considered to be one of the “strongest” of the Anti-Discrimination Act – see

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<sup>46</sup> Which was incorporated into the Civil Procedure Code by Act No. 30/2000 Coll., which amends the Act No. 99/1963, Civil Procedure Code, as amended, and some further Acts, as amended.

<sup>47</sup> A minor modification of terminology occurred in relation to the adoption of the new Civil Code.

for instance, the provision of Section 7, paragraph 1 of the Act which bars any unequal treatment based on nationality) would leave the victim of discrimination stripped of procedural protection.

The above mentioned information therefore clearly shows that a number of potential victims of discrimination are protected from discrimination, but when they file an anti-discrimination lawsuit, they find themselves in a distinct procedural position with regard to the alleged discrimination ground. For instance, a senior who is denied a financial product by a financial institution, may file an anti-discrimination lawsuit, but is not able to prove the motivation of the service provider at all, or with much difficulty (in the case a particular motive is recorded). Despite their evidence options being the same as in the case of a woman or a Roma who are denied access to services, their procedural status is significantly worse. It is highly probable that the victim of discrimination will not file a lawsuit with a court at all because of the practical inability to prove the discriminatory treatment.

The distinct procedural status of the individual victims of discrimination may be the cause why the victim of discrimination does not file a lawsuit with a court regarding a specific issue. Provided that the phenomenon of underreporting of discrimination is related also to the low awareness (of what constitutes discrimination, and how to defend oneself from it), the absence of the appropriate procedural status might not be one of the key barriers. It may however represent a secondary barrier, as even in a society that is well educated about discrimination, the victim of discrimination may not be motivated to defend their rights by filing a lawsuit due to the inability to provide proof of the motives of the discriminating party.

In my opinion, the aforementioned limitation cannot be spanned by interpretation; for this reason, it would be worthwhile to unify the protection from discrimination on the level of material and procedural legislation.<sup>48</sup> There is yet at least one decision where the court proceeded to share the burden of proof in a case where no discrimination ground listed in the provision of Section 2, paragraph 3 of the Anti-Discrimination Act was alleged (or in the provision of Section 133a of the Civil Procedure Code). The Municipal Court in Prague<sup>49</sup> proceeded to transfer the burden of proof in a case from the area of labour law, where discrimination was alleged due to criminal record, and the plaintiff won the case due to the transfer of

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<sup>48</sup> The Public Defender of Rights already proposed modifying the court fees in the case of filing an anti-discrimination lawsuit in their Summary Report for 2013, available here: <http://www.ochrance.cz/zpravy-o-cinnosti/zpravy-pro-poslaneckou-snemovnu/>.

<sup>49</sup> Decision of the Municipal Court in Prague of 24th February 2012, ref. no. 37C 2/2011 – 72.



burden of proof; the court awarded her an apology and monetary compensation of non-pecuniary damage in the sum of CZK 51,000 (€ 1,889).

### **Sharing the Burden of Proof with Regard to the Nature of the Adverse Treatment**

I believe that applying the transfer of burden of proof in practice should not present many issues. From my own activity and from the decisions which I had available, there appear essentially two problematic questions. The first one is concerned with the transfer of burden of proof in the case of employment termination due to redundancy in accordance with provision of Section 52 c) of the Labour Code, the other one is concerned with the transfer of burden of proof in the case of alleged harassment or sexual harassment.

Taking into consideration the case law in labour-related lawsuits, it is particularly complicated for the victim of discrimination to prove the discriminatory treatment if they are made redundant in accordance with provision of Section 52 c) of the Labour Code. For this employment termination to be valid, the following conditions have to be fulfilled (in a cumulative order):

- A decision of organizational change is made;
- The employee's position is redundant;
- The causality between the decision of organizational change and the employee's redundancy.

In the case the organizational change concerns multiple employees, only some of whom are made redundant (or only one is), it is up to the employer to select a specific employee.<sup>50</sup> Should this dismissal be contested in court, the courts in general do not follow up on why this particular employee was picked; yet at the same time the employer is barred from picking the employee based on discriminatory criterion.<sup>51</sup> To be able to prove that the employer did not discriminate, it would be necessary in the case of alleged discrimination to break with the aforementioned process. If the court only examined whether the conditions of redundancy had been fulfilled, but not the selection of the particular employee, the plaintiff could never prove that the reason to pick them was discriminatory. The decisions of the courts show clearly that they do not break with this limitation;<sup>52</sup> though the courts' procedure

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<sup>50</sup> See Bělina, M., Drápal, L. et al: *Zákoník práce (Labour Code). Commentary. 2nd Edition.* Prague: C. H. Beck, 2015, p. 323.

<sup>51</sup> See Bělina, M., Drápal, L. et al: *Zákoník práce. Commentary. 2nd Edition.* Prague: C. H. Beck, 2015, p. 323.

<sup>52</sup> For instance, the Decision of the District Court in Ostrava of 1st June 2010, ref. no. 85 C 145/2009 – 94, the Decision of the County Court for Prague 2 of 8th April 2013, ref. no. 25 C 127/2012 – 100, the Decision of the

is backed by the case law of the Supreme Court which excluded the possibility to review why a particular employee was picked even in cases of discrimination.<sup>53</sup> The courts, however, usually investigate the alleged discrimination and try to prove or disprove it through other means. For instance, in one decision<sup>54</sup> which the court provided for the purpose of this survey, it investigated an alleged age-based discrimination. For this reason, the court examined, for instance, the age structure of the employees in that workplace, and concluded that it did not constitute discrimination. The only deficit of the decision in this respect lies in the fact that the court bases its findings regarding discrimination primarily on witness testimonies, but does not explicitly note their (age-related) content, so the factual findings are generally rather unintelligible for the third party.

Even though submitting evidence using the age structure of the employees could lead to excluding discrimination in this given case, such a procedure is not, in my opinion, applicable in all situations. I will attempt to list some cases where the aforementioned procedure would not necessarily lead to identifying discrimination, even if it had actually occurred, or conversely, it would not be qualified to exclude discrimination even if it had not occurred, so the refutable assumption according to Section 133a of the Civil Procedural Code would be applied automatically.

- (1) Over the vesting period, only one employee who had already reached the age of retirement would be made redundant, and no other employee of retirement age would be employed at that employer;
- (2) A number of employees would be made redundant, with only one of them having reached the age of retirement (or approaching it), and no other employee of retirement age would be employed at that employer (at a comparable position);
- (3) An employee would be made redundant who carries a discriminatory characteristic that by its nature excludes investigating the representation of employees – carriers of the same characteristic – in the workplace.

Ad 1: The first case is, in my opinion, sufficiently exemplary, as the court would not have the possibility to investigate the age structure of the dismissed or current employees. If it didn't even examine the choice of this particular employee, discrimination could be neither excluded nor disproved.

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District Court in Karviná of 6th August 2013, ref. no. 25 C 61/2012 – 60, or the Decision of the District Court in Plzeň – city of 30th June 2014, ref. no. 36 C 236/2013 – 271.

<sup>53</sup> Cf. e.g. the Judgment of the Supreme Court of 22nd May 2012, file ref. 21 Cdo 2358/2011.

<sup>54</sup> Decision of the Regional Court in Ostrava of 6th August 2013, ref. no. 16 Co 232/2013 - 78

Ad 2: The second case is more problematic. It is straightforward obvious that the structure of the dismissed employees is diverse, which may lead to the conclusion that discrimination did not occur. If however the employer may choose “several redundant” employees out of a larger group, and only one of them is of retirement age (or approaching it), discrimination is not yet disproved. The employer’s reasoning might be primarily to “get rid” of the elderly employee and choose the other employees based on objective criteria (e.g. performance). Such case would constitute discrimination (considering this a model case); the unequal treatment consists of the possibility that had the employee not reached a certain age, they would be assessed by objective criteria, and it would be possible they would not have been made redundant. The court, however, cannot identify this fact unless they investigate the criteria for choosing the redundant employee.

Ad 3: It is not possible to prove some reasons for discrimination using the structure of the current or dismissed employees; typically when concerning discrimination based on ethnicity or sexual orientation.

I would like to use the aforementioned (brief) examples to point out that unless the established court practice is broken, in the future, it may be extremely difficult for the victim of discrimination to seek legal redress in the case their employment is terminated (involving discrimination) for the reason listed in the provision of Section 52 c) of the Labour Code. In the event that an employer dismisses a number of employees, with the elderly ones being “first in line”, and the others being chosen based on objective criteria, the dismissed elderly employees have no possibility of proving the employer’s motivation, and they can hardly claim their lawful rights.

### **Sharing the Burden of Proof with Regard to the Form of Discrimination**

Another problematic aspect is defining the forms of discrimination where the transfer of burden takes place. The Anti-Discrimination Act makes distinction between direct and indirect discrimination. It however also considers these as discrimination: harassment, sexual harassment, victimisation, instructing to discriminate, and abetting to discrimination (cf. the provision of Section 2, paragraph 2 of the Anti-Discrimination Act). According to the provision in Section 133a of the Civil Procedural Code, the sharing of the burden of proof occurs when the plaintiff submits evidence to the court from which it may be inferred that *direct or indirect discrimination* was inflicted by the defendant. This however does not preclude the courts from applying the shared burden of proof in the case of other forms of discrimination; this provision has to be interpreted consistently with the EU

legislation, and the CJEU case law indicates that in the case of other forms of discrimination (e.g. harassment), the burden of proof should be shared.<sup>55</sup> The provision of Section 133a of the Civil Procedural Code should therefore be applied not just when direct or indirect discrimination is alleged, but also when discrimination is claimed in the form of harassment, sexual harassment, abetting or instructing to discriminate and victimisation.

I believe that it is practically very complicated to apply the sharing of burden of proof in a constitutionally conforming manner (see the Judgment of the Constitutional Court)<sup>56</sup> to some forms of discrimination – it is not entirely clear at which particular moment would the transfer of burden of proof from the plaintiff to the defendant happen, for instance, in the case of harassment or sexual harassment.<sup>57</sup> In my opinion, the complicated nature of this issue is obvious, among other, from e.g. the decision of the Municipal Court in Brno which dealt with the issue of sexual harassment.<sup>58</sup>

The plaintiff described various “attacks” of sexual character in her filing. The court, however, reached the conclusion that the plaintiff did not manage to successfully prove the individual incidents; it also applied the provision of Section 133a of the Civil Procedural Code, but it is not clear from it whether (or at which stage) the transfer of proof of burden occurred. In the decision, the border line is slightly implied in the following way: *“[the plaintiff] has to prove that she was not treated normally. ... Furthermore, she has to claim that the discriminatory treatment was motivated by violation of the right of equal treatment for men and women, and in a manner of infringing upon human dignity through sexual harassment.”* This reasoning therefore leads to the conclusion that the victim of sexual harassment has to prove the act of harassment itself, or the particular incident, while the defendant proves that even if such incident had occurred, it would not be motivated by the effort to humiliate the plaintiff.

In another case,<sup>59</sup> the court assessed alleged harassment which consisted of a number of offensive verbal attacks. In this particular case, the plaintiff who alleged gender-based discrimination managed to prove the alleged incidents (e.g. through

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<sup>55</sup> CJEU Judgment of 17th July 2008, case C-303/06, S. Coleman v Attridge Law and Steve Law.

<sup>56</sup> See comment no. 24.

<sup>57</sup> A similar position on this issue was taken by legal theory; see Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. Antidiskriminační zákon (Anti-Discrimination Act). Commentary. 1st edition. Prague: C. H. Beck, 2010, pp. 351 – 352.

<sup>58</sup> Decision of the Municipal Court in Brno of 2nd June 2008, ref. no. 21 C 48/2005 – 384

<sup>59</sup> Decision of the District Court in Ústí nad Labem of 25th September 2013, ref. no. 19 C 203/2010 – 138.

witness testimonies). In this case, it was also presumed (with regard to the provision of Section 133a of the Civil Procedural Code) that the attacks were motivated by the plaintiff's gender; the converse was not proved in the proceedings. It should be noted that the lawsuit was dismissed, as the defendant – an employee who was allegedly harassing – lacked the standing to be sued.

The issue of the transfer of burden of proof in the case of harassment or sexual harassment in the workplace is clearly extremely complicated, and it should not be taken lightly in any way. An incorrect application may lead to two extreme situations. Either the victim of discrimination reaches the point where it is entirely impossible to prove the harassment (not considering exceptional situations where a witness is present to the harassment, or e.g. an audio recording is taken), or (in the other extreme point), the defendant may reach a situation when they are not able to refute the allegation of sexual harassment (whereas, to comply with constitutionally conforming interpretation, the defendant may not be pressed to prove negative facts).

#### IV.1.2.3 Administrative courts

The survey in the sphere of justice was primarily focused on the decision-making activity of civil courts. As mentioned previously, administrative courts are concerned with the issue of discrimination as well, but they generally assess the procedures of administrative bodies which impose fines for discriminatory activities. Usually, the subject of their activity is not assessing the individual rights that stem from the Anti-Discrimination Act, with the exception of specific situations, where an administrative body discriminates within the factual scope of the Anti-Discrimination Act – this may concern, for instance, a decision of dismissal of a member of the security force<sup>60</sup>, or a discriminatory decision of a school not to admit a student, etc. Administrative courts may play a significant role in the field of anti-discrimination legislation, particularly when concerning the interpretation of vague provisions contained in the Anti-Discrimination Act. The nature of the administrative court activity, however, indicates that it has little influence over the underreporting of discrimination in the form of filing individual lawsuits. The administrative courts also do not have the option to interpret the contentious points that are the recourse of this part. Their activity may increase the certainty of the decision in a civil lawsuit, but the administrative courts may hardly make a statement with regards to the issue of

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<sup>60</sup> In terms of Act No. 361/2003 Coll., on Service Duty of Members of Security Forces, as amended. These decisions are listed in Table 3, as they have a similar character from the point of view of the victim of discrimination to the decisions from the sphere of labour legislation.

transfer of burden of proof, or to the material satisfaction under the provision of Section 10 of the Anti-Discrimination Act.

The evidence of decisions from the sphere of administrative justice listed in Table 20 does not contain decisions whose subject is the so-called economic discrimination.

**Table 20: The list of decisions**

Court	File ref.	Sphere	Ground	Administrative body	Decision
MC Prague	8 A 191/2014	Goods and services	Age	ČOI (Czech Trade Inspection Authority)	Dismissed
MC Prague	8 Ca 184/2009	Goods and services	I. Age II. Gender	ČOI	Decision set aside
RC Hradec Králové	32 Ad 1/2014	Social security	Gender	ČSSZ (Czech Social Security Administration)	Dismissed
MC Prague	7 A 156/2010	Education	Age	Regional office	Decision set aside
RC Brno	62 Af 21/2013	Education	Nationality	University rector	Decision set aside
MC Prague	6 A 169/2010	Education	Disability	City hall	Decision set aside
RC Brno	30 A 128/2011	Other	Sex. orientation	Registry office	Decision set aside
RC Brno	62 A 14/2013	Employment	I. Age II. Gender	SUIP (National Labour Inspection Authority)	Dismissed
RC Ostrava	73 Ad 17/2010	Employment	Other	Regional office	Dismissed
RC Ostrava	38 Ad 48/2011	Other	Other	MPSV (Ministry of Labour and Social Affairs)	Dismissed
RC Ostrava	73 Cad 2/2009	Other	Other	Regional office	Dismissed
RC Ostrava	22 Af 5/2010	Other	Disability	Financial Administration	Dismissed
RC Ostrava	43 Cad 82/2009	Social security	Nationality	ČSSZ	Dismissed
RC Ostrava	38 Ad 16/2011	Employment	Not listed	SUIP	Dismissed

The contribution of administrative courts in the field of interpretation of anti-discrimination legislation may be demonstrated on, for instance, the decision regarding a lawsuit directed against the Czech Trade Inspection Authority which imposed a fine upon a restaurant that prohibited the entrance of children. The owner of the restaurant placed the following statement at the entrance: *“This restaurant is not suitable for children under 6 years accompanying their parents due to annoyance of the other guests and hotel guests. Entrance only for adults and children over 6 years accompanied by a parent.”* The Czech Trade Inspection Authority assessed this restriction as discriminatory (based on age and gender, or maternity and paternity) pursuant to the provision of Section 6 of Act No. 634/1992 Coll., on

Consumer Protection, as amended (hereinafter the “Consumer Protection Act”)<sup>61</sup>, and imposed a fine to the sum of CZK 10,000 (€ 370). The Municipal Court in Prague<sup>62</sup> quashed the decision of Czech Trade Inspection Authority for being unverifiable. The Czech Trade Inspection Authority defended itself through a cassation complaint and the Supreme Administrative Court quashed the decision on appeal.<sup>63</sup> The prohibition of discrimination pursuant to the provision of Section 6 of the Consumer Protection Act is highly general; it does not contain any further definitions, or a list of prohibited discrimination grounds. Neither does it contain any explicit exemption (or acceptable form of unequal treatment), contrary to the Anti-Discrimination Act which accepts unequal treatment in access to goods and services based on age and gender in the even that it is objectively justified by a legitimate goal, and the means to its achievement are appropriate and necessary. The Supreme Administrative Court therefore “filled” the substantive aspect of discrimination using the Anti-Discrimination Act provisions, and among other issues interpreted some of the vague concepts contained in the Anti-Discrimination Act. According to the Supreme Administrative Court, *“[g]eneral prohibition of entrance of children onto the premises of the restaurant, which is not based on objective and rational grounds, nor is it justified by a legitimate goal, represents discrimination under the provision of Section 6 of the [Consumer Protection] Act. The grounds which may serve as basis for an appropriate and necessary cause to restrict the entrance of children onto the premises, may consist of, for instance, its construction aspects or the nature of services provided; however, it cannot be considered a justified ground to limit the entrance of children onto the premises if the owner only declares their general focus on a specific type of the clientele.”*

In another case, the City Hall of Capital City Prague, Trade Law and Civil Law Section, assessed as discriminatory the advertising campaign of T-shirts with the inscription “I should have studied more” worn by workers of a construction company, majority of them of Roma origin. The administrative body imposed a fine in the sum of CZK 100,000 (€ 3,700) for the discriminatory advertising campaign. The Municipal Court in Prague quashed the decision of the administrative body due to being unlawful.<sup>64</sup> This case also reached the Supreme Administrative Court which set aside the decision of the Municipal Court in Prague.<sup>65</sup> The Act No. 40/1995 Coll., on

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<sup>61</sup> “The vendor may not discriminate against the consumer when selling products or providing services.”

<sup>62</sup> Decision of the Municipal Court in Prague of 20th November 2013, ref. no. 8 Ca 184/2009 – 32.

<sup>63</sup> Judgment of the Supreme Administrative Court of 30th October 2014, ref. no. 4 As 1/2014 – 28.

<sup>64</sup> Decision of the Municipal Court in Prague of 24th April 2013, ref. no. 3 A 111/2010 – 39.

<sup>65</sup> Judgment of the Supreme Administrative Court of 15th October 2013, ref. no. 1 As 46/2013 – 44.

Regulation of Advertising and Television Broadcast, as amended (hereinafter the “Advertising Regulation Act”), similar to the Consumer Protection Act, does not define the concept of discrimination. According to the Supreme Administrative Court, it is possible, with regard to the principle of unity of legislation, to use the provisions of the Anti-Discrimination Act to define the concept of discrimination. Among other things, the Supreme Administrative Court held in the judgment that *“[t]o assess the degradation of human dignity as a value worthy of protection, it is not necessary to prove the attitude of the participating workers towards the wearing of the yellow T-shirts. Even the workers’ potential voluntary attitude therefore plays no role in the assessed case. The right to maintain human dignity, being an inherent and inalienable right, cannot be given up.”*

The above-mentioned information clearly indicates that the administrative courts’ activity assists in refining the vague concepts contained in the Anti-Discrimination Act. The associated certainty or predictability of the courts’ decisions may have positive influence on the willingness of the victims of discrimination to claim their rights through a civil lawsuit.

I have already noted that even in administrative justice, the courts may decide on the individual rights of a person (or on subjective public rights). This typically concerns decisions in the sphere of education. For instance, the Municipal Court in Prague assessed a lawsuit concerning a child not admitted for preschool education.<sup>66</sup> The plaintiff alleged, among other, discrimination based on the medical status. Even though in this case the court was not concerned in the decision with the factual aspect of discrimination, it stated that the appellate body did not deal sufficiently with the plaintiff’s objections, and set aside the decision of the appellate body for being unverifiable.

## **IV.2 ADMINISTRATIVE BODIES**

There are administrative bodies acting in the field of equal treatment and protection from discrimination whose purpose is to investigate whether various entities (employers, service providers, schools etc.) comply with the principle of non-discrimination. In the case they identify violation of the right to equal treatment or an incident of discrimination, they may impose measures to remove the identified deficiencies, or fines to individuals, individual entrepreneurs or legal entities; these fines represent the revenue of the national budget. They may not, however, award

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<sup>66</sup> Decision of the Municipal Court in Prague of 24th April 2014, ref. no. 6 A 169/2010 – 54.



compensation for damage to a victim of discrimination who has to turn to a court with their particular claim pursuant to Section 10 of the Anti-Discrimination Act.

The administrative bodies generally act *ex officio*. Practically, this means that they receive complaints from individuals who became victims of discrimination or witnessed discriminatory action, but the decision to investigate the case (and initiate an inspection or administrative procedure) is at their discretion. There is no legal entitlement to initiate an inspection or an administrative procedure of imposing duty. On the other hand, there is no fee associated with accepting the complaint to act *ex officio*, which is considered to be an advantage by many victims of discrimination, and they use this option before turning to the court or to the Public Defender of Rights. Another fact which may be considered an advantage is that the administrative body may have access to exclusive information (e.g. on unequal remuneration in the workplace) or knowledge (from the fields of psychology, medicine or economics) which the victim of discrimination does not have, and never has to have. Every administrative body also has the duty to inform the complainant on their action regarding the claim, if requested by the complainant.<sup>67</sup> This duty also helps reducing the barrier on the level of the lack of information.

The duty to protect from discrimination has been vested upon several administrative bodies in the Czech Republic. In the following table, the administrative bodies are sorted by the aspects of life in which discrimination is prohibited by the Anti-Discrimination Act.

**Table 21: Administrative bodies**

Sphere	Administrative Bodies
Labour and employment	I. National Labour Inspection Authority, Regional Labour Inspectorates II. Labour offices <sup>68</sup>

<sup>67</sup> The provision of Section 42 of the Act No. 500/2004 Coll., Code of Administrative Procedure, as amended.

<sup>68</sup> Up to 31st December 2011, the Labour Office carried out administrative activities concerning relations prior to the inception of employment contract. These competences were taken over in 2012 by the National Labour Inspection Authority and regional labour inspection offices. According to Section 28 of the Employment Act, the regional branch of the Labour Office offers employment vacancies to potential employees and publishes them with the consent of the employer, including publishing in electronic media. The regional branch of the Labour Office does not offer and does not publish vacancies which are of discriminatory character, or are in breach of the employment legislation (Section 126, paragraph 2), or other legislation, or contrary to good morals.

Goods and services	I. Czech Trade Inspection Authority II. Czech National Bank III. Energy Regulatory Office IV. Czech Telecommunications Office V. Supervisory bodies in the fields of advertising and TV and radio broadcast
Housing	Czech Trade Inspection Authority <sup>69</sup>
Education	Czech School Inspectorate

The above-mentioned administrative bodies have a broader scope of activity and the issue of equal treatment represents only a very narrow segment of their regulatory activity. There is therefore risk of marginalizing this agenda to other law-imposed activities of the administrative bodies. Their activity is, similar to the courts, retrospective: they inspect incidents that have occurred irreversibly, and they impose fines for violating the law. In certain cases, the effect of their activities may be preventative as well, as they may impose remedial measures to remove deficiencies identified during the inspection, which is particularly suitable in cases of ongoing discrimination. In my view, this tool should be used much more frequently than so far, as it may help remedying the situation within several weeks or months, and the discrimination might not reappear at that particular entity (employer, service provider or education body). On the other hand, I cannot overlook the fact that discrimination is a legal concept and only a very limited number of officers of the administrative bodies (inspectors) currently have legal expertise. Dealing with discrimination in the field therefore requires highly qualified officers, or support for their continuous education.

The following part of this survey report is dedicated to the activities of three administrative bodies (National Labour Inspection Authority, Czech Trade Inspection Authority and Czech School Inspectorate) in the field of anti-discrimination between 2010 and 2014. Before that, I should however briefly mention three specific areas in which discrimination is prohibited by public law regulations, and which often remain outside the public eye due to lack of relevant data.

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<sup>69</sup> This concerns cases where an individual entrepreneur publicly offers real property under Section 2, paragraph 1 b) of the Consumer Protection Act. For instance, if a town council rents an apartment, it does not act as an entrepreneur, and its actions cannot be subjected to the inspection by the Czech Trade Inspection Authority.

## **IV.2.1 Specific Issues**

### **IV.2.1.1 Healthcare**

Even though the Anti-Discrimination Act is also concerned with providing healthcare, there is no administrative body in the Czech Republic which would monitor the principle of equal treatment in the sphere of providing healthcare and specific medical services.<sup>70</sup> Though the Defender has encountered cases of discrimination in access to, or providing healthcare,<sup>71</sup> the only recourse which the victims of discrimination could use was an anti-discrimination lawsuit filed with a court.

The role of a body which registers complaints is currently fulfilled by the regional authorities, but only within the extent of duties imposed upon healthcare providers. Complaints are also registered by professional chambers (Czech Medical Chamber, Czech Dental Chamber) which however lack coercive rights that are typical for administrative bodies.

From the institutional viewpoint, there is an asymmetrical situation, where there is no administrative body in one of the fields where discrimination is prohibited, that could effectively protect the public interest, while there are such bodies in other fields. With respect to this, an expert discussion should be launched to create an inspection-type body in the field of healthcare (not just for the issues of equal treatment).

### **IV.2.1.2 Advertising**

The field of advertising may (from a broader viewpoint) fall under the scope of goods and services (it serves to promote them in the eye of the consumer), but in Czech Republic it is regulated by special laws<sup>72</sup>, and the number of supervisory bodies is higher than in case of “standard” consumer protection.<sup>73</sup>

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<sup>70</sup> Act No. 372/2011 Coll., on Healthcare Services and the Conditions of Providing Thereof (Healthcare Services Act), as amended; Act No. 373/2011 Coll., on Specific Medical Services, as amended.

<sup>71</sup> Cf. evidence of the Defender’s Opinions – Legislation – 221 Discrimination – Healthcare. Available at <http://eso.ochrance.cz>.

<sup>72</sup> Act No. 40/1995 Coll., on Regulation of Advertising and Changing and Complementing Act No. 468/1991 Coll., on Operating Radio and Television Broadcast, as amended; Act No. 231/2001 Coll., on Operating Radio and Television Broadcast and on Changing further Acts, as amended.

<sup>73</sup> Council for Radio and Television Broadcasting, State Institute for Drug Control, Ministry of Health, Central Institute for Supervising and Testing in Agriculture, Institute for State Control of Veterinary Biologicals and Medicines, Office for Personal Data Protection, regional trade licensing offices.

The prohibition of discrimination in advertising reflects the public interest in the ethical dimension of media activities which significantly influences the consumers' thought processes (which includes reinforcing prejudices and stereotypes concerning minorities<sup>74</sup>).

Until recently, discrimination in advertising has been outside the scope of interest of supervisory bodies, and has been currently dealt by primarily the non-profit sector.<sup>75</sup> I believe this is one of the fields in which the administrative bodies should intensify their supervisory activities in the future.

#### IV.2.1.3 Civil coexistence and infraction authorities

The Infractions Act contains specific protection from discrimination as well.<sup>76</sup> Infraction authorities may investigate cases where one individual causes damage to other individual based on their national minority or ethnicity, their race, colour, gender, sexual orientation, language, belief or religion, their political or other attitude, their membership or activity in political parties or movements, or in trade unions or other organizations, their social origin, property, ancestry or their marital or family status. This forms one of the merits of infractions against civil coexistence.

The infraction proceeding in this matter, however, cannot be initiated upon the application of the victim of discrimination. The infraction authority has to decide upon the initiation. The victim of discrimination who suffered damage therefore has to decide whether to claim their rights at an administrative body (where they are not in the position of a party to the proceedings, but only a witness<sup>77</sup>), or with a court. Another issue which may dissuade the victim of discrimination from resolving the discrimination through infraction proceedings is the maximum possible imposed fine (CZK 20,000, or approx. € 740), and the fact that the fine imposed upon the offender becomes government revenue.

Although I did not carry out a more thorough survey of the decision-making activities of the infraction authorities, the underreporting of discrimination incidents pursuant to the Infractions Act is attested by the fact that the Office of the Public

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<sup>74</sup> Cf. the Judgment of Supreme Administrative Court of 15th October 2013, ref. no. 1 As 46/2013-44, items 61 – 73, [www.nssoud.cz](http://www.nssoud.cz).

<sup>75</sup> In the Czech Republic, the organization Nesehnutí has been long concerned with the issue of sexist advertising. More information at <http://zenskaprava.cz/tema/sexismus-v-reklame/>.

<sup>76</sup> The provision of Section 49, paragraph 1 e) of Act No. 200/1990 Coll., on Infractions, as amended.

<sup>77</sup> In the case the infraction authority does not initiate the proceeding, the victim of discrimination may only file a complaint according to Section 175 of Act No. 500/2004 Coll., Code of Administrative Procedure, as amended.

Defender of Rights has not registered a single case of discrimination investigated by a infraction authority over the monitored period of 2010 to 2014.

#### **IV.2.2 Monitoring the Supervisory and Decision-making Activities of Selected Administrative Bodies**

In 2009 and 2010, the Public Defender of Rights signed three Memoranda of Cooperation in the field of discrimination, specifically with the National Labour Inspection Authority, Czech Trade Inspection Authority and Czech School Inspectorate. The Defender closely cooperates with these administrative bodies; the cooperation most frequently entails employee training, issuing statements or recommendations on controversial issues, or mere exchange of information on activities in the sphere of equal treatment (through written reports or personal round-table sessions).

First, I would like to express my gratitude that over the monitored period of 2010 to 2014, equal treatment and the issue of discrimination gradually shifted into the focus of these administrative bodies, and are now approached seriously. This is, among other, attested to by the fact that the administrative bodies do not wait to receive submissions from victims of discrimination, but they inspect the compliance with the principle of equal treatment during their routine inspection activities according to their inspection plan. They inform the general public about the results through press releases, standalone publications<sup>78</sup> or annual reports.<sup>79</sup> This approach may significantly decrease the barriers on the level of lack of information (people get to know about the activities of the administrative bodies, about what constitutes discrimination and where they can resolve it), on the social level (increased trust in the actions of the administrative bodies) and it may eventually help overcome the barriers on the level of individual decision-making (discrimination is reported even by persons who would not otherwise deal with it, as they would not believe it was worthwhile). The *ex officio* activity of the administrative bodies, however, also brings up the questions whether the currently applicable and effective regulations are sufficient to deter discrimination, and whether there is any change necessary. Last but not least, the proactive attitude of the administrative bodies reflects positively

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<sup>78</sup> E.g. Šojdrová, M. et al. *Rovný přístup ke vzdělávání v České republice: situace a doporučení* (Equal Access to Education in the Czech Republic: Current State and Recommendations). 1st ed. Prague: Czech School inspectorate, 2014. Available at <http://www.csicr.cz/Prave-menu/Mezinarodni-setreni/Prekonavani-skolniho-neuspechu/Rovny-pristup-ke-vzdelavani-v-CR-situace-a-doporu>.

<sup>79</sup> All three administrative bodies dedicate a part of their yearly reports to the surveyed issues.

upon case law too. The increased inspectoral and administrative activity is necessarily followed by an increased number of decisions, some of which may be later contested at administrative courts. The administrative courts (regional courts and the Supreme Administrative Court) then provide guidelines how to approach the issues of equal treatment and discrimination. This may ultimately dissolve the last barrier on the level of court decisions.

The following part of the survey report is therefore dedicated to the inspectoral and administrative activities of the aforementioned administrative bodies which, in my experience, are the ones that most frequently deal with cases of unequal treatment in the spheres of employment, providing goods and services, and education. These administrative bodies provided copies of administrative decisions for the purpose of this survey (National Labour Inspection Authority, Czech Trade Inspection Authority), and conclusions of their control (inspectoral) activities (Czech Trade Inspection Authority, Czech School Inspectorate) from the years 2010 to 2014.

The purpose of this part of the survey (similar to the part concerning courts) is not to review the processes and decisions of the administrative bodies, but to describe how their activity may help to improve the access to justice for the victims of discrimination. I have included some recommendations to their activity which were over the past years provided by the Public Defender of Rights.

#### IV.2.2.1 National Labour Inspection Authority and regional labour inspectorates

The National Labour Inspection Authority (NLIA) and regional labour inspectorates (RLI) are administrative bodies which were vested by Act No. 251/2005 Coll., on Labour Inspection, as amended (hereinafter the “Labour Inspection Act”) inspectoral authority in the sphere of employment legislation.<sup>80</sup> The NLIA and RLI are at the same time the only national control bodies which can inspect the situation in the workplace *ex officio* and ensure protection of the employees from discrimination. The key mission of the inspectorate is to control the adherence to duties which are imposed by employment legislation, including regulations on health and safety at work, and regulations concerned with the relations prior to inception of employment contract.<sup>81</sup>

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<sup>80</sup> The provision of Section 3, paragraph 1 a) of the Labour Inspection Act imposes upon the labour inspection bodies the duty to monitor compliance with the requirements provided by legislation from which incur rights of the employees, or duties in employment relations.

<sup>81</sup> Act No. 435/2004 Coll., on Employment, as amended.

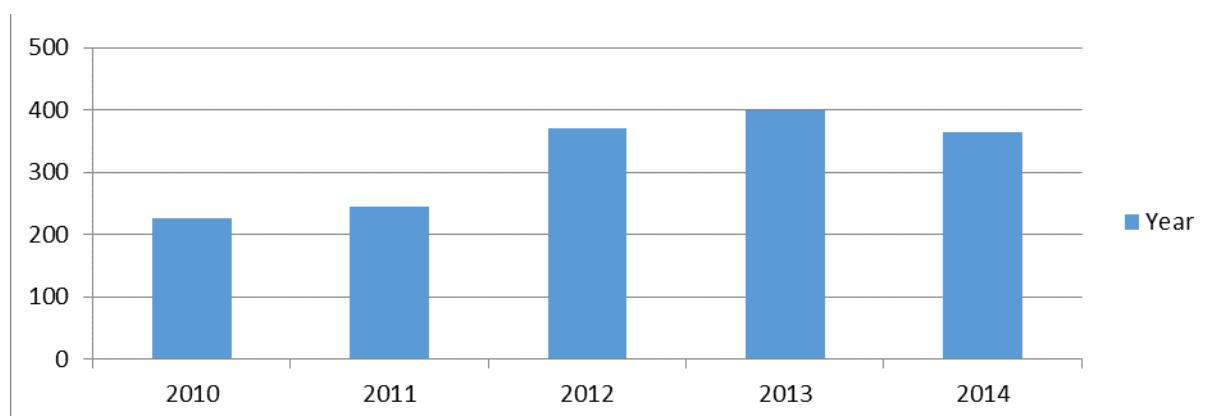
The NLIA and RLIs may (but are not obliged to) initiate an inspection or administrative proceedings based on an individual complaint. As part of the inspection, they may enter the workplace, interview the employees (in the absence of a third person) and impose measures to remove the deficiencies identified throughout the inspection. The result of the inspection is given in the form of an inspection protocol; the result of an administrative proceeding is (usually) an administrative decision on imposing a fine. With regard to the fine which may be imposed for violating the principle of equal treatment, the RLIs may impose fines in the sum of up to CZK 1,000,000 (approx. € 37,037).

### **Development of Submissions to Inspect Equal Treatment (2010 to 2014)**

**Table 22: Development of the number of submissions alleging discrimination in the sphere of employment relations**

<b>Year</b>	<b>No. of submissions</b>
2010	226
2011	244
2012	371
2013	400
2014	365

**Chart 15: Development of the number of submissions alleging discrimination in the sphere of employment relations**



The number of submissions delivered to the RLIs increased steadily since 2010; it only declined in 2014.<sup>82</sup> The submissions for inspection were not just concerned with the field of equal treatment but contained several areas of the labour

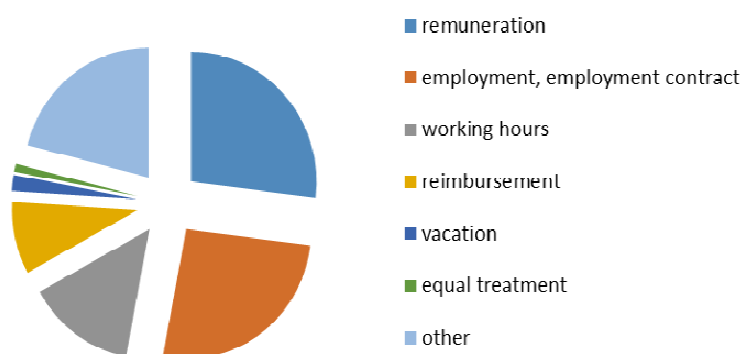
<sup>82</sup> The NLIA and RLIs receive more than 8,000 submissions to control every year. For more detail, see the Annual Summary Reports of Results of Inspection Carried out by Labour Inspectorate. Available at [www.suip.cz/rocnizpravy/](http://www.suip.cz/rocnizpravy/).

law (working hours, holiday entitlement, reimbursements, health and safety in the workplace). It can be said in general that submissions which pointed out solely violation of equal treatment occurred only scarcely. The NLIA statistics also include submissions in which discrimination had been alleged but the subsequent inspection showed that the alleged behaviour did not amount to its legislative characteristics.<sup>83</sup> The submissions are most frequently aimed at employers in public administration (education, government, social services). In the business sphere, the most frequently concerned domains are retail, restaurants and various manufacturing companies.

**Table 23: Findings from inspections based on submissions (2014)**

Area	Percentile share
Remuneration	27%
Employment contract, contract of services	26%
Working hours	14%
Reimbursements	9%
Vacation	2%
Equal treatment	1%
Other	21%

**Chart 16: Findings from inspections based on submissions (2014)**



### **NLIA and RLI Findings from the Inspection Activities<sup>84</sup>**

From the NLIA viewpoint, the issue of unequal treatment and discrimination is an extremely complicated task. In the vast majority of cases, the inspectors are not able to rely on documents provided by the employer; they therefore interview the

<sup>83</sup> "It is evident from the contents of submitted complaints and of questions in consulting that the employees do not know how to grasp the concept of violation of right to equal treatment, and use it to denote basically anything they do not like about their job." Statement of Jiří Macíček, Deputy Inspector General of the NLIA, from 25th January 2011 (Common Memorandum of the Public Defender of Rights and the NLIA, Summary Report for 2010).

<sup>84</sup> Uses findings from regular quarterly reports sent to the Office of the Public Defender of Rights since 2010 (file ref.: 26/2010/DIS/PPO) and from round-table meetings in 2013 and 2014.



employees and search for evidence of unequal treatment directly in the workplace.<sup>85</sup> They routinely encounter contradictory information provided by the employees, or their lack of interest in providing information on the subject of the ongoing inspection. The NLIA also perceives as problematic the fact that when the findings from an inspection (discrimination) are based on information provided by employees (anonymously), it is necessary to make this information available to the employer in the subsequent administrative proceeding, where the employees are called as witnesses. It often happens that the employees give different testimonies in the administrative proceeding on imposing a fine than during the inspection, which has impact on the result of the administrative proceeding (fine not imposed due to lack of evidence).

For this reason, only a minor part (approx. 1 %) of the total findings from NLIA and RLI inspections is concerned with violation of equal treatment. The below table contains total counts of violation of equal treatment in 2013 and 2014.

**Table 24: Violation of equal treatment over the period of 2013 to 2014.**

<b>Sphere</b>	<b>2013</b>	<b>2014</b>
Unequal treatment – most frequently remuneration	117	75
Unequal treatment in agency employment	48	60
Unequal treatment prior to employment contract conclusion (advertising)	45	63

### **Defender's Findings from the Sphere of Inspectoral Activity of the NLIA and RLIs**

During the monitored period, the defender had several opportunities to investigate the proceedings of the NLIA and RLIs in inspecting submissions contesting unequal treatment and discrimination in the workplace (this concerned the inspectors' practises prior to the inspection, or during the inspection). It can be said that this is a sphere where it is extremely difficult to prove committing an administrative offence. The Defender has therefore compiled several recommendations regarding the RLI proceedings so that they may carry out their duties effectively and help fulfil the public interest, which, without doubt, should cover

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<sup>85</sup> In the past, the Defender criticized the practise where a RLI refused to investigate the illegal actions of the employer due to a lack of proof from the individual complainant. In the Defender's opinion, RLIs are required to accept submissions for inspection of compliance with the employment legislation even in the case the individual complainant does not possess documents which would prove this violation, or when the law is violated in such a way that it can be only proven by verbal testimonies of other employees. Report on Investigation of the Public Defender of Rights from 16th December 2009, file ref.: 4294/2009/VOP/LD, available at [www.eso.ochrance.cz/Nalezene/Edit/310](http://www.eso.ochrance.cz/Nalezene/Edit/310).

equal treatment and non-discrimination in any workplace in the Czech Republic. I believe that respecting these recommendations in the long term will lead to removing the barriers on the level of lack of information and on the social level.

**The Defender's recommendations are generally concerned with three areas:**

**Removal the RLI Inspectors from Confidentiality Duty on the Part of the Employee**

The RLI inspectors are bound by the confidentiality duty, and are not allowed (due to protection of the weaker party in the employment relation) to reveal the identity of the person who submitted the complaint for inspection. The identity of the individual complainant may not be revealed even from the structure of the inspection protocol.<sup>86</sup>

In numerous cases, the complaints are submitted by persons who are not concerned with sanctions by the employer, or by former employees. In these cases, respecting the protective regulation is rather counterproductive, as the RLI may not focus on the actions of the employer towards a particular (though former) employee. The Defender therefore recommended that in justifiable cases (particularly when bossing is contested<sup>87</sup>), the RLI inspectors request the individual complainant (current or former employee) to remove them from the confidentiality duty. As a reaction to this recommendation, the Inspector General of the RLIA issued a binding methodical Order on Inspections based on Submissions to Inspect,<sup>88</sup> according to which the inspectors are required to proceed according to the Defender's recommendations. In the event that the individual complainant removes the RLI from the confidentiality duty, the inspector is not allowed to protect the identity (or person) of the individual complainant solely based on their discretion, particularly when such protection would lead to inability to correctly identify the merit of the case.<sup>89</sup>

**Establishing the Facts beyond Reasonable Doubt**

The Defender also recommended that the RLI document the inspection process to such extent that their proceedings are unambiguously following the file

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<sup>86</sup> Investigative Report of the Public Defender of Rights of 20th December 2010, file ref.: 6607/2009/VOP/LD, available at: <http://eso.ochrance.cz/Nalezene/Edit/294>.

<sup>87</sup> Investigative Report of the Public Defender of Rights of 16th September 2013, file ref.: 5798/2013/VOP/ZO, available at: [www.eso.ochrance.cz/Nalezene/Edit/738](http://www.eso.ochrance.cz/Nalezene/Edit/738).

<sup>88</sup> The order from 31st January 2014 is an appendix to the Methodical Order of Inspector General of the NLIA No. 2/2014 (ref. no. 437/1.10/14), effective as of 3rd February 2014.

<sup>89</sup> Investigative Report of the Public Defender of Rights of 21st July 2014, file ref.: 7644/2014/VOP/HP, available at: [www.eso.ochrance.cz](http://www.eso.ochrance.cz).

materials. This is the only way which allows reviewing the conclusions of the inspection, assessing their probative value and checking that the RLI identified the merit of the case beyond reasonable doubt. In the case the RLI interviews the employees of the inspected body within their authority,<sup>90</sup> they are required to take rigorous official records of the communication with the employees.<sup>91</sup> When investigating discrimination, the RLI have to adapt their proceedings to the form of discrimination (e.g. by choosing a suitable comparator<sup>92</sup>). For instance, in the case of indirect discrimination, it is necessary to assess whether the measures had a less favourable impact on a certain group which is defined by a protected criterion. Adapting the proceedings in the case of alleged indirect age-based discrimination in remuneration may consist of, for instance, the RLI inspectors comparing the entire group of employees who receive pension to a group of employees who do not carry the discriminatory characteristic (advanced age associated with eligibility for pension).<sup>93</sup> Carrying out the inspection need not even be a condition to initiate an administrative proceeding with the employer. The Defender stated that should an inspection not be sufficient to identify the committed offence, the RLI should employ the institute of explanation<sup>94</sup> and interview the former employees of the inspected body. Based on the provided explanations, they may consider whether to initiate the administrative proceedings to impose a sanction on the employer in which they would be obliged to take testimony from the persons who had provided the explanations.<sup>95</sup>

### **Informing the Individual Complainant on the Results of the Inspection**

The provision of Section 5, paragraph 2 of the Labour Inspection Act imposes a duty on the RLI to inform the individual complainant on the results of the inspection. It is the Defender's opinion that the barrier on the level of lack of information may be only removed when the RLI deals adequately with all points of the submission for the inspection and explains to the individual complainant (potential victim of

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<sup>90</sup> The provision of Section 7, paragraph 1 of the Labour Inspection Act

<sup>91</sup> Investigative Report of the Public Defender of Rights of 11th August 2014, file ref.: 1758/2014/VOP/EHŠ, available at: [www.eso.ochrance.cz/Nalezene/Edit/1488](http://www.eso.ochrance.cz/Nalezene/Edit/1488).

<sup>92</sup> A person in a comparable position to the person who contests unequal treatment or discrimination.

<sup>93</sup> Investigative Report of the Public Defender of Rights of 10th November 2014, file ref.: 4785/2013/VOP/EN, available at: <http://eso.ochrance.cz/Nalezene/Edit/1236>.

<sup>94</sup> The provision of Section 137 of Act No. 500/2004 Coll., Code of Administrative Procedure, as amended

<sup>95</sup> Investigative Report of the Public Defender of Rights of 15th August 2014, file ref.: 6797/2013/VOP/EHŠ, available at: <http://eso.ochrance.cz/Nalezene/Edit/2580>.

discrimination) all relevant facts so that the information on the results of the inspection reflects all relevant facts that were considered by the RLI, and mentions all findings and conclusions taken thereof.<sup>96</sup> In the case an employer who committed an act of discrimination ensures that corrective action is taken, the RLI always has to consider whether initiating a proceeding on administrative offence (and imposing a fine) does not run counter to the principle of penal repression subsidiarity. The RLI is obliged to justify this process sufficiently to the individual complainant in accordance with the principles of good governance.<sup>97</sup>

#### IV.2.2.2 General comments on administrative decisions of the NLIA and RLIs in the area of labour and employment

The most investigated cases in administrative proceedings from 2010 to 2014 were concerned with discriminatory advertising of vacancies. This concerned advertising found in shop windows, at the doors or otherwise within the premises (working places) of employers which was found during inspections focused on illegal employment. Also concerned were advertisements published in newspapers or online (on portals specializing in publishing vacancies).

The employers often brought up to their defence their lack of knowledge of the Anti-Discrimination Act, or actions of incompetent persons who received no direct order to publish an advertisement with discriminatory text. They often said that they used the wording appropriate to the persons who are usually interested in working at such positions. Some mentioned that they did not intend to exclude anybody. They also often removed the offensive advertisement during the inspection. The inspectorates did not consider these facts as mitigation when imposing sanctions.

The most frequent discriminatory cause in the penalized employment advertising was gender, or offers of work for women, or in several cases for men. Another typical demand was age – young age up to 30 or 45 years, or request for pensioners. The requests for gender and age were often combined. The labour inspectorates considered the combination of more than one discriminatory reason as an aggravating circumstance and took this into account when imposing the sanction. The fines ranged from CZK 2,000 (€ 74) in case the malice of the act was considered as low, to CZK 75,000 (€ 2,777) which was the most frequent fine imposed in the

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<sup>96</sup> Investigative Report of the Public Defender of Rights of 4th December 2014, file ref.: 2109/2014/VOP/EHŠ, available at: <http://eso.ochrance.cz/Nalezene/Edit/1210>.

<sup>97</sup> Investigative Report of the Public Defender of Rights of 13th August 2014, file ref.: 250/2012/DIS/EN, available at: <http://eso.ochrance.cz/Nalezene/Edit/1634>.

capital city of Prague. In other regions, the fines ranged most frequently from CZK 5,000 to CZK 10,000 (€ 185 – 370) according to the financial status of the employer and the circumstances of the case, exceptionally to CZK 15,000 or 20,000 (€ 555 – 740).

### **Examples of Penalized Advertisements**

*Translator's note: Czech language uses inflection to differentiate between masculine and feminine substantive forms; this is impossible to express in English without resorting to verbatim translation (e.g. male chef, female employee etc.)*

*“To all gentlemen chefs! Looking for a specialty chef to a modern, stainless steel kitchen where we keep up with the times and cook contemporary Czech and foreign dishes. We prefer male chef with approx. 10 years of experience and maintenance duties who would cook for the love of the job and not just for the money.*

*Responsible, independent, interested in a young working team.”*

*“Maids for a hotel in Prague. Must have experience, up to 48 years of age. Job suitable for foreigners with residency and EU citizens.”*

*“Female pensioner needed.”*

*“Barman and cleaning lady needed for a restaurant, up to 30 years of age.”*

*“Assistance for cleaning and dishwashing... woman only.”*

*“Casino seeks females aged up to 27 years.”*

*“Looking for skilled women with excellent eyesight to work as operators of an assembly line in industry halls in Plzeň.”*

*“Warehouse keepers, handling truck operators – males aged 25 to 35 years.”*

Apart from discriminatory advertising, there were cases of unequal remuneration, different working conditions for permanent employees and employees supplied by employment agency,<sup>98</sup> and unequal conditions in assigning shifts.

In one case, bossing was also penalized which occurred after the female employee had given notice, and a case of a non-investigated complaint to bullying in the workplace. This case was also taken by a court (see below).

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<sup>98</sup> According to the statement of Jiří Macíček from 23rd March 2014, this is the highest amount of fines imposed by the RLIs and NLIA.

#### IV.2.2.3 Examples of specific decisions of the NLIA and RLIs

##### **RLI for South Moravian and Zlínský regions (ref. no. 18898/9.30/14-3, file ref. S9-2014-26)**

The employer provided the following reason for rejection in the letters of recommendation for employment issued by the Labour Office of the Czech Republic: “The employer confirms that the applicant is rejected due to the reason: the vacancy is for female workers.” The employer defended themselves by claiming they employ both men and women. They take men for physically demanding jobs and women for lighter jobs. The vacancy which men enquired about was eventually filled by a woman. The RLI imposed a fine to the sum of CZK 20,000 (approx. € 740) to the employer. This employer was in the category of 10 to 19 employees.

##### **RLI for South Moravian and Zlínský regions (ref. no. 7613/9.30/12/14.3-PZ, file ref. SD 237/12)**

The RLI imposed a fine to the sum of CZK 50,000 (approx. € 1,850) for publishing an online advertisement containing the following wording: “Seeking part-time female shop assistant to sell paints. Knowledge of product range not required. Max. age 40 years.” When determining the amount of the fine, the inspectorate considered not only the accumulation of discriminatory causes but also the fact that the employer actually did not intend to fill any vacancy but only used this method to monitor the interest of young graduates and professionals.

##### **National Labour Inspection Authority (NLIA ref. no. 407/1.30/12/14.3, Ministry of Labour and Social Affairs ref. no. 2011/91991)**

The NLIA made a decision on an appeal against the decision of the Labour Office of the Czech Republic. The employer sent a request to the Labour Office to fill a full-time vacancy on the position of a warehouse keeper – technician, with requirements of good health, good verbal skills and Type B driver’s license. Two of the applicants subsequently presented letters of recommendation to the Labour Office in which the employer confirmed that the applicant was not accepted due to age over 50 years. In this case, the NLIA confirmed the imposed fine to the sum of CZK 50,000 (approx. € 1,850).

**Judgment of the Supreme Administrative Court of 30th December 2014,  
ref. no. 4 Ads 211/2014 – 36<sup>99</sup>**

The Court affirmed the decision on imposing a fine in the sum of CZK 80,000 (approx. € 2,960) that the RLI imposed for not investigating a complaint on bossing submitted by a female employee. The employer did not investigate the complaint due to sick leave of the employee incurred as consequence of bullying in the workplace. The employer did not investigate the complaint despite being aware of the employee's permitted outings which she offered for use to investigate the complaint. When assessing the situation, the administrative authority based their decision on the fact that the presented documents indicated there was no neglect to investigate; on the contrary, there were signs of an intentional effort not to investigate the complaint.

#### IV.2.2.4 Czech Trade Inspection Authority

Czech Trade Inspection Authority (CTIA) is a government inspection body subordinate to the Ministry of Industry and Trade. This administrative body carries out supervisory activity in the sphere of goods and services in a situation where no special supervisory body exists.<sup>100</sup> The CTIA is in charge of several key tasks in this sphere (e.g. quality control, health and safety control of products).<sup>101</sup> A detailed description of legislative tools that the CTIA may use to ensure these tasks are fulfilled is provided in Section 3 of Act No. 64/1986 Coll., on the Czech Trade Inspection Authority, as amended. The tools include primarily identifying deficiencies at the inspected persons and the causes of these, requesting to provide remedy to the identified deficiencies, and imposing or proposing sanctions and other measures.

The prohibition of the discrimination of the consumer is embedded in the provision of Section 6 of Act No. 634/1992 Coll., on Consumer Protection, as amended. According to this provision, the seller may not discriminate against the consumer when selling products or providing services. The Consumer Protection Act does not explicitly connect the discrimination to "traditional" grounds for discrimination; neither does it specify the forms of discrimination in more detail. This puts the provision into the eye of experts<sup>102</sup> and administrative courts. Prior to the enactment of the Anti-Discrimination Act, the courts reached the decision that a

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<sup>99</sup> See [www.nssoud.cz](http://www.nssoud.cz).

<sup>100</sup> The provision of Section 2, paragraph 1, of Act No. 64/1986 Coll., on the Czech Trade Inspection Authority, as amended.

<sup>101</sup> For more detail, see the provisions of Sections 2 and 2a of Act No. 64/1986 Coll., on the Czech Trade Inspection Authority, as amended.

<sup>102</sup> Cf. Kvasnicová, J. Diskriminace spotřebitele v českém právu (Discrimination of Consumer in Czech Legislation). *Soudní rozhledy*, 2012, No. 6, p 201 onwards.

prohibited criterion of differentiation between consumers may consist of, for instance, their permanent residence<sup>103</sup> or the form of payment of the purchase price.<sup>104</sup>

Similarly to the case of labour inspection bodies, the CTIA may (but is not obliged to) initiate an inspection or an administrative proceeding based on a submission by an individual. The result of the inspection is an inspection protocol; the result of an administrative proceeding is (usually) an administrative decision on imposing a fine. The CTIA may impose a fine up to CZK 3,000,000 (approx. € 111,111)<sup>105</sup> for violating the prohibition of discrimination.<sup>106</sup> The CTIA also frequently uses the instrument of issuing an order, i.e. a simplified form of an administrative decision. The CTIA is also obliged to charge the party to the proceeding for its costs, which are set at a flat rate of CZK 1,000 (€ 37).

### **Development of the Submissions to Inspect the Prohibition of Discrimination of the Consumer (2010 to 2014)**

The Czech Trade Inspection Authority should use complaints, submissions and suggestions by the citizens for its activities.<sup>107</sup> Among other things, it is bound by the law to cooperate with civil organizations to ensure that consumer protection and safety is continuously improved.<sup>108</sup> The CTIA fulfilled this duty over the monitored period particularly in cases of discrimination of consumers based on nationality or ethnicity, in which cases it cooperated with several non-governmental organizations to investigate discrimination in the spheres of private market housing and of entry into various food and beverage facilities.

**Table 25:**

	2010	2011	2012	2013	2014
Total number of complaints in the section of consumer protection	18,893	20,382	23,116	22,505	22,187
Number of complaints concerning discrimination of consumer	71	58	70	65	106
Number of cases of identified discrimination	7	17	13	9	40
Number of inspections initiated in the sphere of discrimination of the consumer	3,443	1,369	1,344	1,000	1,254

<sup>103</sup> Judgment of the Supreme Administrative Court of 16th March 2007, ref. no. 4 As 63/2005 – 69, [www.nssoud.cz](http://www.nssoud.cz).

<sup>104</sup> Judgment of the Supreme Administrative Court of 11th April 2006, ref. no. 8 As 35/2005 – 51, [www.nssoud.cz](http://www.nssoud.cz).

<sup>105</sup> And other supervisory bodies listed in the provision of Section 23 of Act No. 634/1992 Coll., on Consumer Protection, as amended.

<sup>106</sup> This constitutes an administrative offense listed in Section 24, paragraph 7c) of Act No. 634/1992 Coll., on Consumer Protection, as amended.

<sup>107</sup> The provision of Section 13, paragraph 2 a) of Act No. 64/1986 Coll., on the Czech Trade Inspection Authority, as amended.

<sup>108</sup> The provision of Section 13, paragraph 1 b) of Act No. 64/1986 Coll., on the Czech Trade Inspection Authority, as amended.



The number of submissions regarding discrimination of the consumer that were delivered to the CTIA from 2010 to 2013 fluctuated on average of approximately 66 submissions per year. A more significant increase in submissions occurred only in 2014 when the CTIA received a total count of 106 submissions concerning discrimination. Observing the potential development of this trend is certainly going to be a matter of interest.

**Table 26:**

<b>Ground</b>	<b>Number of complaints</b>
Different status	30
Age	16
Ethnicity	8
Gender	2
Nationality	28

Given that the Consumer Protection Act does not contain any list of grounds for discrimination (not even exemplary), the CTIA had to assess whether discrimination had occurred in any alleged case of unequal treatment towards a consumer. With regards to the identification of discrimination as related to the individual causes, the most frequent cause of discrimination of a consumer was based on a different status. A total number of 30 cases were identified over the monitored period. Among other (already traditional) discrimination grounds were nationality (28)<sup>109</sup>, age (16) and ethnicity (8). In a few cases, gender or disability appeared as a prohibited ground for differentiation.

### **CTIA Findings from the Inspectoral Activities**

The CTIA identified discrimination of the consumer in 86 cases. The most frequently identified practice was double pricing (or so-called service surcharges) for persons who did not speak Czech or who came to the Czech Republic from outside to purchase services (restaurants, hospitality and spa services, tours). The average

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<sup>109</sup> The CTIA decision offer does not make it obvious when the reason for inadmissible differentiation consists in the citizenship and when it is nationality. The relation of the citizenship and nationality in the context of economic discrimination would require a more detailed analysis, which is not necessary for the purposes of this research report, though..

fine imposed by the CTIA for double pricing reached the sum of CZK 43,750 (€ 1,620). The CTIA used the Recommendation of the Public Defender of Rights for Price Differentiation as a supporting instrument to justify its decisions.<sup>110</sup>

Under the scope of sales events, the CTIA most frequently identified (apart from unfair business practices) unjustified denial of entry of consumer to the sales event (without any relation to a specific ground for discrimination), or *a priori* exclusion of persons of a certain age. In the first case, it imposed an average fine of CZK 46,666 (€ 1728); in the second case, the average fine reached CZK 25,833 (€ 956).

Age discrimination also appeared in access to financial or hospitality services. In case of financial services, the most frequent incident was concerning age limits for consumer loans (lower limit at 18 to 20 years, upper limit at 65 to 70 years).<sup>111</sup> Another restriction concerning financial products by non-banking providers was associated with nationality, which was fined twice in total by the CTIA to the sum of CZK 20,000 (€ 740) in both cases.

Discrimination in access to private market housing based on ethnicity was investigated in a total of six cases. The CTIA imposed fines to real property agents at an average sum of CZK 12,833 (€ 475) for these incidents. The agents most frequently brought up to their defence the argument that they acted on behalf of the proprietor. The CTIA correctly refuted these arguments.<sup>112</sup>

The CTIA most frequently identified the discrimination of consumer through the instrument of control purchase.<sup>113</sup> The CTIA inspectors used the submissions from the consumers as a salient point for inspectoral activities. They only identified the discrimination (offence) itself at the place of the inspection. To avoid jeopardizing the purpose of the inspection, they only initiated it at the moment of identification of violation of law.<sup>114</sup> When identifying unjustified price differentiation, the inspectors presented a situation in which a person of other nationality ordered a service (the

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<sup>110</sup> Recommendation of the Public Defender of Rights for Price Differentiation of 23rd August 2011 (file ref.: 158/2010/DIS/JKV). Available at: <http://eso.ochrance.cz/Nalezene/Edit/2380>.

<sup>111</sup> The Public Defender of Rights criticized the upper age limit for access to some financial services in the past. Based on the survey results from 2013, the Defender recommended not using upper age limits for selected products. For more detail, see the Survey of the Public Defender of Rights – Availability of Financial Services for the Elderly (2013). Available at: [http://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyzkum/Vyzkum\\_financni-sluzby-pro-senioru\\_grafika.pdf](http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_financni-sluzby-pro-senioru_grafika.pdf).

<sup>112</sup> Cf. report from the survey by the public defender of rights of 10th September 2014, file ref.: 112/2012/DIS/VP, available at: <http://eso.ochrance.cz/Nalezene/Edit/2000>.

<sup>113</sup> The provision of Section 8 b) of Act No. 255/2012 Coll., Inspection Code.

<sup>114</sup> The provision of Section 5, paragraph 2 of Act No. 255/2012 Coll., Inspection Code.

order was placed in foreign language), in case of ethnic discrimination, the CTIA cooperated with non-governmental organizations, or employed inspectors of Roma origin.

### **Interesting Cases**

#### **Adults only and prohibition of age-based discrimination (CTIA ref. no.: 41134/13/O100/2000/13/Če/Št, 12th July 2013)**

The CTIA imposed a fine to the sum of CZK 50,000 (€ 1,851) to an entrepreneur for not allowing the stay of children younger than 8 years at their accommodation facilities, except for certain pre-determined dates (various school holidays throughout the year). By this measure, the entrepreneur allegedly discriminated against consumers who wished to use their services together with their children younger than 8 years. The entrepreneur appealed the imposed fine within the designated time limit. The CTIA Head Office assessed the individual arguments that the entrepreneur presented in the appeal. As for the argument of child safety, the head office stated this was a valid ground for differentiation. However, blanket exclusion is neither appropriate nor necessary in the opinion of the Head Office. The entrepreneur could ensure safety by prohibiting the children from accessing certain parts of the resort (e.g. swimming pool, whirlpool, or sauna), or prohibiting them from participating in certain activities (horse riding or dog sled riding). The Head Office also pointed out that the children's legal guardians are ultimately responsible for their safety, rather than the entrepreneur. The CTIA Head Office eventually identified the key cause of the age restriction to be "guaranteeing peace, effective recreation and undisturbed course" of various events (mostly company events). The Head Office based its decision on the presentation of services provided on the website of the resting resort. The CTIA Head Office found this purpose to be legitimate and the restriction to be appropriate and necessary with regard to the range of provided services. The CTIA also did not omit the fact that the entrepreneur offered services to families throughout the year and provided various interesting activities for them. The consumers therefore are not completely excluded; they may also use the services of other providers. The appeal body therefore set aside the decision of the first instance and discontinued the proceeding.

#### **Refusing entry to a club to persons of Roma ethnicity (CTIA ref. no.: 79740/14/O100/2000/14/HI/Št, 9th September 2014)**

The entrepreneur refused entry to their premises to three persons of Roma ethnicity; previously, the entrepreneur allowed entrance of persons of non-Roma ethnicity (CTIA inspectors). The CTIA imposed a fine to the sum of CZK 400,000 (€ 14,814) upon the entrepreneur. The entrepreneur appealed this decision by stating

this offence did not occur, and requested the fine to be decreased. According to the entrepreneur, the inspectors sided with one party, as there were five persons of Roma ethnicity on the premises during the inspection. The person who was refused entry was, to the entrepreneur, of similar appearance to a person who had acted inappropriately on the premises in the past. The reason for refusing entry therefore was not the person's ethnicity. As for the sum of the fine, the entrepreneur said that it would bankrupt them. The appeal body did not accept the entrepreneur's arguments. The fact itself that there were persons of Roma ethnicity on the premises during the inspection does not have any impact on the question of committing an offence. The entrepreneur also did not proceed correctly by refusing entry to a person solely based on a suspicion that they did not investigate any further. In the event an entrepreneur refuses entry to a person with whom they had bad experience in the past, it is the appeal body's opinion that they have to be certain it is the same person. The request for appropriateness was further non-compliant with the fact that the entrepreneur also refused entry to the Roma women who came with the "suspicious" man. With regard to the sum of the fine, the appeal body found out that the principle of prohibition of double jeopardy was violated and that the entrepreneur's financial situation was not favourable, and decreased the sum of the fine to CZK 200,000 (€ 7,407).

**Double pricing and gender-based discrimination (file ref.: 30/1118/12, 18th January 2012)**

The entrepreneur operated a disco. On their website, they informed on the entrance fees for various dance parties. The CTIA found out that the prices differed based on the gender of the consumer (sometimes both genders paid the same price, sometimes women paid less, sometimes women had free entry). The prices differed in the range of 30 CZK. The CTIA carried out a control purchase and confirmed that the entrepreneur indeed charged different entrance fees for both genders, as declared on their website. The CTIA decided that the entrepreneur violated the prohibition of gender-based discrimination,<sup>115</sup> and ordered a spot fine to the sum of CZK 2000 (€ 74). The entrepreneur promised to remedy the situation immediately.

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<sup>115</sup> The approach to this issue is however not unified across all EU member states. See Equinet report. *Equality bodies and the Gender Goods and Services Directive* (2014). Available at: <http://www.equineteurope.org/Equality-Bodies-and-the-Gender>. In this issue, the Public Defender of Rights considers the conditions for the discount according to Section 7, paragraph 1 of the Anti-Discrimination Act. See the Investigative Report of the Public Defender of Rights of 28th May 2012, file ref.: 244/2011/DIS/JKV, available at: <http://eso.ochrance.cz/Nalezene/Edit/1780>.

**Refusing to provide accommodation services based on political conviction (file ref.: 44549/14/4000, 9th July 2014)**

An entrepreneur who provided hotel services stated the following information on their website: *“As of 24th March 2014, we do not provide accommodation to the nationals of Russian Federation. The reason is the annexation of Crimea. The services of our hotel may be used only by RF nationals who sign a proclamation in which they express their disagreement with the occupation of Crimea that violates all norms that should be valid in the 21st century.”* This information was also presented on the hotel doors. Several consumers complained to the CTIA. The CTIA inspector acted as a consumer who was interested in securing accommodation for her Russian boyfriend who would come to visit her in the Czech Republic. The receptionist on duty informed her that they would accommodate her boyfriend but that a condition was placed by the service provider for her boyfriend to sign the following declaration: *“I hereby declare that as a citizen of the Russian Federation, I disagree with the occupation of Crimea which violates all norms that should be valid in the 21st century.”* The identical text was translated into Russian below this text. The CTIA assessed this provision to be discriminatory and imposed a fine by an order, to which the entrepreneur submitted an appeal. In the appeal, they argued, among other things, the sanctions imposed on Russia by various entities. The CTIA however maintained its position and stated that the discrimination ground was not nationality but political or other conviction of the citizens of Russian Federation. The entrepreneur was not hindered from expressing their political views in any way. They however cannot be expressed at the cost of violating the consumer rights (their discrimination). The CTIA therefore imposed a fine to the sum of CZK 50,000 (€ 1,851). Among other things, the CTIA also took into account that this was the first violation of the Anti-Discrimination Act by the entrepreneur, and that after the inspection had been concluded, the information was removed from the hotel website.

**Kids’ meals (file ref.: 400403/2011/4000/Vel., 4th May 2011)**

The CTIA inspector ordered the “Little Mole” dish from the section “For our Little Eaters” in a restaurant facility. For a dish of 80 g weight, she was supposed to pay 59 CZK (€ 2.20). The waiter however refused to take the order. The inspector found out there was a similar dish on the menu of 150 g weight and priced at 106 CZK (€ 4). When buying the cheaper dish, the consumer did not receive any advantage, quite contrary. The reasons for differentiation were not mentioned in the menu and were not explained by the entrepreneur during the inspection, either. The collocation “Little Eater” (not very hungry, low age, low height) was unclear according to the CTIA. The entrepreneur therefore had to pay a fine and cover the costs of the proceeding to the total sum of CZK 3,000 (€ 111).

#### IV.2.2.5 Czech School Inspectorate

Czech School Inspectorate (CSI) is an administrative institution subordinated to the Ministry of Education, Youth and Sports whose purpose is to inspect the processes of schools and education facilities. The inspection activities are diverse and are described in detail in the provision of Section 174, paragraph 2 of Act No. 561/2004 Coll., on Preschool, Primary, Secondary, Vocational and Other Education (Education Act), as amended (hereinafter the "Education Act"). Inspections are carried out in accordance with the plan of key tasks for the relevant school year, or based on submissions, complaints and petitions. In the case of inspection activities based on a complaint, the CSI investigates the individual claims stated in the complaint, and submits the result of the inspection to the founder for further proceedings. The founder informs the Czech School Inspectorate on handling the complaint and on possible remedial measures taken.

A significant part of the inspectoral activities is assessing the conditions, processes and results of education in schools, and education services. For this assessment, the CSI has to work in accordance with the principles and targets set by the Education Act under the provision of Section 174, paragraph 7 of the above Act. The key criterion of this activity has to be observing the effectiveness of the support of the child's or student's personality and the principle of non-discrimination.<sup>116</sup>

The CSI may initiate infraction proceedings in the case the person responsible for adoption or fulfilment of the measures to remedy the deficiencies identified during the inspection (most frequently the head of the school) fails to adopt or fulfil these measures within the time limit set by the CSI. The CSI also has the right to submit a proposal to the school or education institution founder to declare bankruptcy of the school, or may submit a proposal to dismiss the head teacher. The founder is not obliged to comply with the proposals of the CSI. The hardest proceedings the CSI may choose according to currently effective legislation is submitting a proposal to remove the school, education institution or field of education from the school registry.<sup>117</sup> This proposal is decided by the Ministry of Education, Youth and Sports.

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<sup>116</sup> According to section 2, paragraph 1 a), education is based on the principle of equal access to education for all citizens of the Czech Republic or other EU member state without any discrimination based on race, colour, gender, language, religion or belief, ethnic or social origin, property, ancestry, health status or other status of the citizen.

<sup>117</sup> The conditions of Section 175 of the Education Act have to be fulfilled.

## Development of Submissions to Inspect Equal Access to Education (2010 to 2014)

**Table 27:**

	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014
Total number of submissions in the section of equal access to education (discrimination)	16	11	11	13	24
Number of cases where the merit of the complaint was justified	8	4	3	4	9
Number of cases where the merit of the complaint was not detectable	0	2	6	2	6
Number of cases where the merit of the complaint was not justified	8	5	2	6	9
Number of initiated state controls/inspections in the sphere of equal access to education	11	5	3	1	9

The CSI keeps a statistic of the submissions by school years. According to the analysis of complaints and submissions, the CSI received over the monitored period 464 submissions a year on average. The highest number of submissions was received in the school year 2013/2014 (527), which had an impact on the increase of number of submissions to inspect the compliance with equal access to education (24 submissions). Over the past years, the share of submissions which alleged discrimination oscillated around 3 % per year.

The Education Act contains an open list of discrimination grounds (“other status”). Because of this, the most frequently contested discrimination ground over the monitored period was this one (44 cases).<sup>118</sup> Unlike the Anti-Discrimination Act, the Education Act considers the health status in general to be a protected ground.<sup>119</sup> This appeared among the complaints several times (15 cases), particularly in association with securing special education needs of the child, pupil or student according to section 16 of the Education Act. Among other alleged discrimination grounds were ethnicity, gender, nationality, and religion.

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<sup>118</sup> In the inspectorial activities, the following reasons for discrimination between students appeared: a lack of knowledge of electrical measurements, not eating in the school cafeteria, enrolment in a sports class, student in foster care, student threatened by poor grades, student of a four-year high school, parent’s membership in the PTA, student enrolled in a class with intensive language courses, parents’ employment etc. This collective category may include situations where bullying by a teacher or by the school management is alleged without a particular reason. Unless the alleged punishment of the student after submitting a complaint to the CSI had any relation to another reason listed in Section 2, paragraph 1 a) of the Education Act, the complaint was also listed under the reason “different status of the citizen”.

<sup>119</sup> Not only medical disability.

**Table 28:**

<b>Ground</b>	<b>No. of complaints</b>
Other status	44
Health status	15
Ethnicity	7
Religion	5
Gender	2
Nationality	1

The CSI also differentiates between the individual points of the complaint, as the submitting individuals allege several violations of the school regulations in one complaint (e.g. educational measures, corporal punishment of the student, security, school boarding). Over the monitored period, the CSI did not initiate any infraction proceeding due to discrimination with any head teacher of the school, nor did it exploit its right to submit a proposal to remove a school from the school registry.

### **CSI Findings from the Inspectoral Activities**

Similar to the aforementioned administrative bodies, the CSI also encounters situations in which the submitting individuals (most frequently the legal guardians of the child, pupil or student) do not understand the legal contents of the concept of discrimination. The CSI inspectors try to resolve every complaint (and the individual points listed in it) within 30 days. For more complicated cases, the deadline for resolving the complaint is extended to 60 days. The CSI has also registered cases where the parents are concerned about submitting a complaint, and rather consult the inspectors on the correct procedure that the school should take. On this level, the CSI may help in removing the barriers on the individual level. There are often complaints submitted anonymously concerning the situation in the school or education facility. On occasion, the complainants withdraw their complaint. A high ratio of the complaints is based on statements that cannot be supported with evidence.

Over the monitored period, the CSI released several statements regarding the issue of education of Roma children and of children with disability. Within the framework of the inspectoral activity, it published important thematic reports concerned with education of children with special education needs according to the General Education Program for Elementary Education – the annex governing the



education of students with mild mental disability (GEP EE MMD).<sup>120</sup> With regards to equal access to education in general, it produced several key recommendations following the results of the PISA survey<sup>121</sup> and the OECD survey.<sup>122</sup> In this regard, the CSI is beyond the activity of the aforementioned administrative bodies, and comes close to a body which significantly contributes to the formation of the education policy. Its inspectoral activity therefore also serves to remove barriers on the social and legislative levels.

### **Defender's Findings on the Inspectoral Activity of the CSI**

As part of her surveys,<sup>123</sup> the Defender formed several recommendations to the CSI which are concerned with the sphere of equal treatment in education. These recommendations stem from the presumption that the state should, through its authorities, have at mind the best interests of the child, particularly when the child's guardian neglects these interests, or even acts in stark contrast to these interests. According to the Defender, the CSI should therefore submit an initiative to initiate a review proceeding if it finds out during its inspectoral activity that one of the parents of the child was clearly not informed about the fact that their child was transferred to a reduced education programme.<sup>124</sup> Similarly, the CSI should not satisfy themselves with a statement by the school that the founder formally permitted increase of the maximum number of children in a class in accordance to the Education Act, but should investigate within its inspectoral activity whether the increase had any negative impact on the level of the provided education.<sup>125</sup>

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<sup>120</sup> Some examples include "Public administrative and state control in practical elementary schools" from 2010, "Process of transformation of former special schools in the school year 2011/2012" or "Support of inclusive education in elementary and high schools 2012/2013". Available at: <http://www.csicr.cz/cz/DOKUMENTY/Tematicke-zpravy>.

<sup>121</sup> "The survey indicates that from 2003 to 2012, the influence of socioeconomic background in the Czech Republic on the results of the students in mathematics rose by 13 points, which might attest to some increase of inequality in the sphere of education opportunities. The previous PISA analyses had already shown that the higher share of differences in average results of the students is caused by differences between the schools themselves, which confirms the selective character of the education system." For more detail, see Šojdrová, M. et al. *Rovný přístup ke vzdělávání v České republice: situace a doporučení* (Equal Access to Education in the Czech Republic: Current State and Recommendations). 1st ed., p. 14. Prague: Czech School inspectorate, 2014. Available at: <http://www.csicr.cz/Prave-menu/Mezinarodni-setreni/Prekonavani-skolního-neuspechu/Rovny-pristup-ke-vzdelavani-v-CR-situace-a-doporu>.

<sup>122</sup> More information on the activity "Overcoming the school failure in the Czech Republic" at <http://www.csicr.cz/Prave-menu/Mezinarodni-setreni/Prekonavani-skolního-neuspechu/Rovny-pristup-ke-vzdelavani-v-CR-situace-a-doporu>.

<sup>123</sup> Carried out according to Sections 14 and 15 of Act No. 349/1999 Coll., on the Public Defender of Rights

<sup>124</sup> Investigative Report of the Public Defender of Rights of 27th August 2014, file ref.: 5893/2012/VOP/BN, available at: [www.eso.ochrance.cz](http://www.eso.ochrance.cz).

<sup>125</sup> Investigative Report of the Public Defender of Rights of 17th February 2015, file ref.: 6928/2013/VOP/TG, available at: [www.eso.ochrance.cz/Nalezene/Edit/2632](http://www.eso.ochrance.cz/Nalezene/Edit/2632).

There were some cases in which the CSI and the Defender reached the same legal conclusions. For instance, it is not possible for a school to adopt a rule in the internal regulations of the school club that they cannot admit students who require special assistance, or students who were diagnosed with a behavioural disorder.<sup>126</sup> Similarly, both institutions agreed that the potential failure in educating a student with a disability cannot be fully attributed to the school only. When considering indirect discrimination caused by disability, it is necessary to take into account the specific methods of the school when using supportive and balancing measures (particularly their timeliness and effectiveness) on the one hand, and the competences, overall attitude to studies, and cooperation of the particular student, or their legal guardian, on the other hand.<sup>127</sup> According to the CSI and the Defender, it is not possible to presume the medical ineligibility of a student for participation in a foreign trip (convalescent activity) based on being relieved of participating in physical education. Only a physician may verify the medical eligibility. Any *a priori* exclusion of students who are relieved of participating in PE might lead to violating the principle of equal access to education based on health status.<sup>128</sup> In addition, in a case concerned with wearing a religious symbol (hijab) on the school premises during theory lectures, the CSI eventually sided with the Defender and assessed the complaint of a Muslim student as justified.<sup>129</sup>

The Defender, however, disagrees with the CSI regarding its activities towards school counselling facilities which significantly influence the exercise of the right to education. The Defender is convinced that whenever the school consulting institution does not proceed in accordance with expert knowledge when issuing reports and recommendations for education of children with special needs, the Czech School Inspectorate has the right to state violation of Section 16, paragraph 1 a), or 1 b) of the Education Act, and mandate a remedial measure.<sup>130</sup> The CSI is of the opinion that the Education Act does not offer this possibility. This contradiction ought to be resolved by an amendment to the Education Act.

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<sup>126</sup> Investigative Report of the Public Defender of Rights of 3rd July 2014, file ref.: 49/2013/DIS/ZO, available at: [www.eso.ochrance.cz/Nalezene/Edit/2014](http://www.eso.ochrance.cz/Nalezene/Edit/2014).

<sup>127</sup> Investigative Report of the Public Defender of Rights of 14th April 2014, file ref.: 133/2012/DIS/ZO, available at: [www.eso.ochrance.cz/Nalezene/Edit/2016](http://www.eso.ochrance.cz/Nalezene/Edit/2016).

<sup>128</sup> Investigative Report of the Public Defender of Rights of 28th March 2011, file ref.: 138/2010/DIS/JKV.

<sup>129</sup> Investigative Report of the Public Defender of Rights of 2nd July 2014, file ref.: 173/2013/DIS/EN, available at: <http://www.eso.ochrance.cz/Nalezene/Edit/2006>.

<sup>130</sup> Opinion of the Public Defender of Rights of 10th September 2014, file ref.: 44/2014/DIS/HP, available at: [www.eso.ochrance.cz/Nalezene/Edit/1484](http://www.eso.ochrance.cz/Nalezene/Edit/1484).

## **Interesting Cases**

### **The duty of parents to provide hall monitoring for their son in the school during two longer breaks (ČŠIP-228/10-P, 4th March 2010)**

A primary school provided education to a student with Asperger's syndrome who was recommended by the school counselling facility to receive individual integration and a pedagogical assistant to aid with their behavioural issues. The school however did not establish this position and did not make a request to the regional office to express its consent and grant funds for the assistant's pay. The school claimed that one assistant in a low-number class where another student with mental disability was studying should be sufficient. The parents therefore had to commute to the school for one and half year to provide care to their child during the two long breaks. The school also did not enable the class teacher to attend training focused on autism. The CSI found the school's negligence to be a violation of the principle of equal access to education (Section 2, paragraph 1 a) in conjunction with Section 16 of the Education Act). The case was remedied only in the second semester, when the child (by then a second year student) started to study with the support provided by a pedagogical assistant.

### **Student expelled from outdoor school trip due to religion (ČŠIA 564/10-A, 9th June 2010)**

The student's parents are members of the Jehovah's Witnesses religious organization. Prior to their daughter's departure to the outdoor school trip, they signed a statement on common procedures in the case of student's medical problems during the outdoor trip. They also included a written request that should the need arise, their daughter was not to receive blood transfusion, but instead transfusion of blood-free derivatives. The primary school subsequently refused to accept the cash deposit, and did not allow the student to participate in the outdoor trip. The school alleged that it would not be able to provide adequate medical care in accordance with the parents' requests. The CSI reached the conclusion that the school violated the principle of equal access to education, as there was no legitimate ground for such an approach. The CSI referred to the provisions of Section 2, paragraph 1 a) and Section 21, paragraph 1 a) of the Education Act.

### **Educational measures taken in the case of a student with ADHD (ČŠIL-395/11-L, 30th June 2011)**

A student of the sixth year disturbed the class, could not concentrate, was impulsive, kept forgetting the equipment and disregarded the teacher's reprimands. The school was convinced that the student's behaviour exceeded the extent of their diagnosed ADHD, and throughout the year rated the student's behaviour from class reprimand to a B in good behaviour. The CSI compared this measure with the

classification of the ADHD symptoms and then reviewed the school consulting institution's recommendation for work with this student. The CSI reached the conclusion that the school respected the diagnosed disorder during classwork, but in assessing the student's behaviour, it issued repeated corrective measures that were excessive to the student's condition. The CSI also stated that the school was less than diligent in cooperating with the student's mother, and that it did not take the opportunity to cooperate with a consulting institution.

**Bullying of Roma twins by their class teacher (ČŠIE-376/11, 8th March 2011)**

A class teacher in an elementary school repeatedly spatially excluded Roma twins from the group of their peers (both children were seated separately in the back seats of the class; the teacher also moved their locker to a different area of the school). During the Czech language lesson, the teacher dismissed the Roma student's question by saying: "Should I explain it to you in Roma since you can't understand it?!" The teacher also erred in handing out reprimands. The school regulations permitted reprimanding in case of forgetfulness and minor misbehaviours. The twins were however reprimanded for poor grades in the Czech language and national history. Another teacher also approached one of the Roma students and "compressed her face with her hands so forcefully that the teacher's fingerprints remained visible." All the incidents were confirmed through witness testimonies. The CSI stated that the school did not take adequate measures against the teacher who treated the Roma twins unequally.

**Student accused of racism (ČŠIL- 389/12-L, 12th September 2012)**

A fourth year student "A" presented his report book to his mother with the following message written in it: "Please explain to your son that loathing people because of their colour is unacceptable and detestably racist!" The mother submitted a complaint on the school for unjustified accusation of her son of racism. The CSI found out that the message in the report book was preceded by a number of incidents. The class teacher found a letter in the class confidential message box in which a student complained about the behaviour of student A and his classmate (in the form of expletives and mocking). The mother was informed about this behaviour. The problems kept going on. The class teacher (who was also the methodologist of prevention) subsequently organized a small-scale survey in the class. The survey results showed that the behaviour of the student A towards a particular student violated the school regulations. The student A admitted to saying some of the expletives. A discussion was held between the parents of all the students concerned and the school management. The pedagogical council recommended to the head of the school to issue a reprimand to the student A. The parents of the student A

disagreed. The CSI reached the conclusion that the school's actions were consistent with the Education Act and appraised the school's approach. The school participated in the project "The Roma and us", explained the issues of dangerous racism in its classes, introduced the school regulations to the students, held discussions with all persons concerned and encouraged them to cooperate in a constructive way.

**Parents' employment and operation of a kindergarten (ČŠIB-287/14-B, 28th February 2014)**

The kindergarten A made the following announcement: "During the spring holidays, kindergarten B will be open for children of working parents. We kindly ask all working parents to report their wish to enrol their children in kindergarten B by Friday at the latest." The CSI found out that the head of kindergarten A did not consult the restriction of the operating hours with the founder and did not provide any significant operational reasons. The CSI also identified violation of the principle of equal access to education, as this measure posed a disadvantage to the children of unemployed parents.

**Free contact among classmates (ČŠIE-549/14-E, 1st July 2014)**

The teacher X prohibited a female student of the eighth year to visit her severely handicapped classmate during breaks which he spent with his pedagogical assistant in the training kitchen. The reason for the prohibition was the student's declining grade in the Czech language. The teacher recommended to the students to use the breaks to supplement her curriculum from the notes of her classmates. The CSI however took testimony from teacher Y who was in charge of the integration of the handicapped student and found out that the female student did not go to the kitchen to see the assistant (as believed by teacher X), but to see her classmate, to talk to him, to bring him various little items and to serve as his only contact with his peers. The handicapped student was over the past months only studying with the assistant in the unsuitable space of the training kitchen and did not participate in classes with his classmates; this isolated him completely. The CSI identified violation of equal access to education, as the prohibition of teacher X restricted free and natural contact of students; this was in CSI's opinion particularly startling, since in this case the student concerned had special needs and his possibilities to spend time in company of others were severely restricted due to his immobility. The CSI also identified violation of the Education Act with regards to providing staff for individual integration and not enabling the student's education in the tenth year.

### **IV.3 BARRIERS IN DEFENCE FROM DISCRIMINATION AS VIEWED BY THE COURTS AND ADMINISTRATIVE BODIES**

When investigating the barriers that are encountered by victims of discrimination who strive to assert their rights, I was also interested in the viewpoints of the administrative bodies and the courts. The administrative bodies are tasked with investigating whether the subjects comply with the principle of non-discrimination; the courts rule on potential discrimination suits and also make decisions with regards to fines imposed by the administrative bodies. It can be therefore presumed that they are well acquainted with the barriers that the persons who contest discrimination have to overcome after reporting the incidents, and their viewpoints are relevant to this survey.

Among administrative bodies, I reached out to all regional inspectorate offices of the Czech School Inspectorate (14), regional labour inspectorates (8), regional inspectorates of the Czech Trade Inspection Authority (7) and the Czech National Bank. All thirty respondents filled in the questionnaire. Among the courts, I reached out to all district courts (75), county courts for Prague (10), municipal courts (2) and regional courts (7). Out of the total count of 94 courts, 67 filled in the questionnaire (71 %). Seven more courts informed me that they have not yet acted in any anti-discrimination lawsuit and do not have sufficient experience that they could provide for the questionnaire; hence they would not fill it in. The data was collected through a survey<sup>131</sup> and the chosen data collection tool was an anonymous electronic questionnaire located on the Defender's website. **The aim of this survey was to examine the experience and viewpoints of the administrative bodies and courts regarding the phenomenon of underreporting of discrimination.**

In the first part of the questionnaire (Table 29), the respondents were asked to list the groups of people which are in their experience most frequently threatened by underreporting of discrimination. The administrative bodies and the courts agree that this concerns primarily the elderly citizens (this option was listed by up to 47 % of administrative bodies and 24 % of courts). The administrative bodies also consider persons with low education (37 %), foreigners (33 %) and disabled persons to be particularly threatened, while the courts rather listed employees (19 %) and women (particularly mothers; 18 %). More than one third of the courts also responded that they cannot answer this question due to lack of experience.

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<sup>131</sup> A research method of social sciences which is based on mass data collection and analysis.

**Table 29: Groups of citizens threatened by the phenomenon of underreporting of discrimination**

	Admin. bodies		Courts	
	Count	Share	Count	Share
Seniors	14	47 %	16	24 %
Persons with low education	11	37 %	10	15 %
Foreigners	10	33 %	5	7 %
Handicapped persons	8	27 %	3	4 %
Employees (particularly those of large private companies)	6	20 %	13	19 %
Women (particularly mothers or mothers-to-be, single mothers)	5	17 %	12	18 %
Persons from socially disadvantaged/excluded environment	5	17 %	5	7 %
Roma, national and ethnic minorities	5	17 %	10	15 %
Low income groups of citizens	4	13 %	4	6 %
Persons who live alone	2	7 %	0	0 %
Members of sexual minorities	1	3 %	1	1 %
Do not know, lack experience	0	0 %	24	36 %
Persons who are for some reason apprehensive of authorities	0	0 %	1	1 %
Decent people who are too decent to complaint	0	0 %	1	1 %
Persons released from imprisonment	0	0 %	1	1 %

The second part of the questionnaire surveyed the viewpoints of the administrative bodies and courts on various barriers which block the victims of discrimination from accessing legal aid. When conceptualizing the barriers, I built upon the survey of the Slovak Centre for Civic and Human Rights from 2012 which works with four types of barriers:

- (1) Barriers on the level of the lack of information;
- (2) Barriers on the level of individual decision-making;
- (3) Barriers on the social level;
- (4) Barriers on the level of the anti-discrimination legislation, its application and the decisions of the courts.

A large part of the administrative bodies (80 %) and the courts (46 %) pointed out the low awareness of the citizens on the possible methods of defence from discrimination. In their experience, the people are not familiar with the legislation, are often unaware that they were discriminated against, or consider any injustice towards them to be discrimination. They also do not know where to turn to, or how, in the case of discrimination. A part of the respondents, particularly the administrative bodies (33 %), pointed out that there is sufficient information available but certain groups of people simply cannot access it due to barriers in information – e.g. language barrier, or because the information is most easily accessible online but the Internet is still unavailable to a part of the population, or they do not know how to use it. Interestingly, only a negligible part of the courts (3 %) mentioned the informational barriers. On the other hand, approximately one tenth of the courts and administrative

bodies believe there are no barriers at all on the level of the lack of information. More than one third of the courts again responded that they could not answer this question due to lack of experience.

**Table 30: Barriers on the level of lack of information**

	Admin. bodies		Courts	
	Count	Share	Count	Share
Low awareness of people on the possible methods of defence from discrimination (do not know the legislation, do not know where to turn to, or how)	24	80 %	31	46 %
There is sufficient information, it is however not targeted and explained to the most needy; existence of informational barriers (lack of information in other than the Czech language, lack of information available online for certain groups)	10	33 %	2	3 %
None	3	10 %	9	13 %
Often incomprehensible legislation for a layperson	1	3 %	1	1 %
Do not know, lack of experience	0	0	23	34 %

The second type covers barriers on the level of individual decision-making. As summarized in Table 31, the majority of the administrative bodies (77 %) and of the courts (52 %) consider the apprehension and worries of the victims of discrimination from publicity in the case and particularly from its consequences and potential vengeance to be the key issue. The victims of discrimination are also often concerned about contacting the authorities or courts, or are afraid of the court case itself, or of its decision. The administrative bodies also commented on the general mistrust of people towards the meaningfulness of the complaint or lawsuit and towards the potential remedy to the situation, or mistrust in the system of justice as such (33 %). On the other hand, only 13 % of the courts mentioned the potential mistrust to be one of the reasons. The administrative bodies (23 %) and the courts (16 %) also pointed out the feeling of shame – people may be ashamed or do not wish to be called malcontents. Approximately one third of the court did not answer this question either due to lack of experience.

**Table 31: Barriers on the level of individual decision-making**

	Admin. bodies		Courts	
	Count	Share	Count	Share
Concerns of publicity of the case and its consequences, of vengeance; afraid of authorities and courts, of the court case and its decision	23	77 %	35	52 %
Mistrust towards the meaningfulness of the complaint or suit and towards the remedy; mistrust in authorities, courts and the system of justice	10	33 %	9	13 %
Shame (people do not wish to be called malcontents)	7	23 %	11	16 %
Lack of finance to pursue the litigation	5	17 %	4	6 %
Lack of time and energy	4	13 %	0	0 %
Self-doubt, feeling of social inferiority	0	0	3	4 %



None	0	0	3	4 %
Unwillingness of the officers	0	0	1	1 %
Do not know, lack of experience	0	0	23	34 %

The victims of discrimination may be also prevented from accessing legal aid by barriers on the social level. As shown by Table 32, the key barrier in this sphere is, according to administrative bodies (27 %) and the courts (21 %) the fact that the prohibition of discrimination and the need for equal treatment are not yet sufficiently embedded in the social awareness of people, and have not become a natural part of their thinking. Prejudice and a negative attitude of the majority population towards people who defend their rights are equally grave. The administrative bodies also pointed out the low diligence of the state when fighting discrimination (20 %). More than one half of the contacted courts responded that they do not have sufficient experience and information to answer this question.

**Table 32: Barriers on the social level**

	Admin. bodies		Courts	
	Count	Share	Count	Share
The social phenomenon of prohibition of discrimination (and the need for equal treatment) is not yet embedded as a natural part of people's thinking	8	27 %	14	21 %
Prejudice, stigmatization and negative perception of persons who defend their rights by the social majority	8	27 %	14	21 %
Low diligence in fighting any forms of discrimination	6	20 %	2	3 %
None	5	17 %	6	9 %
The barriers in this sphere are disappearing, the attitude of the general public towards exercising these right is changing positively	5	17 %	2	3 %
Increasing social differences between various groups of people	2	7 %	0	0 %
Unwillingness of the officers	1	3 %	3	4 %
Minimum willingness of other people to give testimony	1	3 %	0	0 %
Do not know, lack of experience	0	0	35	52 %

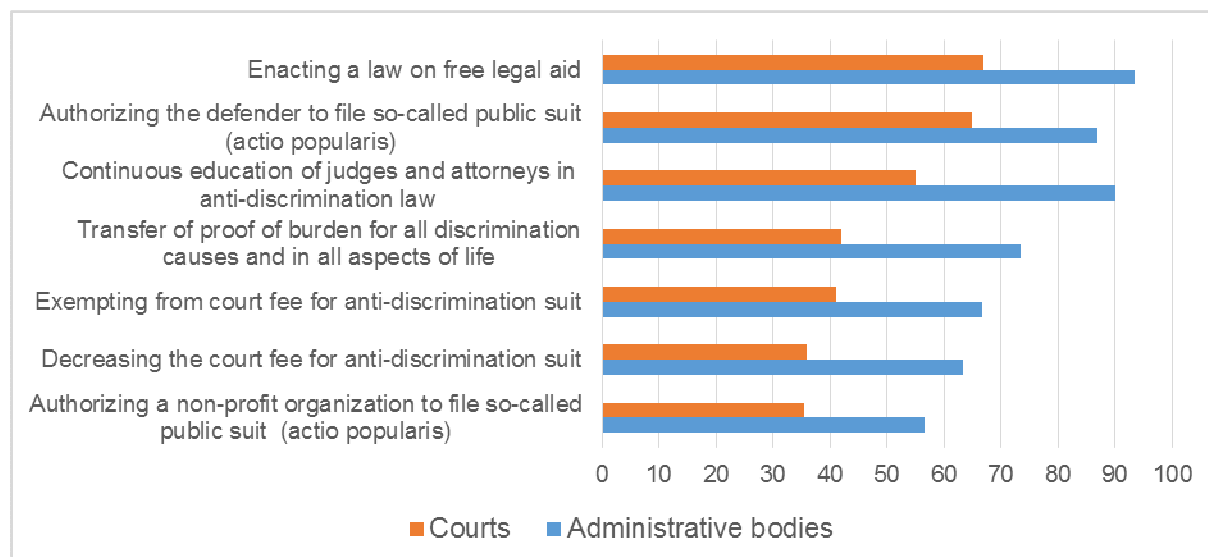
The last type include barriers on the level of the anti-discrimination legislation and its enforcement. As indicated by Table 33, the administrative bodies particularly stressed the financial costs of the litigation and the non-existence of a law governing free legal aid, as well as the difficulties in proving the discriminatory actions (equal shares of 37 %). On the other hand, approximately one quarter of the courts and administrative bodies noted that there are no barriers in this respect; if the courts perceive any barrier at all, it is predominantly the financial cost of the litigation and the absence of the law on free legal aid (13 %). More than one half of the contacted courts responded that they do not have sufficient experience to answer this question either.

**Table 33: Barriers on the level of anti-discrimination legislation and its enforcement**

	Admin. bodies		Courts	
	Count	Share	Count	Share
Absence of a law on free legal aid, high costs of litigation, cost of court fees	11	37 %	9	13 %
Difficulties in proving the discriminatory actions (burden of proof)	11	37 %	3	4 %
None	7	23 %	17	25 %
Duration of litigation	6	20 %	3	4 %
Lack of experience	3	10 %	38	57 %
Uncertainty of the decision, lack of case law (the Anti-Discrimination Act is highly generic), divided interpretation	3	10 %	3	4 %
Insufficient sanctions	2	7 %	0	0 %
Attitude of some officers, reaching the decision without properly reviewing the individual case	2	7 %	0	0 %
Non-consolidation of public litigation ( <i>actio popularis</i> )	1	3 %	3	4 %
Often incomprehensible legislation for a layperson	1	3 %	1	1 %
Constant changes to legislation	1	3 %	0	0 %
Insufficient protective mechanisms for the plaintiffs and their witnesses	1	3 %	0	0 %

In the third part of the questionnaire, the Defender consulted the opinions of the administrative bodies and courts on various measures that could help in removing or mitigating the barriers that the victims encounter when seeking legal aid. The respondents received a catalogue of proposals and were to assess to what extent these proposals would be beneficiary. Chart 17 sums up the shares of respondents who commented that implementing these measures would rather help, or would help a lot. It is obvious that all of these measures are more supported (approximately by one third) by the administrative bodies than by the courts. The highest share of respondents agreed on the benefits of passing a law on free legal aid – almost all the administrative bodies (93 %) and two thirds of the courts (67 %) noted this. Almost all the administrative bodies (90 %) also consider continuous education of judges and attorneys in anti-discrimination legislation to be beneficial as well – it is noteworthy that a significantly lower part of the courts (55 %) share their opinion. According to the majority of administrative bodies (87 %) and almost two thirds of the courts (65 %), it would be also worthwhile if the Public Defender of Rights could file the so-called public action (*actio popularis*). On the contrary, the respondents from both categories took a significantly more reserved attitude towards the potential option that non-profit organizations could file public action as well.

**Chart 17: Expected benefits of the individual measures aimed at removing or mitigating the barriers of access to legal aid for victims of discrimination**



The Anti-Discrimination Act took effect in 2009 and the number of complaints of discrimination or discrimination litigations has not been very high; we can therefore presume that the administrative bodies and the courts are only sparsely in touch with the Act. The respondents were therefore asked to try to assess their own knowledge of anti-discrimination legislation and case law. As indicated in Table 34, the administrative bodies are slightly more modest or critical in assessing their knowledge – while the courts have on average marked themselves as 2 (commendable), the administrative bodies are ranked closer to mark 3 (good).

**Table 34: Estimated knowledge of anti-discrimination legislation and case law – average mark (same as Czech school system: 1 is excellent, 5 is unsatisfactory)**

	Admin. bodies	Courts
Estimated knowledge of anti-discrimination legislation	2.5	2.2
Estimated knowledge of anti-discrimination case law	3.1	2.2

At the end of the questionnaire, the respondents also had the option to add any comments or proposals to resolve the phenomenon of underreporting of discrimination. A total number of 10 administrative bodies (33 % of total) filled in this question, as did 21 courts (32 % of total). As indicated in Table 35, the most frequent recommendations called for more awareness and media presentation of the topic of discrimination (this proposal was presented by three administrative bodies and three courts). Five courts also pointed out that implementing measures which would simplify the situation in litigating for victims of discrimination would necessarily also lead to an increase in suits by malcontents. These courts also mentioned that decreasing or eliminating the court fee for anti-discrimination lawsuit is not necessary, as there is already an institute of liberation from court fees and the

possibility to appoint an attorney *ex offio*. One administrative body and one court used the comment to express support to the legislative recommendations of the Public Defender of Rights. Other proposals, comments or recommendations appeared only sparsely.

**Table 35: Comments and proposals on the topic of underreporting of discrimination**

	Admin. bodies	Courts
	Count	Count
We recommend increased media presentation of the issue with the goal of increasing the public awareness (aiming at individual target groups; it would be worth presenting the anti-discrimination measures so that they are not used for preferential treatment of a group threatened by discrimination, but they are targeted at establishing balance between the rights and duties of the individual groups).	3	3
The current legislation already covers the institute of the waiver of court fees and appointing an attorney <i>ex offio</i> – an institute of representation the plaintiff may use. The strict waiver of court fees by law, including the free legal aid and transfer of burden of proof as proposed would necessarily lead to an increase in litigations by malcontents.	0	5
I agree with the legislative recommendations of the Defender in the field of discrimination.	1	1
A more detailed and unambiguous regulation of the issue of discrimination in special legislation.	1	0
A broader offer of qualified free legal aid.	1	0
Complex application of the legal framework on cases concerning employment relations, particularly when gathering evidence.	1	0
Complex consulting for the discriminated person would be a great help (turning to court is very difficult for a "common" person, the court is too impersonal; non-profit organizations would be more suitable than state inspection bodies, they can also provide moral support and do not deal with the narrow spectre of discrimination only).	1	0
Increasing the awareness of the officers (closer cooperation between individual authorities, particularly in anti-discrimination case law).	1	0
Providing education not just for officers but also for e.g. teachers – should be provided by pedagogical faculties and by the system for further education of pedagogical employees.	1	0
The issue probably lies in the fact that most of the concerned persons quite reasonably assess the effectiveness of such court protection; i.e. whether the decision in the lawsuit, no matter if favourable, would as a consequence be beneficial to their further gainful activities (or otherwise – by suffered damage), or whether it would be just another empty victory. It is necessary to keep in mind that the expended effort and means do not necessarily have to correspond to the achieved goal.	0	1
Enacting one general Anti-Discrimination Act with complex unified legal regulation governing the entire sphere of social cohabitation of all subjects on all social levels.	0	1
Public action would help, as on one hand, the person who feels discriminated against could (also in the public interest) seek their law-guaranteed rights and qualified help; on the other hand, the expertise vested in the public prosecutor could guarantee that suits would not be filed in rash and malcontent cases.	0	1
I personally do not think that the Czech society would be discriminatory in general.	0	1
So far, lawsuits to protect from discrimination are filed by plaintiffs with an inflated ego, not by those who are truly discriminated against.	0	1

To conclude, it appears that the administrative bodies and the courts share many opinions on the phenomenon of underreporting of discrimination; however, the survey also brings up some noteworthy differences. First, it seems that the administrative bodies are more open in their approach to this issue than the courts. One third to one half of the courts refused to share their opinion on the barriers in accessing legal aid by referring to their lack of experience – this particularly concerned the barriers on the level of the anti-discrimination legislation and its

enforcement (57 % of courts) and the barriers on the social level (52 %); to a lesser extent also barriers on the level of lack of information and on the level of individual decision-making (equal shares of 34 %). On the contrary, this answer was not provided by the administrative bodies at all. The administrative bodies and the courts however agree on the level on which they perceive, or rather do not perceive these barriers. The respondents were able to identify barriers particularly on the level of individual decision-making of the victim of discrimination (only 4 % of courts claimed there are no barriers on this level); approximately one tenth to one fifth of the courts and the administrative bodies said that there are no barriers on the level of lack of information or on the social level, and up to one quarter of respondents from both groups repeated this hypothesis in the case of barriers on the level of anti-discrimination legislation and its enforcement. The logical conclusion to this is that a significant part of the courts and administrative bodies considers the phenomenon of underreporting of discrimination to be an individual problem, or even individual weakness (one of the respondents claimed that it threatens “*stupid people*”), and they have significantly worse response in reflecting its social dimension.

The administrative bodies and the courts consider seniors, employees (particularly those of large private companies) and persons with low education to be particularly threatened by underreporting of discrimination. It seems that the administrative bodies reflect the difficult situation of other vulnerable groups such as foreigners or handicapped people better than the courts. As for the specific barriers, both the administrative bodies and the courts point out the generally low awareness of the population regarding discrimination and possible methods of defence. The administrative bodies gave much more frequent emphasis than the courts to the fact that the information is available, but not targeted well at the specific target groups which are especially threatened by discrimination (and which also more frequently suffer from language barrier, or barriers in access to new technologies). A particular barrier on the level of individual decision-making is, according to the administrative bodies and the courts, the fear of publicity in the case and its consequences, and of the litigation and its results. The administrative bodies listed another barrier of general mistrust in the meaningfulness of the complaint or the suit, and the mistrust in the system of justice, which is a barrier mentioned by only a negligible part of the courts. The barriers on the social level are, in equal opinions of the administrative bodies and the courts, the insufficient embedding of the prohibition of discrimination in the public mindset, and also prejudice, stigmatization and negative perception of people who fight for their rights. As for the barriers on the level of anti-discrimination legislation and its enforcement, the courts mostly mentioned that they did not identify any barrier on this level, while the administrative bodies pointed out the costliness of the litigation, the absence of a law on free legal aid and the difficulties in proving the discriminatory action (burden of proof).

The administrative bodies and the courts were generally in agreement regarding their opinion on measures that could help eliminating, or at least mitigating the aforementioned barriers, though the administrative bodies assessed their potential benefits generally more favourably than the courts. The most beneficial steps would be enacting a law on free legal aid, authorizing the Public Defender of Rights to file public action (*actio popularis*) and continuous education of judges and attorneys.

## V. CONCLUSION

As I have presented in the introduction, though it appears that a significant part of the population of the Czech Republic feels discriminated against for diverse reasons (as attested, for instance, by the results of the Eurobarometer from 2012), the number of complaints addressed to the Public Defender of Rights and the administrative bodies, or the number of court cases concerning discrimination do not correspond to this. In the Czech Republic, we are clearly facing a considerable unwillingness of the victims of discrimination to assert their guaranteed rights. What is the cause of this unwillingness, and how could the situation be improved? These questions were to be answered by this survey whose objective was to investigate the experience of the Czech population with discrimination, and to analyse the individual, social and institutional obstacles that the victims of discrimination encounter while trying to claim their rights. I was interested not just in the experience of the general population and the underprivileged groups, but also in the views of the actors who enforce the right to equal treatment: administrative bodies, courts and non-profit organizations.

To conclude, I would like to summarize the key findings I reached and to form specific recommendations to remove the barriers in access to justice for victims of discrimination.

### V.1 EXPERIENCE OF THE CZECH POPULATION (INCLUDING UNDERPRIVILEGED GROUPS)

**A representative questionnaire survey of the adult population of the Czech Republic** carried out on a sample of 2,079 respondents confirmed the hypothesis proposed in the introduction: **underreporting of discrimination is a widespread issue in our country**. Over the past five years, 11 % of the respondents experienced discrimination or harassment, but only a minor part of them (11 %) reported this experience to the authorities or organizations. **The rate of underreporting of discrimination therefore reaches almost 90 %**. Discrimination was more frequently reported by persons in productive age, with a higher socioeconomic status and with higher completed education. The respondents felt discriminated against primarily due to **elderly age** and due to **gender**; they experienced discrimination primarily in the sphere of **labour and employment**. Up to **50 % of all respondents** consider discrimination to be widespread in the Czech Republic. In their opinion, the most frequent type is however discrimination based on

**race and ethnicity** (up to three quarters of the respondents consider it to be widespread).

What are the key causes of underreporting of discrimination? The most frequently listed cause was **mistrust** that the relevant institutions would be able to resolve the case (43 % of respondents), **lack of evidence** (28 %), **lack of information** on where to turn to with a request for help (27 %) and **apprehension of negative consequences** of such steps (27 %).

The options of the victims of discrimination to claim their rights are rated as **complicated** by three quarters of all the respondents. The survey also indicated that people often do not know where to turn to with their complaint on discrimination. The discriminated individuals would most often turn to the police, and to a lesser extent, to the inspection bodies, the Public Defender of Rights or the trade unions. The question on where the respondents would turn to if they experienced discrimination in the future brought similar results. According to my findings, they would first contact the **police** (58 % of all respondents), and to a lesser extent the lawyers (24 %) or the public defender of rights (16 %).

The quantitative survey of the adult population of the Czech Republic was subsequently supplemented by **in-depth interviews with 51 members of underprivileged groups** (persons disadvantaged by their age, gender, disability, race or ethnicity, nationality, sexual orientation or religion) who became victims of discrimination for various reasons and in various aspects of life, but decided not to resolve their situation through legal means. The testimonies of the protagonists indicate that among the significant barriers to access to legal aid, there is not just **lack of information**, lack of knowledge of their rights or lack of knowledge or availability of places to report discrimination, but also **psychological barriers** which are to a large extent caused by **current social condition**. The society is not always inclined to members of underprivileged groups contesting their right to equal treatment, it tends to rather punish than support the complaining individuals, and in some groups of its members, it clearly **evokes a feeling that they are not its rightful and fully-fledged part, and it is not worth trying to become this**.

A characteristic **emotional reaction** to discrimination based on these reasons is the **feeling of powerlessness** and **resignation** to any activity that might resolve the situation. The issue lies in the acceptance of something being wrong (and one having a certain characteristic that disadvantages and stigmatizes them in the eyes of others), as well as the necessity to come back repeatedly to the humiliating experience. Some victims of discrimination encounter it so often that they consider it to be a routine part of their life which is not worth taking into consideration. The discriminated individuals are often awed by the powerful adverse party; they do not wish to initiate conflict and they are concerned with personal impacts that such



solution would bring as well as attracting unwanted attention. This is accompanied by frequent previous negative experience, mistrust towards formal institutions and the enforceability of law as well as concerns regarding the time, financial and emotional demands associated with the institutional or legal solution to the issue. The result of this is a more-or-less passive approach, or only minor attempts to achieve a partial resolution of the issue. **The discriminated individual assesses that the potential loss caused by reporting discrimination is higher than the potential gain from a successful litigation.**

A key factor that significantly influences the willingness of the discriminated individual to resolve the issue of discrimination using legal means is their **(lack of) awareness of their own rights** which goes hand in hand with the lack of awareness of the possibilities for free legal aid. The victims of discrimination need to know what they are or are not entitled to. They may get help from a description of typical cases of discrimination which may be an impulse to the discriminated individual identifying with them and seeking help. There were however opinions among the respondents that it is not enough to educate the members of underprivileged groups about discrimination, and that the whole society should be educated so that discrimination would not appear.

The knowledge of organizations that provide help and consulting in discriminatory situations reaches the highest score on the level of **non-governmental organizations** which the underprivileged groups contact the most frequently, primarily when resolving other life issues. In the event that the protagonists resolve the incidents of discrimination on an institutional level (despite all the barriers listed previously), the key factor for choosing a specific facility is the particular situation, or area of life, as well as personal or conveyed experience with this specific institution or organization. In general, the lowest number of actors would turn to the court in the case of discrimination. The Public Defender of Rights enjoys a high rate of trust among the respondents; it is however perceived as the supreme institution which should only resolve the most serious issues (a part of the respondents therefore view it as the last place where they can seek justice). The specific proceeding therefore depends on the nature of the individuals and on their habit of resolving their own problems – they may be used to proceeding “bottom-up”, or vice versa, “from the top”.

## **V.2 VIEWPOINTS OF THE COURTS, ADMINISTRATIVE BODIES AND NON-PROFIT ORGANIZATIONS ON THE PHENOMENON OF UNDERREPORTING OF DISCRIMINATION**

Aside from the experience of the general population or the underprivileged groups, I also took interest in the experience and viewpoints of the actors who

enforce the right to equal treatment: using a questionnaire, I reached out to non-profit organizations (19 respondents), administrative bodies (30 respondents) and district and regional courts (67 respondents).

According to the administrative bodies and courts, underreporting of discrimination threatens primarily seniors, employees (particularly of large private companies) and persons with low education; according to the non-profit organizations, the concerned groups rather include members of ethnic, national, sexual or religious minorities, women, or disabled persons.

The comparison of the viewpoints of the courts, administrative bodies and non-profit organizations on the causes for underreporting of discrimination brought up some interesting results. There is, for instance, a marked unwillingness of the courts to address these questions, which is however understandable to some extent, since a part of the courts have not had any experience with anti-discrimination cases yet. Another even more relevant difference lies in the **lower consideration for other than individual reasons** for not reporting discrimination. Unlike the non-profit organizations, a significant part of the **courts** and, to a lesser extent, of the administrative bodies, consider the phenomenon of underreporting of discrimination to be **an individual problem, or even individual weakness** of the victims of discrimination, and are not able to reflect its social dimension accurately. With regard to the specific barriers on the individual level, all three groups of actors agreed that the cause lies in the apprehension of the publicity of the case and its consequences, as well as apprehension of authorities and courts, and of the court proceedings and their results. The administrative bodies and the non-profit organizations also perceive one of the barriers to consist of general mistrust in the meaningfulness of the complaint or lawsuit, and mistrust in the system of justice; this barrier was however mentioned only by a minor part of the courts. The non-profit organizations also pointed to the low self-confidence of the victims of discrimination in their own abilities, and their low self-esteem.

The second most critical type of barriers is concerning, according to the non-profit organizations, administrative bodies and courts, the **lack of information**. All three groups of actors agreed that the victims of discrimination are not certain if a particular treatment really fulfils the criteria of discrimination; they do not know how to defend themselves, who to turn to, how to gather evidence or what to claim. Unlike the courts, the non-profit organizations and the administrative bodies stressed that there is a lack of better-targeted information on specific groups that are particularly threatened by discrimination (and which may also often suffer from language barriers or barriers in access to new technologies). According to the experience of non-profit organizations, the issue also lies in the poor awareness of teachers, social workers or officers who should be helping the victims of discrimination.

The existence of barrier on the **social level** is being reflected particularly by the non-profit organizations, and to a lesser extent by administrative bodies and courts. They are however in agreement when naming the key barriers: human rights are often marginalized in the Czech society, the society suffers from a number of stereotypes and prejudices, and there is frequent stigmatization and negative perception of people who claim their rights.

According to the courts and administrative bodies (but not the non-profit organizations), the lowest barriers are on the level of **anti-discrimination legislation and its enforcement**. The courts in particular stated that they could not identify any barriers on this level, while the administrative bodies and non-profit organizations pointed out the costs of the litigation and the absence of a law governing free legal aid, as well as difficulties in proving the discriminatory activities (burden of proof). The non-profit organizations also listed among the issues the lengthiness of the proceedings, legal uncertainty caused by a low number of court decisions and the insufficient powers of bodies that fight unequal treatment.

As for measures that could help removing or mitigating the barriers in access to justice encountered by victims of discrimination, according to the administrative bodies, courts and non-profit organizations, the most helpful steps would be **enacting a law on free legal aid, authorizing the Public Defender of Rights to file so-called public action (*actio popularis*)** and continuous education of judges and attorneys. The non-profit organizations also recommended improving the education and awareness (for the underprivileged groups and for the general public), creating and promoting qualified consulting centres, online consulting resources or non-stop helplines for the victims of discrimination, providing a network of social services for persons who require assistance in negotiating with the authorities, enacting appropriate sanctions for discrimination (including potential temporary increase in sanctions), or increasing the possibilities of law enforceability (including its more stringent enforcement).

### **V.3 MONITORING THE COURT DECISIONS AND THE ACTIVITIES OF THE ADMINISTRATIVE BODIES**

I have also focused on investigating the available court decisions in discrimination lawsuits. I was interested in the overall number of such decisions as well as in their structure with regard to areas of life and grounds for discrimination, and in particular in the court decision (including the awarded monetary compensation for non-pecuniary damage, and covering the litigation costs of the adverse party). I assumed that the number of court cases would be minimal and that the barriers for victims of discrimination indeed exist (especially in the form of financial costs and uncertainty about the decision). For this reason, I asked all district and regional courts to provide me with copies of court decisions from 2010 to 2014 in which the issue of discrimination was addressed. The purpose of this monitoring was not to review activities of Czech courts, to which I am not legally authorized in any case, but to open up an expert discussion on the practical effectiveness of the Anti-Discrimination Act, which has not been addressed since 2009.

I also requested copies of administrative decisions (or inspection findings) from 2010 to 2014 from three key administrative bodies in the field of anti-discrimination. I wished to identify how often people turn to administrative bodies with discrimination complaints, which issues are concerned, what the alleged causes are, how the administrative bodies process their complaint and whether the administrative bodies use their activities (*ex officio*) to gradually dismantle the barriers faced by a majority of the victims of discrimination (lack of information, fear of victimisation, mistrust in any changes etc.).

#### **V.3.1 Courts**

As mentioned in Chapter IV, I consider the greatest barriers in access to courts to be the **uncertain result of the court proceedings, complicated process of submitting evidence** and **financial costs** associated with the litigation; these three barriers are closely tied to each other.

From the provided decisions of the first instance courts (**56** in total), it appears that discrimination was most frequently alleged due to **age** (9), gender (7) and ethnicity (6). Other grounds included handicap (2), nationality (1), religion (1) and worldview (1). In most cases, direct discrimination was alleged (43), followed by harassment (4), sexual harassment (1) and indirect discrimination (1). The most suits were filed in the area of **labour law**, followed by education (3), housing (3) and civil service (2). I have omitted litigations (or decision) from this list that were outside the scope of the Anti-Discrimination Act, or that did not indicate any form of

discrimination, or other discrimination cause was alleged, or whenever no cause was alleged at all.

In the sphere of labour law, the alleged discrimination was most frequently associated with litigation seeking to have **the termination of employment set aside** (15); discrimination was also alleged in access to employment (10), in remuneration (9) and in working conditions (5).

With regard to the monetary compensation of non-pecuniary damage, the **highest litigated sum reached CZK 1,500,000** (€ 55,556). In the area of labour law, the highest litigated sum reached CZK 1,000,000 (€ 37,037), **the lowest was CZK 10,000** (€ 370) – this was also the lowest litigated sum across all the areas. The average amount of claimed monetary compensation for non-pecuniary damage was CZK 261,944 (€ 9,702). The vast majority of claims to award monetary compensation for non-pecuniary damage was however dismissed (in 21 cases, or in 17 cases since the Anti-Discrimination Act had taken effect), and **in only one case, the court awarded monetary compensation for non-pecuniary damage in the sum of CZK 51,000** (€ 1,889). From this perspective, the potential victim of discrimination has lesser chance to be awarded monetary compensation for non-pecuniary damage by the court. A certain role is also played by the wording of the provision of section 10 of Anti-Discrimination Act that specifies the claims for victims of discrimination. Even though EU legislation presumes that monetary compensation of non-pecuniary damage is to be awarded as a priority, the wording of the provision in section 10 of the Anti-Discrimination Act rather indicates the supportive character of material satisfaction. From the available decisions, it is evident that the courts tend to side with the grammatical interpretation; **the chance to be awarded monetary compensation for non-pecuniary damage is therefore lower** even if the victim of discrimination prevailed in the lawsuit.

The willingness of the victim of discrimination to defend themselves at the court may be also negatively influenced by the **costs of litigation**. I have already noted that in a vast majority of cases, the courts do not award the costs of the proceedings to either party. In 41 out of 56 (73 %) of the decisions of the first instance courts, the plaintiff did not have to face any further costs in the case of losing the lawsuit. In fifteen cases, the plaintiff who had alleged discrimination was, however, obliged to pay the costs of the proceedings incurred by the adverse party. **The highest awarded costs of court proceedings reached the sum of CZK 142,877** (€ 5,292), the lowest was CZK 10,720 (€ 397), and the average sum was CZK 36,794 (€ 1,363). In this respect, I have for instance shown the unsuccessful litigation in which the plaintiff sought, among other things, compensation for non-pecuniary damage in the sum of CZK 34,452 (€ 1,259), and was successfully obliged to cover the costs of the adverse party in the sum of CZK 142,877 (€ 5,292), that is,

more than **quadruple the sum that was originally sought**. This information indicates that the costs of the potential victim of discrimination may be significantly higher, and they do not consist of solely hiring the services of an attorney and paying the court fees. It is obvious that the adverse party also incurs costs associated to the court proceedings, and it is not quite possible to rule out further costs. The victim of discrimination may however find their situation easier either by **decreasing the court fees**, or by **introducing free legal aid**.

The victim of discrimination has also difficult situation in the case of furnishing evidence. The provision of Section 133a of the Civil Procedure Code regulates the institute of so-called shared burden of proof, but the **scope of the provision is narrower** than the substantive scope of the Anti-Discrimination Act. The sharing of burden of proof therefore cannot be applied in any case of discrimination according to the Anti-Discrimination Act. It has also shown that even when the burden of proof is transferred, it is not always easy to determine its boundaries; especially in cases of harassment or sexual harassment, it is not clear what evidence should be provided by the plaintiff and when the burden should be transferred to the defendant.

I have focused on the issue of furnishing evidence in the case of employment termination due to redundancy according to the provision of Section 52 c) of the Labour Act, as the alleged discrimination was most frequently associated with this cause for dismissal. The provided decisions indicate that the **courts do not examine the choice of the redundant employee**, so the employer (defendant) does not have to prove directly the objective (non-discriminatory) reasons for their choice. Discrimination is therefore usually investigated using other means (e.g. investigating the age structure of the employees). In the case of some grounds for discrimination (typically ethnicity or sexual orientation), this method of furnishing evidence cannot be applied; in my opinion, it would be suitable that this procedure were broken by the decision-making activity of the courts and the case law of the Supreme Court.

As for the predictability of the result of the court proceeding in general, there is the role of a rich and diverse case law. **The anti-discrimination legislation is “locked in a circle”**, as the victims of discrimination seldom turn to the courts out of apprehension about the decision, and the courts therefore do not have the potential to generate case law. A significant role is therefore played by the administrative courts that address the proceeding of administrative bodies which investigate discrimination. Interpretation of the vague concepts contained in the Anti-Discrimination Act can be often extracted from the decisions of the administrative courts; these decisions therefore **help increase the predictability**.

### **V.3.2 Administrative Bodies**

The situation is slightly different in case of **administrative bodies** (the National Labour Inspection Authority, Czech Trade Inspection Authority, or Czech School Inspectorate) which are tasked with supervising the prohibition of discrimination in the spheres of labour and employment, of goods and services, and of education. In 2010 to 2014, the victims of discrimination turned much more frequently to these administrative bodies than they did to courts. The National Labour Inspection Authority received on average **317** submissions per year concerning potential violation of equal treatment in the workplace. The Czech Trade Inspection Authority received on average **74** submissions per year concerning consumer discrimination, and in the case of the Czech School Inspectorate, the violation of the principle of equal access to education was contained in **15** complaints per year on average. From the point of view of the victims of discrimination, the access to these administrative bodies is facilitated by being **free of any charge**. The administrative bodies act *ex officio* and providing evidence of an offence having been committed is fully within their competence, which may be advantageous for the victims of discrimination (the burden of proof is borne by somebody else), but does not necessarily bring the desired effect (identifying discrimination and sanctioning the offender). The number of cases in which the administrative bodies identified and penalized discrimination is extremely low.

**The labour inspection bodies** penalized unequal treatment in **80** cases. The labour inspectorates most frequently imposed fines for discriminatory advertising, unequal remuneration without any “traditional” discrimination ground, and unequal conditions for own employees and agency employees. **The average imposed fine for discriminatory advertising reached the sum of CZK 23,850** (€ 883). The highest fine imposed for advertising reached CZK 250,000 (€ 9,259). This was however a summary fine which also penalized illegal employment. The lowest fine of CZK 1,500 (€ 55) was imposed to a town mayor for a discriminatory advertisement for a kindergarten “headmistress”. **The most frequent discriminatory cause** in the penalized employment advertising was **gender**, i.e. vacancies for women and in several cases for men. Another typical demand was a certain **age** – young age up to 30 or 45 years, or on the other hand demand for age of pension. **Bossing** was only penalized in one case that occurred after an employee had given notice, and there was one case of **complaint** on bullying in the workplace **not having been investigated**.

**The Czech Trade Inspection Authority** identified discrimination of the consumer in **86** cases. The most frequent discriminatory cause was **nationality** or **citizenship** (28), followed by age (16) and ethnicity (8). In many cases investigated by the CTIA, the **discrimination ground was not obvious** (30). The most frequently

identified incidents concerned **double pricing** (or the so-called service surcharges) for persons who did not speak Czech or who came to the Czech Republic from outside to purchase services (restaurants, hospitality and spa services, or tours). **The average fine** imposed by the CTIA for double pricing reached the sum of **CZK 43,750** (€ 1,620). With regard to **sales events**, the CTIA most frequently identified unjustified refusal for consumer to participate in the sales event (without any relation to a specific discriminatory cause), or *a priori* exclusion of persons of certain age. In the first case, the CTIA imposed fines of the average sum of CZK 46,666 (€ 1,728); in the second case, the average fine reached CZK 25,833 (€ 956). **Age discrimination** was also encountered in access to financial or hospitality services. Discrimination in access to **housing based on ethnicity** was investigated in six cases. For these issues, the CTIA imposed fines to the real estate agents at the average sum of **CZK 12,833** (€ 475). **The highest fine for discrimination** was imposed for refusing Roma individuals to enter a music club, and it reached the sum of **CZK 400,000** (€ 14,814). The body of appeals eventually decreased the fine to one half with regard to the financial situation of the entrepreneur who had filed an administrative suit. The lowest fine was imposed to a hotel operator who, in relation to the events in Ukraine (annexation of Crimea) refused to provide accommodation for guests from the Russian Federation who would endorse the annexation. The fine was 500 CZK (€ 18).

**The Czech School Inspectorate** did not carry out any administrative proceedings concerning the violation of the principle of equal access to education, or concerning not taking measures to remove discrimination in education. **In 44 cases**, people (most frequently legal guardians of children, pupils and students) alleged unequal treatment based on the ground not listed in the Anti-Discrimination Act.

**Health status** (a discrimination ground with a broader scope of content than “disability”) appeared in **15 complaints**; other frequently contested discrimination grounds included ethnicity (7) and religion (5). The CSI identified that **28 points of various complaints** on violation of equal treatment were justified. The CSI submitted the results of investigating the complaints to the school and to the founder for further proceedings, as indicated by the Education Act.

The survey has shown that in 2010 to 2014, the administrative bodies penalized particularly such discriminatory activities that were **sufficiently supported with documentary evidence** (discriminatory advertisements or unequal remuneration) or by **personal testimony** (inspectors carrying out control purchase or ordering services, or classroom observations in schools). The administrative bodies however have a poorer record of penalizing discrimination **with no evidence available**. This may concern more complex or more serious forms of discrimination (indirect discrimination, harassment, sexual harassment, or victimisation), or direct



discrimination which would require taking witness testimonies and longer process of evidencing to be penalized. Despite the undisputed contributions of the administrative bodies towards dismantling the barriers that victims of discrimination face when seeking justice, there is a question whether the fines imposed by the authorities over the past years for violating the prohibition of discrimination are in accordance with the requirements of EU legislation on effective, appropriate and dissuasive character of the sanctions. At the same time, discussion should be opened on how to make the activities of all administrative bodies (not just those listed above) more effective, and how to reinforce their position in the sphere of protection from discrimination. In my opinion, their potential has not been used to its full extent yet.

## **V.4 RECOMMENDATIONS TO REMOVE BARRIERS IN ACCESS TO JUSTICE FACED BY VICTIMS OF DISCRIMINATION**

Practical enforcement of anti-discrimination legislation often fails. I have therefore formed 15 key recommendations which may help changing effective protection from discrimination in the Czech Republic from a mere chapter in legal textbooks to gradually become a common part of our lives. The recommendations are focused on the general public, marginalized groups, non-governmental organizations, associated professions and administrative bodies. The recommendations involve my own proposals for amending the concerned legislation. I am going to discuss all recommendations with the relevant persons and organizations including the central administrative bodies. I am convinced that it is high time that the Czech Republic took a more active stance in building a more equitable society that respects every individual as a unique human being and appreciates diversity.

- 1. Create targeted awareness campaigns focused on increasing the awareness of the underprivileged groups.** The victims of discrimination are often not certain whether a particular behaviour does indeed meet the criteria for discrimination under the Anti-Discrimination Act; they do not know how to defend themselves, who to turn to, how to obtain evidence or what to claim. This information is generally available, but it needs to be better adjusted to the particular target groups, both from the content and the formal perspective (e.g. we need to take into consideration the barriers in access to new information technologies or language barriers).
- 2. Continuous education of judges, attorneys, inspectors, officers, teachers, social workers, police officers, medical personnel, and other groups.** The anti-discrimination legislation is a rather recent field, so it is necessary to educate those who are tasked with enforcing the right to equal treatment and with protecting the victims of discrimination.
- 3. Carry out education campaigns for the general public aimed at mitigating prejudice and stereotypes and at explaining why discrimination is unacceptable.** It appears that parts of the society disagree intrinsically with the content of the Anti-Discrimination Act, and they perceive the prohibition of discrimination as an inappropriate restriction of their rights. They also tend to denounce the victim than the offender, which leads to the victim's unwillingness to complain so they are not seen as a "troublemaker" and so that the offender would not retaliate. Prejudice and stereotypes are so widespread in the society that a

part of the members of the underprivileged groups have embraced them and understand the position of a discriminated individual as part of their identity and as something which is so common it is not worth the concern.

- 4. Create beneficial conditions for the operation of non-profit organizations that provide free consulting and support for the victims of discrimination.** It appears that the victims of discrimination are dissuaded from filing a complaint by their ashamedness, lack of confidence in their own abilities, apprehension from dealing with authorities or courts and mistrust in those as well as financial costs. The non-profit organizations may provide significant support in reporting discrimination and its investigation.
- 5. Award monetary compensation for damage to victims of discrimination in court proceedings.** The court decisions indicate that the courts (with regard to grammatical interpretation) understand material satisfaction only as a supporting means of compensation. The victim of discrimination may be concerned about litigation, given that even though they may prevail in the lawsuit, the chance to be awarded monetary compensation for non-pecuniary damage is only slight (according to the available court decisions over the period of effectiveness of the Anti-Discrimination Act, the plaintiff succeeded in one case out of 17, i.e. 6 % of cases). With regard to their burdensome situation (e.g. unemployment) and the costs associated with filing a lawsuit, the victim may be rather motivated not to claim their rights. At present, the provision of Section 10 of the Anti-Discrimination Act needs to be interpreted in a manner consistent with the European legislation, but the victim of discrimination is not certain that the courts would accept this interpretation. For this reason, I propose to refine the wording of the provision of Section 10 of the Anti-Discrimination Act to make it comply with the EU legislation.
- 6. Provide equal protection in the court to all victims of discrimination.** The victims of discrimination currently do not have equal procedural status. While in the case of contested race- or ethnicity-based discrimination, sharing of the burden of proof is always applied, this is only valid in other grounds in the area of labour law (except for the cause of “gender”, which also enjoys a stronger position in the area of access to goods and services). For instance, the victims of discrimination based on age or disability therefore have a weaker procedural status when alleging discrimination in access to education and healthcare as well as housing, and to goods and services. Therefore, I propose to extend the provision of Section 133a of the Civil Procedural Code so that it is in line with the Anti-Discrimination Act.
- 7. Modify the court fees for filing an anti-discrimination lawsuit so that it does not contain the percentage share of the sum of the claimed monetary**

**compensation for non-pecuniary damage, and simultaneously decrease the court fee to 1,000 CZK (€ 37).** For a victim of discrimination in a burdensome life situation, it is difficult to file an anti-discrimination lawsuit with regard to the costs. Some costs cannot be anticipated but the plaintiff needs to take them into account; this concerns, for instance, covering the costs of the adverse party in the case of loss – such costs may be prohibitive (the plaintiff covered the costs of the counterparty in 27 % of the monitored cases, and the average sum reached almost CZK 37,000 (€ 1.370)). Therefore, it appears as convenient to decrease the predictable costs, such as the amount of the court fees.

- 8. Provide free legal aid to victims of discrimination and establish evidence of attorneys specializing in equality law.** Similar to the case of the court fees, the possibility for the victim to obtain free legal aid would lead to decreasing the predictable costs on behalf of the plaintiff. The victim of the alleged discrimination would therefore not have to hesitate to claim their rights even when considering the potential unpredictable costs in case of losing the lawsuit. The victim of discrimination is also restricted in their options for defending themselves at the court when trying to find an attorney who specializes in this field. The register of attorneys and junior lawyers on the Czech Bar Association website offer the option to search among attorneys by their specialization, but equality law is not on the list. The victim of discrimination may therefore turn to an attorney with a different specialization in a field that concerns them (e.g. specializing in labour law), but at this stage, they cannot be certain that the attorney has ever encountered any case of equality law in their practice. Given that there are only a limited number of anti-discrimination cases, even the attorneys need not have experience with this field in general. Attempting to find a specialist and consulting multiple attorneys may be associated with additional costs.
- 9. Incorporating the action of public interest (*actio popularis*) for cases of discrimination into the Czech law.** A public interest action in the case of discrimination appears to be an effective tool for various reasons. Firstly, the barriers to filing a lawsuit faced by the victim of discrimination “disappear”. At the same time, it is a suitable solution to general discrimination, i.e. discrimination with impact on an indefinite group of victims. A secondary benefit would be “generating case law”, i.e. increasing the legal certainty of both victims of discrimination and persons who apply discriminatory treatment and are not certain whether the distinction is consistent with the law. Last but not least, it should be stressed that the discriminating subject, in the case of losing the suit, would only be obliged to cease the discrimination or remove its consequences, but would not be exposed to the risk of covering the cost of the non-pecuniary damage.

- 10. Refine and enhance the database of court decisions by the Ministry of Justice of the Czech Republic.** Among other things, this survey has shown that the database of the Ministry of Justice of the Czech Republic is neither precise nor complete. Some decisions requested through the database were not concerned with discrimination, while a number of decisions in discrimination cases are missing from the database. Yet the database may be an important source of information both on the number of anti-discrimination cases and on the results of the individual lawsuits. In the ideal case, the courts would provide to the Ministry (apart from the spheres concerned and the file references) also anonymized decisions. The Ministry of Justice of the Czech Republic could then exclude the decisions which were not concerned with discrimination, and at the same time record the results of the proceedings, the number of discrimination grounds, and the number of forms of discrimination. Given the low frequency of anti-discrimination cases, the administrative burden associated with this measure would be manageable.
- 11. Ensure that the issues of equal treatment and protection from discrimination are a regular part of the planned inspections by the administrative bodies.** Though the survey indicated that the monitored administrative bodies (National Labour Inspection Authority, Czech Trade Inspection Authority, Czech School Inspectorate) inspect the compliance with the prohibition of discrimination not just as a result of individual complaints but also based on planned controls, there is however no guarantee that the administrative bodies would proceed in this way in the future. Given the existing barriers for the victims of discrimination to access to justice, it is desirable that the selected central authorities (particularly the Ministry of Labour and Social Affairs, Ministry of Industry and Trade, Ministry of Education, Youth and Sports, and other Ministries) monitor that the annual inspection plans of their subordinate administrative bodies are always concerned with the issues of non-discrimination and equal opportunities.
- 12. Ensure that an expert on the issues of unequal treatment and protection from discrimination operates on the regional level of administrative bodies.** Given the complex nature of the issue of discrimination, it is necessary that an expert trained in this field operates in every regional inspectorate of the administrative body which addresses the issue of equal treatment. An example for sharing this good practice between the administrative bodies may be the approach of the National Labour Inspection Office which has a so-called guarantor in every inspectorate office. This employee receives continuous support in education and regular supervision from the employer. They may act as a mentor to other employees of the inspectorate in issues of equal treatment. I also recommend for inspections of equal treatment that the administrative bodies

employ more frequently the instrument of invited experts from the circles of representatives of non-governmental organizations who work with marginalized groups (disables persons, the Roma, transgender individuals etc.). An example of good practice is the long-term activity of the Czech School Inspectorate in this field.

**13. Increase the frequency of inspections and administrative proceedings**

**focused on discrimination and unequal treatment in the spheres of employment, goods and services, and education.** Even though over the monitored period, the victims of discrimination turned more often to administrative bodies than to courts, the number of reported and identified incidents may be considered rather negligible. The administrative bodies should therefore promptly increase the number of inspections in the sphere of equal treatment and duly employ all legal instruments to identify the state beyond reasonable doubt. The administrative bodies should not hesitate to use documentation provided by the individual complainant (victim of discrimination) to prove the offence, including audio or video recordings. The administrative bodies should also more often use the instrument of witness testimony and promote witness protection (and protection of the individual complainants) from victimisation.

**14. Provide thorough justification for the findings of the inspections and the decisions of the administrative bodies with particular regards to the discrimination grounds, forms of discrimination and acceptable forms of discriminatory treatment.**

The decisions which I collected for the purpose of this survey indicate that the administrative bodies did not identify the discrimination ground with sufficient certainty in the justifications of their decisions (this most frequently concerned cases of nationality, citizenship or “other status” of the discriminated person), or did not consider the form of discrimination at all. The administrative bodies did not properly address the admissible forms of discriminatory treatment in their inspection findings or administrative decisions. Not every unequal treatment constitutes discrimination. In the case of some discriminatory causes (gender, age, disability, religion etc.), it is always necessary to carefully examine the legitimacy of the reason for discrimination, and whether the chosen measures support this reason and are appropriate and necessary. Whenever the administrative bodies do not proceed in this way, they violate the principle of sound administrative decision-making.

**15. Impose sanctions for violating the prohibition of discrimination that are effective, appropriate and dissuasive, and inform the general public about these in an appropriate way.**

Even though the administrative bodies imposed dozens of fines over the monitored period of 2010 to 2014 for violating the prohibition of discrimination, the frequency of offences in the sphere of labour and

employment (discriminatory advertisements) and goods and services (double pricing, unjustified age restrictions, racial discrimination) was de facto constant. The number of these offences was multiple times higher than the number of imposed fines. This casts serious doubts on whether the administrative bodies fulfilled the criteria which are required by the EU legislation. The sanctions for discrimination should be effective, appropriate and dissuasive. And so as to dissuade the discriminating person from engaging in discriminatory behaviour in the future, the sanctions should be above all perceptible. At the same time, it is necessary that the administrative bodies inform the general public on the cases of discrimination and imposed sanctions in an appropriate way. This is the only way how to reach a state in which the amount of the sanction dissuades other persons who engage in discrimination but have not been apprehended yet. Regarding the method of informing the public, inspiration may be found in the current practice of the Czech Trade Inspection Authority. I would like to add that racial or ethnic discrimination must be penalized most strictly. Any contrary approach violates the European Union law.

Anna Šabatová

Public Defender of Rights

**Final Report on the Research of the Public Defender of Rights**

**Discrimination in the Czech Republic:  
Victims of Discrimination and Obstacles Hindering  
their Access to Justice**

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