

Czech Republic

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- **Context information from ECRI**

40. Nevertheless, ECRI is very concerned that right-wing extremist groups organised a series of anti-Roma demonstrations and protests throughout 2013. These usually began with racist and inflammatory speeches against “inadaptables” and mostly ended in extreme violence. As ECRI observes in the section below on Racist and homo/transphobic violence, these extremist groups showed their capacity on numerous occasions to incite ordinary local people to acts of violence. ECRI considers that they must be regarded as a threat to society.

58. As for prevention, ECRI welcomes the steps taken by the authorities to counter the wave of extremism in the country which was observed in ECRI’s fourth report. A Strategy for Combating Extremism, including a Concept for Fighting Extremism with concrete tasks for ministries, municipalities and police, was drawn up and is revised each year; annual reports are presented to Parliament. The Strategy is preventive rather than repressive in nature. According to the authorities, the campaign against extremism has been successful, with the neo-Nazi scene of the years 2008-2009 now in disarray. Extremists are currently less radical and less visible (see also the next section on Racist and homo/transphobic violence).

59. Regarding counter speech, ECRI notes a few examples of good practice. In 2011 almost the entire political scene reacted in opposition to the homophobic opinions of the then President and his advisor on the Gay Pride festival (see § 37). One senior politician even stated that the advisor was “inciting hatred against a minority population in our country”. Furthermore, 13 Prague-based embassies issued a joint statement in support of the event.

In 2012, a former Constitutional Court judge and current senator renounced her membership of the senators’ club in protest against the racist attitudes of two other senators, including the leader of Dawn of Direct Democracy.³⁹ On the other hand, as far as ECRI is aware, no other political or public figure has condemned Dawn’s leader for his antiimmigrant, anti-Muslim and anti-Roma comments. ECRI considers that where intolerant statements do not reach the level required for criminal sanctions, 40 political and public figures should take a strong stand against them by means of counter speech.

- **Transphobia and data on hate crimes in the country**

121. ECRI notes that there is no official data on the LGBT population in the country, although the authorities carried out an in-depth Analysis of the Situation of the Lesbian, Gay, Bisexual and Transgender Minority in the Czech Republic in 2007. Research demonstrates that in general there is broad tolerance for LGBT persons in the country. In a global survey published in June 2013, the Czech Republic had the third highest percentage in Europe (80%, after Spain and Germany) and worldwide (on a par with Canada) of people agreeing that “society should accept homosexuality”.⁷⁰ In

August 2014, the fourth Gay Pride took place under the auspices of the Minister for Human Rights. The official opening was held in the Hrzánský Palace, a government building. In previous years there were protests against the festival, but this appears not to be the case in 2014. Nevertheless, ECRI notes that of 2 469 respondents from the Czech Republic who took part in the FRA survey of LGBT people's experiences of discrimination, 36% felt discriminated or harassed because of their sexual orientation in the year preceding the survey (the EU average was 47%).

There is no specific reference to homophobic hate speech. However, Section 356 on incitement to hatred provides a possibility for punishment through open-ended wording ("or against another group of persons"), but Section 355 on defamation sets out a closed list of grounds not including sexual orientation or gender identity. Section 352 of the Criminal Code provides for the racism-specific offence of violence against a group of persons or an individual. The list of grounds is exhaustive and does not include sexual orientation or gender identity (see ECRI's recommendation in § 123 of this report). According to information provided by the authorities, a total of 61 persons were prosecuted in 2013 under Section 352 and 50 were convicted and sentenced. As already observed, the data is not broken down according to the hate motive.

- **Promoting tolerance and combating discrimination**

129. ECRI is pleased to note that in some fields of everyday life, steps have been taken to promote tolerance towards LGBT persons. In education for instance, the subject People and the World, which provides information on sexual orientation and gender identity, is part of the framework curriculum for all pupils at elementary and secondary levels. Public health insurance covers the costs of gender reassignment and counselling. Between 2012 and 2014, 173 applications for gender reassignment were registered and all but one were accepted. However, hormonal treatment is not covered; in view of the fact that hormone therapy is an essential part of gender reassignment, ECRI encourages the authorities to consider providing financial assistance to those in need of such treatment.

130. Although there is no government action plan or strategy to promote tolerance and combat discrimination against LGBT persons in the Czech Republic, ECRI welcomes the setting up, in 2009, of a Committee for Sexual Minorities in the Government Council for Human Rights. 77 Its members include representatives of ministries and civil society. They analyse the situation and rights of sexual minorities in the Czech Republic and may present to the Government Council proposals concerning legislative amendments or solutions to other problems facing LGBT persons. For example, the Committee helped create a handbook on Homophobia in the Classroom and recommendations for the media on how to treat and present to the public different sexual identities. In addition, as mentioned above (§ 71), the Government is planning a Campaign against Racism and Hate Violence to be conducted in 2016, focusing on vulnerable minority communities including LGBT.

- **Legislative issues**

122. The Criminal Code does not specifically mention homophobic or transphobic motivation under Section 352 (violence against a group of persons or an individual), Section 355 (defamation) or Section 356 (incitement to hatred). In theory, public incitement to hatred against LGBT persons could be covered by the wording "or other group of persons", but there is no case law confirming this.

123. ECRI recommends that Sections 352, 355 and 356 of the Criminal Code should include specific references to the grounds of sexual orientation and gender identity.

124. The Anti-Discrimination Act prohibits discrimination based on sexual orientation and covers so-called “sexual identification” (gender identity) under the ground of sex. As concerns the burden of proof, ECRI regrets that, in the case of discrimination on grounds of sexual orientation and gender identity, the sharing may only occur when discrimination is alleged in the field of employment; it does not apply in any other area. ECRI refers to its recommendation in § 18 of this report.

125. While a number of laws ban discrimination on the basis of sexual orientation and gender identity (the Labour Code, the Employment Act and the AntiDiscrimination Act), according to the above-mentioned FRA survey, 59% of respondents were not aware of the existence of a law forbidding discrimination on account of sexual orientation when applying for a job. ECRI encourages the authorities to organise an awareness raising campaign on this issue.

126. Same sex marriage is not permitted. However, in 2006 the institution of registered partnership was recognised in law. LGBT activists claim that the extent of partners' rights and obligations remains very disadvantageous in comparison with marriage. Differences include that partners cannot jointly own property, there are no tax benefits as provided to a husband and wife, and there is an automatic ban on adoption of a child. As concerns adoption, ECRI notes that the Public Defender, when investigating a complaint, did not find any objective and rational reason for denying registered partners the possibility of adoption and considered the relevant provisions of the Registered Partnership Act unconstitutional.⁷⁴ Procedures have been initiated for an assessment by the Constitutional Court.

127. Gender reassignment is regulated by the 2012 Act on Special Health Services. Persons wishing to change their sex must obtain the positive opinion of a committee of experts which consists of seven persons, including a representative of the Ministry of Health. Legal gender recognition is not possible without surgery; a certificate of surgical gender reassignment is required for change of birth number and name. ECRI considers that gender reassignment should not be a prerequisite for gender changes in personal documents. According to the new Civil Code of 2014, “marriage or registered partnership ceases to exist automatically as a result of gender reassignment transition”

128. Lastly, ECRI notes that the Czech Republic has explicitly recognised in its national legislation that sexual orientation is included in the notion of “membership of a particular social group” for the purpose of refugee recognition.

- **List of recommendations from ECRI**

17. (§ 123) ECRI recommends that Sections 352, 355 and 356 of the Criminal Code should include specific references to the grounds of sexual orientation and gender identity.