



**The Status of Lesbian, Gay, Bisexual and Transgender Rights
in the CZECH REPUBLIC**
Submission to the Human Rights Council for the Universal Periodic Review
(1st session)

Introduction

This information is submitted by ILGA-Europe¹ and Global Rights, in the framework of the Universal Periodic Review, to draw the attention of the Human Rights Council to human rights concerns affecting lesbian, gay, bisexual and transgender (LGBT) people in the Czech Republic.

This report is largely based on the “*Shadow report on lesbian, gay, bisexual, transgender and intersex rights in the Czech Republic*” submitted by IGLHRC and Global Rights to the Human Rights Committee (July 2007) which is attached to this submission.

Overview

After the fall of the communist regime in 1989, the situation in the area of human rights, improved rapidly, including the rights for LGBT people. In 1990, the age of consent for same sex sexual acts between consenting adults was set equally at 15 years of age². In 2006, the Czech Republic introduced the Registered Partnership Act³ for same-sex couples, and thus became the second post-communist country to have such a law.

Despite such positive legal developments, there are still instances of discrimination against LGBT people and other human rights violations of this group in the country. The Penal Code does not recognize that homophobic hate may be considered as an aggravating circumstance in cases of attacks and crimes motivated by the victim’s sexual orientation or gender identity. Moreover, transgender individuals have significant problems with proving the “continuity” of their legal personhood; they also experience

¹ ILGA-Europe, the European Region of the International Lesbian and Gay Association, enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe is a European NGO with more than 240 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 47 European countries; it receives financial support from the European Commission.

² Before 1990, the age of consent for opposite sex sexual acts was 15, while for same sex sexual acts it was 18 years.

³ Act No 115/2006 Coll. on registered partnership and changes in some related laws

violation of their right to treatment with humanity while in detention because of the impossibility to receive hormonal or surgical treatments while in jail.

There are also significant problems in the area of the rights of same-sex partners as well as parental rights. While the Registered Partnership Act was adopted, the law was amended by a series of restricting and even discriminating articles. In the area of parental rights of LGBT persons, the situation is not satisfactory yet. Finally, while the Constitution prohibits discrimination, with a non open list of fields that are for that reason interpreted as including on grounds of sexual orientation, the horizontal applicability of this provision is limited, especially with respect to economic or social rights. The legal prohibition of discrimination remains inadequate and challenges in implementation of existing anti-discrimination persist. These human rights concerns are briefly outlined below in the section on implementation of international human rights obligations.

It should also be mentioned that there are challenges when it comes to monitoring the rights of LGBT persons in the Czech Republic. The limited number of LGBT organizations and activists, and the weakness of the existing groups, often means that no one systematically monitors cases of discrimination against LGBT persons, for example, by gathering information about violation of their rights, attacks on LGBT persons, etc. The situation is further complicated by the invisibility of the LGBT community and the fact that LGBT persons hardly claim for their rights. Consequently, there are very few cases brought before courts.

Promotion and protection of LGBT rights on the ground – Implementation of international human rights obligations

1- Right to recognition before the law (Articles 16 and 17 of ICCPR)

Transsexual individuals in the Czech Republic have significant problems with proving the “continuity” of their legal personhood, because of the system of national identification numbers, in violation with the decisions of the European Convention of Human Rights and, as a consequence, of the ICCPR.

Indeed, although the state legally recognizes gender reassignment for post-operative transsexuals and the “continuity” of legal personhood of transsexuals is legally accepted in the country, there are several cases in which this right is not respected by public and private entities. This often derives from the system of national birth identification numbers, which are the basic tools for identification of the population⁴. The change of the ID number and name is defined in the law in close connection to the change of sex⁵. Therefore, transgender people, who cannot or don't want to undergo surgery, are not able to apply for legal change of their gender and national ID number. Access to surgery is linked to the approval of a commission of physicians that is created in accordance with the People's Health Care Law⁶.

In its case law, the European Court of Human Rights has established that the failure to recognize the legal status of post-operative transsexual individuals constitute, inter alia,

⁴ Act no. 133/2000 Coll. census law.

⁵ Paragraph no. 17, Act 133/2000 Coll. census law.

⁶ Paragraph no 27a, articles 1 and 2, Act no. 20/1996 Coll, about people's health care, in accordance with later legal bylaws.

a violation of the right to private life under article 8 of the European Convention on Human Rights and Fundamental Freedom (ECHR). Similarly, transsexual and transgender persons are entitled to protection from arbitrary interference with privacy with reference to Articles 17 of the ICCPR. (See IGLHRC and Global Rights Shadow Report for more information on this matter).

2- Right to treatment with humanity while in detention (Article 10 of ICCPR)

Another human rights concern regarding transgender people is treatment in detention. In the correctional system, rights of transgender people to a dignified treatment are violated because of the impossibility to receive hormonal or surgical treatments while in jail. The possibility of reformation and social rehabilitation is therefore extremely complicated. (See IGLHRC and Global Rights Shadow Report for more information on this matter).

3- Right to security of the person (Article 20 of ICCPR)

Hate Crimes

The Penal Code⁷ does presently not allow that homophobic hate may be considered as an aggravating circumstance in the case of an attack against life or physical integrity of the victim motivated by the victim's sexual orientation or gender identity, as the penal legislation establishes in the case of racially motivated crimes. The State does not provide consequently adequate protection against homophobic attacks.

It follows from the fact that hate crimes based on the victim's sexual orientation or gender identity is not recognized by law, that it is virtually impossible to know the number of hate crimes based on sexual orientation and gender identity from the aggregate numbers. Statistics, whether official or un-official, about hate crimes based on sexual orientation and gender identity do not exist in the Czech Republic. This of course does not mean that such crimes do not occur. Based on testimonies of several individuals it is clear that such attacks occur, especially to individuals⁸, and to lesbian and gay clubs. The attacks are often verbal, but physical violence also occurs.⁹ The problem with documentation is that victims tend not to file complaints about these attacks with the police, and if they do, the victim's sexual orientation does not play a big role in the investigation.

A new Penal Code is currently being prepared in the Czech Republic. It is expected to include aggravating circumstances in cases of several crimes. According to the draft Penal Code, such circumstances will apply only to those attacks motivated by race, membership to an ethnic group, nationality, political beliefs or religious affiliation. This will not improve the situation for LGBT persons and attacks motivated by hatred against them will not be considered aggravating circumstances. We recommend including sexual orientation and gender identity in the list of aggravating circumstances in the draft

⁷ Act no. 140/1961 Coll., Penal Code in accordance with later legal bylaws.

⁸ Information about one such case from May 2007 is available on <http://www.techno.cz/party/44284/incident-v-plzenskem-ph+?open=21385&show=report>

⁹ According to a questionnaire-based research in 2002 and 2003, conducted by the NGO Gay Iniciativa, 15 percent of respondents (39 persons) said that they have experienced physical attacks with homophobic motivation; 38 percent of respondents (100 persons) said that they have encountered verbal attacks in their environments. Prochazka, I., Janik, D., Hromada, J., (2003): Spolecenska diskriminace lesbickych zen, gay muzu a bisexualu v CR. Praha. Gay iniciativa v CR. It can be found at www.gay.iniciativa.cz/www/index.php?page=clanek&id=256

Penal Code with a view of ensuring increased protection against violence and harassment for LGBT people.

4- Right to found a family (Articles 2, 23, 24 and 26 of ICCPR)

There are also significant problems in the area of the rights of same-sex partners as well as parental rights. While since 2006, the Czech Republic allows same-sex couples to enter into formal relationships (registered partnerships)¹⁰, registered couples are disadvantaged compared to married couples when it comes to several basic rights such as joint property rights, tenancy rights, and are excluded from joint taxation and survivor pension rights. Different treatment is suspect in the light of the existing jurisprudence of the Human Rights Committee¹¹.

Similarly, according to the Family Act¹², adoption is only open to married couples and excludes registered partners. Individuals in a registered same sex couple cannot adopt, while they could as individuals if they were married or single. Lesbian couples are denied the option of artificial insemination that is, on the contrary, available to opposite sex couples, even if unmarried. Rights of children of same-sex couples are also violated because the Czech law does not allow partners to adopt each other's children. Children of same-sex couples legally have only one parent: this situation seriously jeopardizes the principle of the best interests of a child. The rights of the children of transsexual parents are violated as well, especially by an inadequate support and help from the state in the transition period, when solutions restricting contact between parents and children are preferred.

Please see the IGLHRC and Global Rights Shadow Report for detailed information on issues pertaining to recognition of same-sex couples and diverse forms of family.

5- Right to equality and non-discrimination (Article 26 of ICCPR; Article 2 of ICESCR)

The Constitution of the Czech Republic contains a Charter of Fundamental Rights and Freedoms, which contains a general anti-discrimination clause; there is no specific legislation prohibiting discrimination in the Czech Republic outside of the constitutional protections.

While the Constitution prohibits discrimination on numerous grounds, and should be interpreted as including sexual orientation, the horizontal applicability of this provision is limited. It can be relied upon directly only where the discrimination concerns basic civil and political rights, and not for economic or social rights. Where it can be relied upon, it can be enforced against private as well as state actors, though only the state can be sued in the Constitutional Court. The Constitutional prohibition on discrimination does

¹⁰ Act no. 115/2006 Coll. on registered partnerships and changes in some related laws.

¹¹ In their individual opinion, Committee members Lallah and Scheinin argued that the denial to same-sex couples of benefits available for married couples was in fact a form of discrimination under article 26 of the ICCPR (see *Joslin v. New Zealand*). The specific issue of discrimination was later reconsidered in *Young v. Australia*¹¹, where the Human Rights Committee found that the lack of recognition to unmarried same-sex couples of specific pension benefits granted to unmarried opposite-sex couples violated article 26 of the ICCPR, opening up to a different interpretation of the notion of family under the scope of article 23.

¹² Paragraph 72, part 2 Act no. 94/1963 Coll., Family Act, in accordance with later legal bylaws.

not extend to social protection unless there is a legal right to the matter in respect of which discrimination is alleged and does not extend to education or health.¹³

The limited scope of application of constitutional provisions protecting against discrimination, including on grounds of sexual orientation, constitutes a serious limitation to the implementation of Article 26 of the ICCPR which recognizes that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law”,¹⁴ as well as Article 2 (2) of the ICESCR stipulates that “the rights enunciated in the present Covenant will be exercised without discrimination of any kind [...]”. The current legislation in the Czech Republic does not guarantee to all persons **equal and effective protection against discrimination**, in particular in the enjoyment of economic and social rights.

Moreover, while provisions in the School Law regulate discrimination on grounds of sex, religion or belief and disability, these provisions do not extend to discrimination based on age or sexual orientation.¹⁵ This unequal level of protection for different grounds of discrimination constitutes a violation of Article 26 of the ICCPR since it implies that the legislation does not treat all persons as equal before the law. The lack of protection against sexual orientation as well as gender identity in education also constitutes a failure of the State to take all necessary legislative measures to guarantee the right to education without discrimination.

An Anti-discrimination Bill, which was intended to impose a broad prohibition on discrimination¹⁶ on grounds covered by European Union anti-discrimination legislation, was rejected by the Parliament in May 2006. Currently, a new proposal, approved by the government on June 11th, 2007, is pending before Parliament. The approval of the law would guarantee the effective implementation of the principle of non discrimination as enshrined by the ICCPR. We strongly recommend that the State considers the adoption of this anti-discrimination bill with a view to leveling up and ensuring equal substantive and procedural protection against discrimination with regard to all prohibited grounds of discrimination.¹⁷

13 Human European consultancy and Migration Policy Group, “Comparative analyses on national measures to combat discrimination outside employment and occupation”, Study carried out for the European Commission, December 2006.

http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mapstrand1_en.pdf

14 Similar provisions are included in article 14 of the European Convention on Human Rights.

15 The relevant provision of the School Law includes “other status” but is not thought to apply to these grounds.

16 The proposed anti-discrimination bill would have transposed existing European Union anti-discrimination directives (Framework Employment Directive 2000/78 and Race Directive 2000/43). It would have provided protection against discrimination on the grounds listed in Article 13 of the European Union Treaty – which includes sexual orientation – in relation to employment, education, social protection, access to goods and services and health care.

17 In November 2007, the HRC issued concluding observations in its review of Austria which address similar issues. (CCPR/C/AUT/CO/4/CRP.1)