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Legal protection of ethnic minorities in the Czech Republic ¹

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Extended summary

This publication deals with legal protection of ethnic minorities against manifestations of racial discrimination, including procedures of government institutions enabling the integration of ethnic minorities in the CR. The whole of the survey, of which we are publishing the first of the two parts, was carried out on the basis of assignment from the Ministry of Justice of the CR, stemming from Resolution of the Government of the CR No. 599/2000 dated 14.6.2000: Conception of Government Policy towards Members of the Roma Community Assisting their Integration into Society.

Protection of racial, national and also other minorities against attacks on them and their members is an essential precondition for maintaining a stable environment in society. As with other socially pathological phenomena, the problem of racially motivated attacks and racial discrimination cannot be resolved exclusively by penal or administrative measures to repress them. Legal measures to protect minorities against discrimination fall primarily within the field of protection of human rights and freedoms and affect all areas of the law. Criminal Law provisions for protection of minorities, or legal measures for their protection by means of misdemeanour law must therefore proceed from two basic sources: from international documents, the content of which is binding on the CR, and from national sources with the highest legal weight, so in particular from the Constitution of the Czech Republic and the Charter of Basic Rights and Freedoms.

Because criminal law protects basic values and relationships as a rule already governed by other branches of the law, particularly constitutional law, civil law, commercial law, administrative law etc, use of it comes under consideration where the measures available in these other branches of the law do not provide sufficient protection, because an offence has been committed. Criminal law protection against racially motivated offences therefore consists in the fact that some more serious attacks are qualified as criminal offences and penalties and protection measures can be imposed for committing them. From this definition of the role of criminal law it is clear that it should fulfil only a support and subsidiary function and that in connection with racially motivated offences it is also necessary first and foremost to apply means of prevention.

The criminal law in force in the Czech Republic contains four basic facts of offences which mark out racially or similarly motivated attacks against a group of citizens or against individuals. These are the provisions of § 196, § 197a, § 198 and § 198a of the Criminal Code. However, protection against racially and similarly motivated attacks is not covered completely by the provisions cited. Certain other facts, directed to protection of life, health or property, contain this motivation as a circumstance conditioning use of a stricter legal qualification of a certain criminal offence and thereby also the possibility of imposing a higher sentence for its commission. This is the case particularly for the criminal offence of

¹ Štěchová, M., Kotulan, P., Rozum J., Zeman P., Půry F. (externally): Legal protection of minorities in the CR. Final report on survey. Prague: ICSP, 2002. 232 pages. Summary.

murder under § 219 paras 1 and 2(g) of the Criminal Code, where the offender is liable to a prison sentence of 12 to 15 years or an exceptional sentence if this criminal offence was committed against another person because of his/her race, nationality, political conviction, religion or because he/she had no religion. The same circumstance may be a reason for imposing a harsher sentence for offences of assault under § 221 paras 1 and 2(b) of the Criminal Code (sentence of imprisonment of 1 to 5 years) and under § 222 paras 1 and 2(b) of the Criminal Code (sentence of imprisonment for 3 to 10 years). Similarly, a criminal offence of blackmail receives a harsher sentence under § 235 paras 1 and 2(f) of the Criminal Code with a sentence of imprisonment of 2 to 8 years where it was committed against another person because of his/her race, nationality, political conviction, religion or because he/she had no religion. The same circumstance may be a reason for harsher punishment for an offence of damage to the property of another under § 257 paras 1 and 2(b) of the Criminal Code, where the offender is liable to a sentence of imprisonment of 6 months to 3 years.

The most serious attacks against national, ethnic, racial or religious groups can be prosecuted as certain crimes against humanity, for example as genocide under § 259 of the Criminal Code or support and promotion of movements aiming to suppress the rights and freedoms of a person under § 260, § 261 and § 261a of the Criminal Code.

The Criminal Code in force in the Czech Republic enables – as does criminal legislation in other countries – to take adequate sanctions against various attacks against groups of citizens and individuals. From this point of view, then, Czech criminal law protection on the one hand complies with the International Convention on Elimination of All Forms of Racial Discrimination (decreed under No. 95/1974 Coll.) and on the other hand is comparable with criminal legislation of other developed countries in Western Europe.

Compared with other European countries, however, Czech criminal law does not yet expressly provide for certain special cases of racial discrimination which the criminal law of other countries takes into consideration. So, for example, refusal to provide goods and services or their provision only after discriminatory conditions are met, refusal of employment or dismissal from employment or placing discriminatory conditions on an offer of employment are not as such criminal offences here.

In the present government's proposal for partial amendment of the Criminal Code from March 2001, just one change is proposed in relation to criminal offences that are racially or similarly motivated, namely adding to the facts of the criminal offence inciting hatred against a group of persons or restriction of their rights and freedoms under § 198a para. 2 of the Criminal Code so that under letter (c) of this provision one who participates in activities of groups, organisations or associations which advocate discrimination, violence or racial, ethnic or religious hatred could be sentenced to imprisonment of up to 2 years. No fundamental objections can be raised against this proposal - the question is rather why only some of these undesirable activities are to be criminalised and not, for instance, the foundation or operation of these groups, organisations or associations, and why the proposal does not relate to entities which also advocate political or national hatred.

In none of the proposals mentioned has the idea of stricter sanction of certain criminal offences yet appeared (eg under § 196, § 198, § 198a, § 260 and § 261 of the Criminal Code), if committed by a public official. A similar tightening of sanctions is contained in some criminal legislation provisions in other democratic countries and clearly there is no

convincing argument why such a solution should not be adopted in the Czech Republic as well.

Problems with the effectiveness of criminal prosecution of racially or similarly motivated offences arise above all from the fact that proving these criminal offences is complicated and in particular proving national, racial, ethnic or similar motivation is by no means simple. For in this respect as a rule there is no available admission by the offender which could be a single direct proof, and this is why this motivation can often be proved only by circumstantial evidence, the quantity and quality of which is not sufficient for reliable conviction of the offender for a racially or similarly motivated attack.

Misdemeanours are typically less serious anti-social acts than criminal offences and form one of the sub-groups of administrative offences. The Misdemeanours Act, No. 200/1990 Coll., as amended can, at least to a certain extent, be regarded as the only statute on administrative offences. It contains both general provisions and a separate section, and is also devoted to procedural issues. With effect from 2.8.2001, two new facts of misdemeanours, expressly covering inter alia cases of racially motivated attacks or discrimination for racial, ethnic, nationality etc reasons, were included in the list of misdemeanours against civil co-existence in § 49 of the Misdemeanours Act.

The question of discrimination is very sensitive in the consumer protection field. Explicit anti-discriminatory provisions can be found in this connection in § 6 of Act No. 634/1992 Coll., on consumer protection, as amended. Vendors (entrepreneurs) may not when selling products and providing services behave in contravention of good moral conduct; in particular they may not discriminate against the consumer in any way. Breach of the prohibition on discrimination is an administrative offence, for which a fine of up to 1,000,000 CZK may be imposed, and for repeated breach of obligation during one year a fine of up to 2,000,000 CZK may be imposed.

Further findings relating to racially motivated criminal offences were derived from a report of the Ministry of Justice of the Czech Republic, which states that for the period from 1.1.2000 to 31.12.2000 a total of 148 persons were legally convicted in Czech courts for criminal offences motivated by racial intolerance, which represents 0.2% of the total number of legally convicted persons (in 1999 166 persons were legally convicted for these criminal offences).

Of this number, 35 juveniles were convicted, ie 23.6%, and 13 of the persons convicted were designated by the courts as re-offenders.

In 2000, the greatest number of persons – 57 (38.5%) – were convicted for the criminal offence of supporting and promoting movements aiming to suppress citizens' rights and freedoms under § 260 or § 261 of the Criminal Code, 29 persons were convicted of the criminal offence of violence against a group of citizens and against individuals under § 196 of the Criminal Code, a further 24 persons for the criminal offence of defaming a nation and a belief under § 198 of the Criminal Code or for the criminal offence of instigating national and racial hatred under § 198a of the Criminal Code, 16 persons for the criminal offence of bodily assault under § 221 of the Criminal Code, 4 persons for the criminal offence of blackmail under § 235 of the Criminal Code, 3 persons for the criminal offence of breach of the peace under § 202 of the Criminal Code, and two persons in each case for the offences of assault under § 222 of the Criminal Code (grievous bodily harm), breach of the rights and protected interests of military personnel under § 279a of the Criminal Code, assaulting a public official

under § 155 of the Criminal Code, drunkenness under § 201a of the Criminal Code and violence against a group of citizens and against individuals under § 197a of the Criminal Code, and one person in each case was convicted for the criminal offences of restricting personal liberty under § 231 of the Criminal Code, robbery under § 234 of the Criminal Code, theft under § 247 of the Criminal Code, embezzlement under § 248 of the Criminal Code and the criminal offence of abusive language between military personnel under § 276 of the Criminal Code, which were in all cases committed with a racial motive.

The greatest number of persons – 63 (42.6%) – were legally convicted by courts in the North Moravia Region, and 17 persons respectively (11.5%) were convicted by courts in the South Moravia and West Bohemia Regions and by District Courts in Prague.

For the criminal offences stated above, 20 (13.5%) of the convicted were given prison sentences, 93 (62.9%) were given suspended prison sentences, 25 (16.9%) were given community service orders, 3 (2.0%) were given fines and 7 persons (4.7%) were discharged.

The Ministry of Justice of the CR also stated in its report that the speed and smoothness of resolving cases in this area of criminality is monitored systematically both by the Ministry and by Presidents of Courts in their supervision powers and it can be stated that there are practically no unreasonable delays.

We obtained specific findings on the issue reviewed directly from crime files, where legal verdicts were pronounced on offences with a racial or national motive. In particular, criminal cases were considered where the offender and the victim of the case reviewed were members of different ethnic groups and the motive for the action was inter-ethnic hatred and also cases where there was no direct conflict between persons but, for instance, racial slogans were chanted, racist and Nazi symbols were scrawled etc. Cases where the action was one of conflict between skinheads and punks and between individuals from the Roma or other national or racial minorities were not reviewed.

Selection of these cases was made first of all on the basis of the Criminal Police Service Headquarters database, where all cases recorded by the Police of the CR in the years studied were kept. From these, cases which were then further monitored by authorities responsible for criminal proceedings up to their legal termination by a guilty verdict were selected for consideration. After the documentary reference data of these crime records were ascertained, their loan was requested from the respective district and area courts.

44 crime files were processed from all former regions, except the West Bohemia region. Crime files were lent to us by 28 district and area courts and one crime file was lent to us by the City Court in Prague, which in view of the seriousness of the case conducted proceedings at the first level (§ 17 of the Criminal Code). For completeness it is necessary to state that we did not have findings on cases reviewed from the West Bohemia region and this is why criminal files from district courts there were not requested. So crime files were lent to us by a third of the district courts from almost everywhere in the Czech Republic and this sample can be considered as sufficient for documentation and more general summary of findings too on the criminal activity in question and on the procedure of authorities responsible for criminal proceedings in their individual phases.

The greatest number of crime files lent to us for analysis were from district courts in North Moravia region (11 out of 12 cases heard), North Bohemia region (8 out of 10), East Bohemia

region (7 out of 10) and South Moravia region (6 out of 13). However, from this wide spread it is not possible to draw more detailed conclusions on the numbers of persons convicted for the criminal offences reviewed. Selected for request were mainly those criminal cases which had already been legally terminated by courts in individual districts or where early conclusion of them could be expected. However, we did not have findings on all criminal cases motivated by racial or national hatred which were in progress or had legally ended in a guilty verdict in the given period.

Despite this statement, the sample of crime files which we had for evaluation on the whole corresponds with the occurrence of these offences in individual regions, as is stated in the Ministry of Justice of the CR report and in other documentation.

In all cases we reviewed only criminal cases which were ended by a court verdict in the years 1997 – 2000. Crime files were also recorded and evaluated where a verdict of acquittal was pronounced in a court judgement.

Findings from crime files were first of all transferred to a record sheet prepared in advance, where a total of 45 individual aspects were monitored. These aspects were broken down into data on the criminal offence, causes and motives for its commission, its consequences and conviction for it, on the person of the convicted and the victim, and on the procedure of the authorities responsible for criminal proceedings, including length of the proceedings in their individual phases. Findings from crime files were analysed under these basic groups and are described below.

Analysis of the files showed that characteristic forms of criminal activity (93.7%) committed from racial, national or other hate motives are mainly verbal manifestations, physical attacks and graphical expression of the racist views of the offenders.

This criminal activity was committed mainly by men (96.9%), Czech citizens of non-Roma origin (59, ie 92.2%), younger age groups (87.5% between 15 and 30), with a significant proportion of juveniles (25%). The research findings obtained from crime files do not differ more significantly from those of other authorities, particularly from the evaluation documentation of the Supreme State Prosecutor's Office and from the Ministry of Justice of the CR report. Most offenders are with lower socio-cultural levels (51.6% with basic education, 42.2% skilled workers) and only a few cases were recorded of people who had completed secondary school (4, ie 6.2%). Relatively prominent in participation in commission of criminal activities are the unemployed (26.5%) and manual workers (17.2%), but there is also a relatively strong group (9.4%) of offenders who professed to be entrepreneurs. Criminal acts were committed mainly by a sole offender (66.7%) or two offenders together (21.4%); repeat offending, as an aggravating circumstance, was recorded only for 7 (10.9%) of those convicted persons. Criminal acts were committed most often (56.3%) in public spaces, then at the house or flat of the victim and in front of it (21.9%) and in restaurant facilities (12.5%). Even though it was not often possible to provide reliable proof that the offender was a member of one of the movements promoting racial and national intolerance, in 27 of the cases reviewed, ie 45.8% of those convicted, membership of the skinhead movement or public demonstration of sympathy for such a movement was recorded.

In our analysis of crime files we also attempted to ascertain all available data on the victims of offences. The most frequent victims of the offences reviewed in the criminal cases examined were men (52, ie 63.4%) of younger age groups (52.5% between 18 and 40), but also children

(11%) and pensioners. 74.4% of the victims were Roma, mostly unemployed (26.8%). 16 (19.5%) were “white” victims, of whom 6 were officers of the police of the CR and the City Police who intervened. Apart from a very small number of exceptions (5), it was a matter of unprovoked criminal activity, motivated by hatred or intolerance. In the criminal cases examined, not one case was found of concealing the identity and appearance of a witness under § 55 para. 2 of the Criminal Code nor any request from a witness to conceal his/her appearance and personal details under § 101a of the Criminal Code.

Sentences imposed on offenders for offences that were motivated racially or nationally or by other forms of hatred are in view of the persons of the offenders (age, character assessment, first conviction and so on) mostly educational, not linked to imprisonment. In not one case was use made of new criminal law provisions – diversions and conditional discharge with supervision – which enable courts to take a more individual approach to offenders and strengthen expectations for the success of the educational effectiveness of a conditional sentence.

In clearing up and dealing with criminal activities committed from racial, national or other hate motives, authorities responsible for criminal proceedings proceeded in the cases reviewed in accordance with the respective provisions of the Criminal Procedure Code. Relatively serious breach of procedural provisions was not found in any phase of criminal proceedings. It is also necessary to acknowledge that nearly two thirds of criminal cases were brought to trial by district courts and resulted in convictions.

We attempted to ascertain from the sample of crime files whether criminal proceedings pursued conformed to the requirement for speed. In addition, the time which elapsed from commission of an act to commencement of criminal prosecution was ascertained. A positive finding is the fact that in 37, ie 57.8% of the cases criminal prosecution was commenced within three days of commission of the act. The fact, however, remains that the length of this time is mainly dependent on how quickly the facts indicating commission of the offence are notified (where there was no intervention by the police). In 2000, the average length of court proceedings for the first two most frequently represented offences, particularly for the offence of violence against a group of citizens and against individuals under § 196 of the Criminal Code, substantially exceeded the average length of court proceedings (365 as against 251 days) for all criminal offences treated by first level courts in the CR. For other criminal offences the length of the proceedings was less than the average. From review of a longer period from 1995 it can be seen that both for individual criminal offences and in comparison of them with the national average there are often quite wide fluctuations up and down. For this reason it is not possible to infer either a downward or upward trend in the length of court proceedings for the criminal offences reviewed.

Findings from the legal analysis conducted and from ministry reports (in this publication anti-discrimination and integration procedures applied by individual Ministries are presented as the relevant ministry produced them at the request of ICSP) show that relatively high attention is given to the problem of ethnic minorities in the CR. The state has legal and institutional tools at its disposal which it can use for the given objectives, ie integration of ethnic minorities and prevention of discrimination against them. Certain gaps have of course been found in the use of these tools, especially at local level.