

## TWO VARYING VIEWS OF DISCRIMINATION IN THE CZECH REPUBLIC

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### Abstract

Since the beginning of the 1950's, the European Community has dealt with the protection of basic human rights and freedoms of which an integral part is the care of complying with the principles of equal handling and fighting against all forms of discrimination. A similar process started with necessary intensity in our territory after 1989 and accelerated when the Czech Republic joined the European Union in 2004; despite of this, many respondents of sociological researches are sure of a high rate of discrimination. The authors have used a comparative analysis to compare the data on discrimination gained from research on public opinion with the exact data on discrimination gained by the Public Defender of Rights as the responsible authority, namely particular individuals who feel that particular situations as discrimination were examined. The subjective opinion of the respondents of sociological surveys who present their opinion on discrimination but have never faced it markedly differ in many aspects from the data gained by the protector of public rights during the examination of particular complaints; however, these basically agree with the knowledge of the respondents having personal experience with discrimination. The title of the paper came from that because of the existence of two – in our opinion – long-term and unreasonable views of discrimination in the Czech Republic that are presented independently. We consider the first view real and right, because it is supported by the results of research performed by the professional staff of the Public Defender of Rights. Despite the possible protest of some readers we understand the second view as a laic one, established in the general public and sure of the high rate of various discrimination in the Czech society. It is a laic view because the sociological research – although of course carried out and elaborated by renowned companies – includes views of discrimination of the respondents who do not have personal experience with discrimination in 90% of cases; this means that they judge intuitively and mistakenly. The previously mentioned statement is shown in the results. It can be recommended in the period of broad internet use that at least occasional visits to websites of Public Defender of Rights where not only the laic public but the professional public can learn much about discrimination, because the demand for an increase of legal awareness of society is always a neverending process, not only in the sphere of discrimination.

**Key words:** *discrimination; Charter of Fundamental Rights and Freedoms; international documents; Convention No. 111; EU Parliament and Council Directive 2006/54/ES; anti-discrimination act; Public Defender of Rights; public opinion*

## INTRODUCTION

European states, and especially the European Community, have long dealt with the protection of basic human rights and the freedoms of citizens living on their territory. These rights and freedoms were first declared in international documents initiated by various UN bodies, and the ratification and implementation of these documents to national legislation by sovereign states was a matter of international prestige.

The establishment of the European Community of Coal and Steel in 1952 represented the beginning of a long and gradual process of development of the integration of European states consisting in increasing number of integrated states and fields of mutual cooperation.

Human-legal documents were then logically completed by standards which define behaviour that contradict them, therefore it is forbidden behaviour; in 1958 the session of the general conference of the International Labour Organization in Geneva had already accepted the Convention on Discrimination (employment and occupation) which was numbered 111 and is usually referred to as the Convention No. 111.

The former Czechoslovak Socialistic Republic ratified this Convention in January 1964, so it came in to force in its territory on 21st January 1965. However, it was published in the Collection of law as soon as the social relations changed in 1989 through the Announcement of the former Federal Ministry of Foreign Affairs No. 465/1990 Sb., and thereby it became effective. It shall be just briefly stated that such practice was not unique in socialistic Czechoslovakia.

After joining the EU in 2004, the Czech Republic adopted on 5.7.2006 the Directive of the European Parliament and of the Council 2006/54/ES, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, now already with obligatory implementation to the national legislation of the Czech Republic.

As a legal tool of protection against discrimination in respect of labour relations, this directive was first in §§ 16 and 17 Act No. 262/2006 Sb., i.e. Labour Code, the complex legal regulations are then included in Act No.

198/2009 Sb., on the equal treatment and legal tools of protection against discrimination and on the alteration of some acts, referred to as the anti-discrimination act.

The anti-discrimination actin § 1 does not only contain the usual formula that the appropriate EU directions are integrated, but the legislator also uniquely declares concurrence on the Charter of Fundamental Rights and Freedoms and international agreements that are a part of the Czech legal order.

Many articles of the charter, especially in the area of economic, social and cultural rights are not applicable directly from its wording, but a more detailed adjustment in the appropriate act is necessary. The above-mentioned fact is also related to the anti-discrimination act, and the House of Deputies of the Parliament of the Czech Republic adopted it by decree No. 199/2009 Sb., after returning it by the President of the republic.

In the introduction of the paper it should also at least be indicated why so much attention is paid to discrimination resp. elimination of its various forms. Differentiation of people in society according to a whole spectrum of criteria (property, professional, class, race, religion, nationality and others) and discrimination; they are as old as human society and should be remembered at least through a short historical excursion.

In today's very neglected Latin we can find the verb to "discriminare", which means to divide or distinguish (Šenková 2002). In Roman law, up to recently a recognized source of legal wisdom, the term "discrimination" meant separation, different assessing, underestimation, discrimination (Rebro 2010). This term was not only known but also much used more than two thousand years ago, and the Roman law was rife with various forms of discrimination. More about the perception of discrimination in antiquity can be learnt in the paper of Ivana Stará (2010).

Here it can be briefly stated that people other than Roman citizens had an unequal position, so-called *ius gentium*, regulated differently rights and duties of foreigners and a slave was just a thing in legal meaning. We do not forerun historical development when we use an example of discrimination of women against men in private as well as public spheres to demonstrate its persistence

even in Europe from antiquity until the 20th century regarding the position of women in the family, obtaining the right to vote, job opportunities, etc. It persists in rough forms within many countries outside Europe until the present.

A shy start, or attempts to achieve an equal position of people can be seen in the declaration "freedom, equality, brotherhood" of the Great French Revolution which was anticipated by the political-philosophical opinion of the enlightened philosophers Rousseau or Voltaire (née Arouet).

In 1811, the Common Civil Code adopted in Austria-Hungary that remained in force on the territory of new found Czechoslovakia after the disintegration of the monarchy until 1950, determined a really breakthrough provision § 16 that "everyone is inborn with brain recognizable rights and so can be regarded as a person. Slavery or serfdom and the execution of power tending to the same not allowed in these countries" (Act from 1st June 1811 No. 976, Sb.). This act very progressively recognized equal rights for citizens and foreigners, although only on the principle of reciprocity, which was absolutely common in those times.

While in the 1950's, as mentioned above, a gradual integration process started in western democratic countries and human-legal topics were intensively elaborated, social development in our territory, as is widely known, took another direction.

After the social changes after 1989, legal matters had to be so much altered that the topics of equal treatment and discrimination (of course, the Constitution and Charter of Fundamental Rights and Freedoms and other legal standards of common character were adopted immediately) were held especially after 2000; despite of the legal sphere, however, the definition of the term discrimination began to appear in various publications earlier.

E.g. the Sociological Dictionary (Geist 1992, p. 68) explains discrimination as "(1). generally: a process of making distinction, difference in perception, ability to perceive (to watch, note) slight difference (cp. discrimination experiment); also the result of this process; (2). A special case of social difference where normative principles of equality and equal treatment with all

members of a social system are denied. It is an especially improper distinction of individuals, groups (category, class etc.), values etc., based on their membership in a certain social (professional, political, stratification, religious etc.) or biological (racial) category and making distinctions in favour of the ones against the others".

The Dictionary of Foreign Words explains it as "distinction connected with breaking the rights of a certain category of persons for a class or social position, nationality, race, religion, sex, political opinion etc." (Klimeš 2002, p. 127).

The book, "Equality and Discrimination", by the authors Bobek et al. (2007) deals in great detail with the matter of equality, limits between lawful distinction and discrimination, particular types of discrimination situations and the prohibition of discrimination, amended by EU law. It includes much judicature of the European Court for Human Rights, analyses and their comments; it also deals with the judicature of Czech courts, with the statement of the fact that legal protection against discrimination still fails and skilled legal analysis of the recent situation. The valid physically-legal adjustment which is tributary to the fact that "adoption of the antidiscrimination act has been generally expected" as a special legal rule could be attackable. Most of this book would be worthy of quotation and it is not possible in this paper; the authors of this paper are pleased and willing to take and quote a passage from this book which explains many of them. "The basic test of discrimination in the sphere of judicature of the European Court for Human Rights is considered to be the Belgian language example (No. 2) from 1968 in which the court carried out and applied this anti-discrimination test: ... the principle of equal treatment is broken when diversity [in treatment] does not have any objective and reasonable justification. The existence of such justification shall be considered in relation to the aim and effects of examined regulations, whereas the principles that usually predominate in democratic societies shall be taken into account. It is not enough that the difference in treatment during the exercise of a right given by the Convention shall struggle for a lawful aim: Article 14 is also broken when it is evidently deduced that there

is not a reasonable relation of proportionality among methods which are used in the given regulation and the aim that shall be achieved” (Bobek et al. 2007, pp. 43–44).

In the procedural area the first expectation of the public (however not a part of professional one) connected with interpolation of a new provision § 133a to the Civil Legal Order. The ideas occurred that the accused potential victim of discrimination is compared to the usual position in civil suits totally devoid of burden of proof, the burden of proof then proceeds wholly on the defendant who shall be able to disprove the discrimination stated by the accuser. It is not so, in fact is so-called shared burden of proof and the right state is basically mentioned in this quotation: “It is not enough that a person feeling discriminated just pretends about the discrimination, but this statement shall be also evidenced to a certain extent by this person. The accuser – a potential victim of discrimination – shall above all evidence that he was treated less favourably than another person in a comparable situation according to the discrimination reason, i.e. also evidence submitted by the accuser shall indicate the fact that different treatment appeared from one of the legally prohibited reasons. The accuser has no duty relating to the stated discrimination reason. Shall the accuser carry this burden of allegation and burden of proof, the burden of proof passes on to the defendant. The defendant shall then pretend and evidence that there was no discrimination and that the treatment which led to the pretended discrimination was legally reasonable and the aim and reaching this aim happened under adequate means (test of legitimacy and proportionality). Should the defendant carry the burden of proof, the court cannot state discrimination” (Čermák and Kvasnicová 2010, p. 22).

The basic definition of discrimination is stated in § 2 anti-discrimination act as follows:

“(1) According to this act the right to equal treatment is the right not to be discriminated against from reasons stated by this act.

(2) Discrimination is direct and indirect. Discrimination is also considered to be the molestation, sexual harassment, persecution, instruction to discrimination and solicitation to discrimination.

(3) Direct discrimination is such behaviour, including omission when one person is treated less favourably than in the treatment of another person in a comparable situation, namely by reason of race, ethnic origin, nationality, sex, sexual orientation, age, health disability, religion, belief or world opinion.

(4) Discrimination for reasons of sex is also considered to be discrimination by reasons of pregnancy, motherhood or paternity and by the reason of sexual identification.

(5) Discrimination is also a behaviour when a person is treated less favourably by reason of assumed reason according to par 3.”

Regarding the comprehensiveness of other terms necessary to understanding the whole matter of equal treatment, we quote at this point of this paper just the key part; however, everything is easily available for the readers on the websites of the Public Defender of Rights. The authors of this paper consider much more important than the detailed quotation of physically – legal adjustment the matter of fact that beginning with force of the anti – discrimination act (except already existing possibilities of court protection against discrimination) the public gained an opportunity of protection against discrimination through giving competence to the protector, as we state in detail at the end of the second part of the paper.

It of course does not mean that the authority of courts is affected or even transferred to the protector, it is not so and cannot be; the separation of court power and executive power remains a matter of fact, however, the protector gained quite concrete competence and he can help the discriminated persons through the execution of this competence if they appeal to him.

However, it also does not mean that the term discrimination and its present state should be a notoriety in Czech society, as we document through the analysed sociological research surveys and the results of the activity of the Public Defender of Rights.

## MATERIALS AND METHODS

The authors of the paper used a comparative method to compare the results ascertained in the area of discrimination through selected

sociological research surveys of the below specified organizations, and they compare them with the exactly ascertained state of discrimination coming from the official outputs of the activity of the Public Defender of Rights which notably vary from each other.

Selection of quoted research surveys was made by the authors of the paper roughly for the period 2004–2014, because the anti-discrimination act was adopted in the Czech Republic in the middle of this 10-year period.

Attention was therefore paid to a mutual comparison of the national state of discrimination at the beginning of the monitored period, further in the half of it – around 2009 – and in its end. Since 2009 it can be established the influence of issuance of the anti – discrimination act on the state in the area of discrimination in the Czech Republic.

To be reliable and serious, the research surveys realized at the instance of the Ministry of Labour and Social Affairs, as well as the research surveys with a usual or up to high number of respondents (1067–12 044) were selected. Their results are then confronted not only with the research data of the Public Defender of Rights but especially with the total results ascertained in the exercise of competence of the Public Defender of Rights provided by law.

Their search of the STEM company which was realized in April 2005 dealt with establishment of public opinion in the area of discrimination in the labour market. The research respondents were the citizens of the Czech Republic over 18, selected from a wide representative file by means of the quota selection method. This research was realized through the method of a standardized interview, whereas the questions were answered by 1668 respondents in total (STEM 2005).

Next, public opinion research was carried out in July 2005 by the STEM company, where its orderer was the Ministry of Labour and Social Affairs. One of the research objectives was the establishment of views and experience of the citizens of the Czech Republic in the area of discrimination (MPSV 2006).

Gender area was concerned with the public opinion research relating to the position of women in the labour market that was carried out by the Centre for Research of Public Opinion together with the Gender

& Sociology (both Sociological Institution AV ČR). This research was realized for the Ministry of Labour and Social Affairs of the Czech Republic. 1067 respondents-citizens of the Czech Republic over 15 were selected by means of quota selection. An omnibus survey was carried out within this research and the data “passed through the system of logical and statistical control” (Křížková and Hašková 2003).

Internet research of the SANEP company was aimed at wage discrimination of women. This research was carried out in the period of 21–28 September 2010, with a representative sample of 10 686 respondents from the age of 18–69 who were selected by means of the method of quota selection (SANEP 2010).

Research carried out directly by the Public Defender of Rights and aimed at manifestations of discrimination in job advertisements includes the results of the frequency of occurrence of discrimination demands of employers in job advertisements. The research was carried out with the file of 12 044 job advertisements published in the portal [www.prace.cz](http://www.prace.cz) in the period of 1–7 April 2011 (Kancelář veřejného ochránce práv – Office of Public Defender of Rights 2011).

The research of STEM TRENDY 5/2014 was carried out in the period of 20–27 May 2014, with a representative file of the citizens of the Czech Republic over 18. The respondents were again selected by means of the method of quota selection and the questions were answered by 1093 respondents (STEM 2014).

Sociological research for the Office of the Public Defender of Rights was carried out by the Focus Agency with the adult population of the Czech Republic in the period of July until August 2014. The subjects quoted in the paper were answered by 2079 respondents, only the subject “personal experience with discrimination in the area of labour market” comes from the answers of 234 respondents (Kancelář veřejného ochránce práv – Office of Public Defender of Rights 2014e).

The authors consider to be an exactly ascertained state in the area of discrimination the public available documents from activities of the Public Defender of Rights, and their opinion is sustained by the statement that Act No. 198/2009 Sb., on equal treatment and legal tools of protection against discrimination and on alteration of some acts



(hereinafter; anti-discrimination act) altered and amended – in addition to the detailed specification of legal terms of discrimination and related questions – Act No. 349/1999 Sb., on the Public Defender of Rights. The reasons why we consider this passage of this act to be such a fundamental legislative act, cannot be entered into details with respect to the extent of this paper and we allow reference to the already quoted book (Bobek et al. 2007). Its authors concisely find faults of physically – legal adjustment which were caused by the “expected passage of the anti-discrimination act” and they state in the procedural area considering judicature of Czech courts that “court protection against discrimination still fails”. The Czech public got another very significant tool of protection against discrimination in the form of competence of the Public Defender of Rights, despite of court protection.

According to § 13, Section 5 and § 21 b the Public Defender of Rights (hereinafter; Defender) “exercises competence in matters of the right to equal treatment and protection against discrimination”. This competence is specified by the legislator as follows: “the Defender supports enforcement of the right to equal treatment with all persons regardless of their race or ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or world opinion and on that purpose:

- a) he provides methodological help to victims of discrimination during filing proposals for the commencement of action by reasons of discrimination;
- b) carries out research;
- c) makes public the reports and issues recommendation to subjects connected with discrimination;
- d) provides the exchange of available information with appropriate European subjects” (Act No. 349/1999 Sb., on the Public Defender of Rights).

Regarding the longtime conviction of the respondents of the performed sociological research on very frequent discrimination in the labour market, this subject is paid a little more attention in this paper, but not at the expense of the presentation of the common state of awareness of the Czech public of discrimination itself.

The paper manipulates only with the results of the sociological research of the above mentioned companies and written reports on the state of discrimination which are quarterly submitted by the Public Defender of Rights to the House of Deputies of the Parliament of the Czech Republic that negotiate them.

Recently these materials have been placed in websites of their executors to be available and usable for the wider public.

## RESULTS

### **Analysis of the results ascertained in the area of discrimination by means of public opinion research**

Sociological research on the state of discrimination in the labour market in the Czech Republic brings relatively worrying data. According to these sources, the occurrence of discrimination is considerable and connected with various groups of discriminated people. Let's look at the results of the selected empiric research performed in the area of discrimination now.

### ***Research from the beginning of the monitored period***

The public opinion research of the STEM agency (from June 2005) brought the findings that “almost every second citizen of the Czech Republic over 18 has experienced, sometimes personally or in his or her surroundings, a case of discrimination for reasons of age, sex, health condition, religion, nationality, sexual orientation, etc.” (MPSV 2006, p. 133), according to the STEM research in April 2004, 79% of respondents and in April 2005 then 75% of respondents were of the opinion that in inland “discrimination of some groups of population in jobs exists” (STEM 2005).

In 2005, the most frequent reasons for discrimination from the frequency aspect were age (the option “very often” was stated by 49% of the respondents and “relatively often” by 39% of the respondents), further pregnancy or motherhood (“very often” 32%, and “relatively often” 44%) and health condition or health disability (24% “very often”, and 49% “relatively often”); other reasons were also stated, namely “race or ethnic origin”, “sex” and “marital status or duty to family” (ibidem).

An analogous state in the perception of the discrimination of women in the labour market is then sustained by the research performed for the Ministry of Labour and Social Affairs by Křížková and Hašková (2003), where as the most respondents (77%) were of the opinion that women or some groups of women are disadvantaged in the labour market – these options were stated by more than 80% of women and more than 60% of men, while the disadvantage of men compared to women stated only 1% of women and 3% of men.

Public awareness of the possibilities to solve the cases of discrimination is also worth mentioning. According to MPSV (2006, p. 133) all 78% of respondents were not informed in this area at all, and more than half of respondents with a university education were also not informed in 2005.

### ***Research from a half of the monitored period***

A half of the monitored period seems to be the year 2009, which is significant due to the fact that the anti-discrimination act entered in force. Therefore this part analyses sociological researches performed in 2009 and immediately after this period, where it tries to establish the possible immediate effect of this act on society and its public opinion.

For example, the research of the SANEP company performed in September 2010 with the file of 10 686 respondents brought the findings that 75.7% of the respondents (91.4% of women and 62% of men) considered working women to be wage discriminated and further almost 70% of the respondents (40.9% of the respondents answered “yes”, 28.2 % answered “more likely yes”) believed that there also exists another one except wage discrimination of women in the Czech Republic (SANEP 2010).

We should draw attention in advance to the result of an interesting analysis of discrimination in the area of job advertisement that was performed by the Office of the Public Defender of Rights in April 2011. According to this analysis, 16.9% of the total analysed job advertisements were discriminatory, whereas some advertisements contained more discriminating reasons together.

The frequency of the ascertained discriminating reasons, however, varied somehow; the age in 10.8% of advertisements,

sex in 7% and other reasons (nationality, health condition and marital status) then were separately found in less than 1% of the analysed advertisements (Kancelář veřejného ochránce práv – Office of Public Defender of Rights 2011).

### ***Research from the end of the monitored period***

This period is important for comparison, especially because it monitors the state after approximately a 5 year-long operation of the special legal regulation in the area of discrimination (anti-discrimination act), as well carefully and systematically performed activity of the Defender that is sustained in part 3. Unfortunately however, the public does not sufficiently derive benefit from this activity as follows from the research performed in that period.

We mention for example research performed by the STEM company from 2014, according to which 74% of the respondents consider discrimination in the Czech Republic to be a problem of considerable meaning, 14% of the respondents consider it to be “an absolutely crucial problem” and 60% “a really big problem”. In addition to that, 48% of the respondents believe that the “discrimination has increased in our country during last years” (STEM 2014).

According to the server EuroZprávy.cz which again relates to the research of the STEM company, 85% of the respondents again “mention discrimination for reasons of age at work”. A further “three quarters believe that a discriminating factor in the labour market is very often or relatively often a health condition or disability,” and two thirds believe in the existence of an “unequal approach at work for reasons of pregnancy or motherhood” (EuroZprávy.cz 2014).

Sociological research by the agency Focus for the Office of Public Defender of Rights (from July to August 2014) brings the following information on the perception of discrimination by the respondents in the territory of the Czech Republic: according to the respondents of this research, discrimination for reasons of ethnicity or racial origin is the most spread – this was mentioned in 21% as “considerably widespread” and in 44% “wide spread”, further by reason of age over 55 in 16% “considerably widespread” and in 34%

“widespread”, for reasons of health disability in 11%, “considerably widespread” and in 33% “widespread” (Kancelář veřejného ochránce práv – Office of Public Defender of Rights 2014e).

However, the opinion of the respondents considering the occurrence of some reasons of rare discrimination cannot be neglected – those reasons were e.g. religion or belief (“rather rare” in 42% and “very rare” in 31%), sex (“rather rare” in 42% and “very rare” in 28%) but also sexual orientation or gender identity (“rather rare” in 38% and “very rare” in 17%). More than 80% of the respondents consider discrimination the reason of age up to 30 to be rather rare or very rare (Kancelář veřejného ochránce práv – Office of Public Defender of Rights 2014e).

It shall be pointed out that despite of public opinion that discrimination is widespread, personal experience with discrimination in the period since 2010 was mentioned “only” 11% of the respondents (ibidem).

The research indicates a higher frequency of the stated discrimination in the labour market. This discrimination was mostly met by the unemployed, namely in 36%, personal experience with discrimination then in 66% of cases during looking for paid work and in 38% during exercise of work (ibidem). Considering work, almost one third was connected with discrimination by reason of high age (ibidem).

The opinion of the respondents concerning the chance of victims of discrimination to recover their rights in the Czech Republic can be considered alarming because 74% of all respondents believe that this chance is difficult (options “rather difficult” and “very difficult” together) but also answers of the respondents concerning solutions to a discriminating situation; 58% would apply to the police, 24% a lawyer and 16% a public defender of rights (Kancelář veřejného ochránce práv – Office of Public Defender of Rights 2014e).

### **Results ascertained in the area of discrimination by the Public Defender of Rights**

The experience issued by the Office of Public Defender of Rights which results from particular claims solved by the Defender and represents an objective basis for the below performed analysis presents a counterbalance to the subjective statement of the respondents.

The subject matter of this analysis was to establish the number of claims relating to employment and work from the volume of all received and disposed claims in competence of the Office of Public Defender of Rights, but also to establish the number of claims where the Office of Public Defender of Rights found a deviation, so a real, not assumed, discrimination.

On the whole, 20 consecutive periods (quarters) from IV. quarter of 2010 till III. quarter of 2015 were analysed. The data are mentioned in the following Table 1.

The data stated in Table 1 shows the following findings:

1. The share of received claims in the area of employment and work in the total volume of received claims in competence of the Defender of rights is very low, in the monitored period it is on average 4.3%, the rest of the claims refer to other areas.
2. Discrimination in the area of employment and work, and then justification of a claim, was ascertained by the Defender on average in 11.12% claims disposed in that area.
3. Discrimination ascertained in the area of employment and work presents a very small share (order per mille) in the total number of all disposed claims in competence of the Defender, in the monitored period on average 4.32% (less than half a percent).

As follows from Table 1, the share of claims relating to discrimination in the area of employment and work in the total number of all claims to the Defender is slight. Many other analyses can be found on websites of the Defender, which show a similar conclusion concerning many other areas of discrimination, here named as “discriminating reason”.

It should be stated that all particular claims were examined by qualified responsible officers of the Defender, according to the law valid for the appropriate areas. The justification of claims in the particular areas could be a little different, however, essentially; it shall also be stated here that the justification of claims is also very low compared to their total number.



**Table 1. Numbers of received and executed claims – the Office of Public Defender of Rights**

Period (quarter/ year)	In the area of employment and work					Totally in competence	
	Received	Disposed				Received	Disposed
		Deferred	Cleared-up	Deviation not found	Deviation found		
IV/2010*	33	4	22	1	9	1159	1101
I/2011	54	4	34	4	3	1204	1051
II/2011	53	2	20	4	3	1081	1007
III/2011	33	6	15	1	5	987	923
IV/2011	44	10	27	2	4	1036	1038
I/2012	83	5	35	1	10	1309	1158
II/2012	135	8	60	3	3	1253	1171
III/2012	33	6	15	1	5	990	931
IV/2012	126	6	81	4	9	1389	1205
I/2013	85	16	76	4	6	1336	1369
II/2013	59	19	38	7	24	1151	1401
III/2013	44	27	14	8	12	1032	1202
IV/2013	36	10	15	5	6	1090	1171
I/2014**	17	0	4	0	1	1141	1083
II/2014	13	0	4	0	0	1205	1033
III/2014	20	4	2	0	0	1261	1105
IV/2014	16	5	6	0	0	1196	1062
I/2015	26	8	4	0	0	1320	1272
II/2015	27	10	9	1	1	1348	1340
III/2015	15	6	7	0	1	1078	1174

\* Since IV/2010 the area Administration in the area of employment and work.

\*\* Since I/2014 the area of Discrimination, category Work and employment.

Source: Kancelář veřejného ochránce práv – Office of Public Defender of Rights (2010, 2011a–d, 2012a–d, 2013a–d, 2014a–d, 2015a–c).

## DISCUSSION

According to the performed analysis, the summary of development in the area of discrimination in the territory of the Czech Republic during a ten-year period can be synthesized. The period from 2004 to 2009, i.e. until the adoption of the anti-discrimination act, can be characterized as the period when the assessment of the state of discrimination was based on only on subjective opinion of the respondents, perhaps except those who experienced it personally; as the results mostly show, they did not know which legal means could be used to defend against it, and

considering the state of valid legislative at this time that's no surprise.

In the period after the adoption of the anti-discrimination act in 2009, a gradual improvement and an increase of public legal awareness could have been expected. However, there was no turning point.

Unfortunately, despite of the wide cultural activity conducted by the Office of Public Defender of Rights and the expressive enlargement of the Defender's competence in the following years, the awareness of the respondents in sociological research has not significantly changed in relation to the legal solution of discriminating situations. While in

2005, 78% of the respondents did not know how to solve cases of discrimination (MPSV 2006), in 2014 only 16% of the respondents would contact the Defender in such a situation (Kancelář veřejného ochránce práv – Office of Public Defender of Rights 2014a–e) and the rest would ask for help from the police of the Czech Republic, a lawyer, or they do not know.

Approximately three quarters of the respondents are constantly sure of the existence of wide discrimination. The most stated reasons of discrimination – also without any changes during the whole time period – are age, namely in 80–90% of cases, and health disability (health condition) in approximately 75% of cases. Partial changes can be seen by the fact that less respondents mention discrimination of women, when on the contrary compared to the beginning and identically compared to the half of the monitored period the frequency of stating pregnancy and motherhood as reasons for discrimination decreased by roughly 10%. However, in terms of personal experience with discrimination, sex was the second most often stated reason (Kancelář veřejného ochránce práv – Office of Public Defender of Rights 2014a–e).

The websites of the Defender also include the availability of many very detailed and professional instructions about what to do in discriminating situations, and these instructions are very correctly divided on information for public and information for lawyers. The Defender also issues particular recommendations about how to keep and observe the principles of equal treatment including detailed legal argumentation.

The issued recommendation includes for example, equal access to pre-school education, entrance to the first classes of primary schools, renting communal flats, etc. Labour relations are best connected with the Defender's recommendation concerning a request for a statement of criminal records from all applicants for any job which can be considered an encroachment upon dignity (according to Article 1 of the Charter of Fundamental Rights and Freedoms). The authors assume that the request for a statement of criminal records can be reasoned in cases when applicants apply for work connected with enclosure of agreement on responsibility for entrusted values, or work in a position of a driver, etc.

Since 2010, a very fundamental phenomenon can be noticed, and that is the only significant conformity between the data from sociological researches and the data of the Defender during the 5-year period of his or her activity (Table 1). These are the standpoints of the respondents who do not consider this matter to be discrimination, but they experienced it personally because the Defender deals only with the solution of claims from people experiencing discrimination personally and seeking his or her help.

Despite of opinion on the high rate of social discrimination based on sociological researches, only 11% of the respondents experienced it personally. The number of claims concerning discrimination (reasonable as well as unreasonable) disposed by the Defender during the above mentioned 5-year period is 11 (12%). Table 1, which includes 20 quarter periods monitored by the Defender, evidences the share of claims concerning discrimination in the area of employment and jobs; in the above mentioned text we refer to other Defender's sources. The fundamental contrast in the area of discrimination in the labour market still consists in the fact that the respondents keep doggedly mentioning this discrimination, although the statistical data of the Office of Public Defender of Rights does not confirm it. Claims concerning the area of job and employment hardly make 5% of all received claims in the competence of the Office of Public Defender of Rights.

The significant contrasts between the results of sociological research of public opinion and particular findings of the Defenders are seen by the authors in the existence of two possible views of the area of discrimination in the Czech Republic. A laic view which is based only on the intuition that is without any doubt false in this particular case, and professional view based on the Defender's exact findings of the state of discrimination in the Czech Republic.

Defender's websites – according to the authors' opinion – contain everything necessary for the protection of public rights against discrimination; the information is given completely and clearly, including division on public information and professional information for lawyers. At a time of massive exploitation of the internet it should be stated that the content of information is

not known to the public, which means that the public cannot exploit it.

The public should reclaim its legal awareness on discrimination through adequate familiarisation with the appropriate legislation, and not trust that discrimination is a commonly known term, and that is why nobody can fail in the assessment of its state in the Czech Republic.

To conclude it shall be stated that discrimination will always be a rather rare phenomenon in a democratic legal state, despite of much different subjective opinion, although this paper has been finished at a time when the direct discrimination of one teacher at the secondary school by her students finished fatally, and with the exception of other responsible institutions it has also been investigated by the law enforcement authorities.

The authors also believe that this serious case should make the wider public pay attention to the subject of discrimination with a good knowledge of valid legal regulations. Without any doubt, this would achieve early recognition of a real discrimination and no discrimination to announce this serious antisocial phenomenon immediately to responsible authorities without any risk of false accusation.

## CONCLUSION

The authors conclude that the results gained from the sociological researches of public

opinion in the area of discrimination are overestimated. They include the subjective opinion of the respondents (it cannot be anything else) which, however, do not come from personal knowledge of the respondents.

On the contrary the results from the competence of the Defender come from particular claims of people experiencing a certain behaviour as discrimination; this was judged by qualified persons with special legal knowledge including their responsibility and the results of this activity are above mentioned in the third part.

If the results of the sociological research in the area of discrimination do not generally comply with the results gained by the Defender, the data gained from the respondents who personally experienced discrimination basically comply with them.

Common opinion of the respondents of the sociological research on discrimination markedly differs from the knowledge of the respondents who have personally experienced discrimination, as well as from the knowledge of the Defender at solving particular cases that on the contrary basically comply with the knowledge of the respondents who were personally discriminated against.

## CONFLICT OF INTEREST

The authors have no conflict of interest to disclose.

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