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Introduction

Dear readers,

In your hands, you are holding a bulletin called *Prosazování genderové rovnosti: vybraná témata (Promoting Gender Equality: Selected Issues)*, which originated within the frame of *Prosazování genderové rovnosti v období CZ PRESS (Promoting Gender Equality in the Period of CZ PRESS)*. The issue of women and men equality has not been addressed to an extent that non-government organization dealing with this issue would imagine in the period of Czech presidency of the Council of the EU. Czech Women's Lobby has therefore decided to conduct shadow activities pointing out problems related to the position of women and men in the society in the time of the presidency.

Bulletin follows five round tables realized by Czech Women's Lobby, its member organizations respectively. Topics significant in the field of promoting the equality of women and men were selected: women in politics, domestic violence, antidiscrimination legislative, position of women migrants and rights of women, during prenatal, natal and puerperium periods. Submitted texts serve as a critical (shadow) view of non-profit organizations and bring solution proposals.

With regard to the variety of issues and keeping the realization of round table to member organizations, individual texts differ in its structure especially when introducing recommendations. The texts represent experience both from round tables and long-term activities of individual organizations bringing unique know-how in "their" topics. These cannot be considered proclamations of Czech Women's Lobby (as a platform of gender and women's non-profit organizations).

Since the majority of member organizations of Czech Women's Lobby focuses on position of women in society, some of the included texts are structured in such a way. The language used corresponds with it: while some texts consistently use gender correct language, the others refer exclusively to men or women. Individual organizations thus got the space to express their own attitudes, focus and experience.

The texts are ordered in such sequence in which round tables to individual issues took place. Brief viewpoints of Czech Women's Lobby in the field of: gender roles and stereotypes, violence against women, prostitution and human trafficking, sexuality and reproduction rights of women, women in decision-making positions and women in labour market are listed at the end of the bulletin.

The texts are not targeted at people in decision-making positions only but also at non-profit organizations so that they can become acquainted with the issues dealt with by their partnering organizations. They should also serve the Czech and foreign media in their promotion of individual topics.

Wishing you pleasant and useful reading,

Alexandra Jachanová Doleželová, president of Czech Women's Lobby

Women in Politics: Still in the Position of a Disadvantaged Minority

Jana Smiggels Kavková, Fórum 50 %

1. Introduction

Representation of women in politics is low. This claim is valid for most countries of the world and the Czech Republic is no exception. The world average representation of women in Parliaments is 18.5%, the European average has already exceeded the level of 20%. Our country, unfortunately, lags behind these numbers. With 17.5% of women in the Chamber of Deputies and 17% in the Senate, we do not reach even the world average and we rank 76th on the charter created by the Inter-parliamentary Union (the IPU is the international organization of Parliaments which aims to negotiate for world-wide parliamentary dialogue and works for peace and co-operation among peoples and for the firm establishment of representative democracy).¹

The representation of women in the Chamber of Deputies decreased from 17% to 15.5% after the last elections in 2006. The results might have been even worse, had the three female candidates not been elected solely thanks to preferential votes. This means that these women got to the Parliament thanks to the support of the voters and despite the fact that their own political parties had placed them in ineligible ballot positions.² During the electoral term, a number of female MPs gradually grew to 35, due to the withdrawal of several male MPs and their replacement by new ones.

The last election to the Senate that took place in the autumn of 2008, on the contrary, brought an increase in the representation of women from 13.5% to 17%. Women were also more successful compared to their male colleagues. Out of 34 female candidates, five were elected, which is 14.7%. Out of 166 male candidates, 22 were elected, which means that only 13.3% were successful. And we have not even considered the fact that in six electoral districts, there were no female candidates at all which considerably worsened their chance to be elected. At the moment, there are 14 female Senators in the Upper Chamber which is three more than during the last electoral term.

¹ Source: <http://www.ipu.org/wmn-e/world.htm> [online, downloaded 06/04/2009].

² SMIGGELS KAVKOVÁ 2006.

One of them, Alena Gajdůšková, has also been nominated the vice-president of the Senate, which is definitely a positive sign.³

In the regions, the situation is not much better, despite a slight improvement after the last election in October 2008: **the average representation of women in regional assemblies is 17.5%, which is 2.5 points more than during the previous electoral term.**⁴ But there is also some good news: for the first time in the history of the Czech Republic, two regions are headed by women (and so we finally experience the first female hetman). These are the former Minister of Health Milada Emmerová in the Pilsen region and Jana Vaňhová in the Ústecký region. There remains one striking fact to be mentioned: the current legislation does not, so far, enable the use of the feminine form of the word *hejtmanka/hetwoman*, the law only speaks of *hejtman/hetman*.

Representation of women in local politics is the highest, on average 25%. But there is a simple rule: the bigger a municipality is, the lower number of women representatives it has. This means that one finds most female politicians in small towns and villages and fewest in big cities. Representation of women in the largest Czech cities is only 19.5% and there are only three female city mayors.⁵ In small towns and villages, on the contrary, there are many female mayors: more than eleven hundred in total.

In order to be able to assert their rights in politics, women (or any minority) have to reach a representation of at least 30%. That is why this level is called a critical mass. The overview of the representation of women in Czech politics displayed above clearly shows that this level has not been reached yet. The fact that there are only a few female politicians also results in a highly competitive behavior among them and makes the existence of female solidarity almost impossible. Women politicians simply have to adapt to the current political environment. Politics is defined in a masculine way, the rules of the game are fitted to men. For a real change in the present situation and political culture, representation of women would have to rise dramatically. As the slogan of the Argentinian women's movement states: "If there are only a few women in politics, politics changes the women. Once there are enough women in politics, women will change the politics." We are not saying that politics with a high representation of women will be four-square better. But it will definitely be different.

Barriers hindering balanced representation of women

What is hidden behind the figures mentioned above? What are the causes of the current insufficient representation of women in political life? Last but not least: are there any tools that could improve the situation?

³ SMIGGELS KAVKOVÁ 2008b.

⁴ SMIGGELS KAVKOVÁ 2008a.

⁵ Source: Český statistický úřad, available on <http://www.volby.cz/pls/kv2006/kv221?xjazyk=CZ&xid=0&xv=7&xnumnuts=0>.

Low representation of women has many negative effects. Many important issues are being neglected in Czech politics. Thus, both women and men voters are losing their faith in politics which they see as disengaged from the real life they live. A recent Eurobarometer survey revealed that in all EU member states women feel that they are detached from the European politics and that they would appreciate it, if the European parliament engaged more in issues connected to their everyday lives.⁶ In politics, an aggressive way of negotiation prevails which discourages publicly active people from entering political life.

There are many, both visible and invisible, barriers hindering a higher representation of women in political life. These barriers can be divided into three groups: 1. institutional barriers, 2. social barriers and 3. individual barriers.⁷ Women and men in politics do not have the same starting line.

The main **institutional barriers** are the electoral system and the functioning of the political parties (i.e. arrangement of candidate lists). Since the political parties are the key stakeholders of the Czech political scene – because it is them who are responsible for the nomination process – their influence on the representation of women in politics is crucial. “Nomination of candidates within political parties is the most important tool that affects the representation of women in politics.”⁸ If there is no political will for a higher representation of women, no voter demand can lead to change.

Social barriers are the result of the Czech society’s attitude to the traditional division of women’s and men’s roles. The Czech society is rather conservative and gender biases are still powerful.⁹ On the other hand, public opinion surveys show that 88% of the citizens are convinced that a higher participation of women in politics is beneficial and that 71% of the respondents consider current representation of women to be insufficient.¹⁰ For ten years now, a number of people who wish for a higher representation of women in decision-making processes has been growing. **Despite gender biases, there is an implicit social demand for a higher representation of women in politics. Unfortunately, the Czech Republic still lacks an adequate supply from the political parties.**

On the level of **individual barriers**, women have to face three types of obstacles: patriarchal model of the family (in the Czech society, the primary responsibility for the family and the household belongs to women and thus the reconciliation of the private life and the career is very difficult for women politicians), different evaluation of women and men (women politicians are frequently undervalued in terms of their expertise) and different approaches to power (women perceive politics as public service and they focus less on official V.I.P. positions than men).¹¹

The existence of the barriers mentioned above prevents women from being engaged in political life in the most essential of ways. The underrepresentation of women in

6 EU a Evropské volby: názory a hlediska žen. Available online on http://www.europarl.europa.eu/news/expert/infopress_page/014-51138-065-03-10-902-20090306IPR51122-06-03-2009-2009-false/default_cs.htm.

7 RAKUŠANOVÁ 2006.

8 RAKUŠANOVÁ 2006, p. 23.

9 RAKUŠANOVÁ 2006, p. 31

10 KUNŠTÁT 2007.

11 RAKUŠANOVÁ 2006, p. 28

politics is not caused by women’s aversion to politics – it is, rather, caused by their systemic discrimination.

3. Quotas as an effective solution

In order to advance equal opportunities, there is a need to adopt certain reformative measures that will help to dismantle the current systemic discrimination of women.

So-called “natural evolution” that is often mentioned as a solution is not acceptable – unless we want to wait for another 150 years for the balanced representation of women and men. Experiences from many (not only) European countries show that positive actions, for example quotas, are a very effective tool for improving the situation.

An example of the country where internal party quotas have worked since the 1980’s is Sweden. Women’s representation in the Swedish Parliament is the unbelievable 47%. Three political parties apply obligatory quotas: Social Democratic Party, Green Party and Left Party. All of them have candidate lists quota. Four other parties apply a recommendation concerning women’s representation in the arrangement of candidate lists.¹²

France, also, has started to tackle female under-representation in politics. The Parity law as a part of the Constitution was adopted in France in 1999 and it aims at achieving “equal opportunities of women and men to obtain mandates and elective posts”. The political parties are responsible for ensuring equal opportunities of women and men in political life. Since 2002, the parties can even be penalized for breaking this law; the penalties are embodied directly in the law. The penalties constitute a reduction of subsidies (in the parliamentary election) and the stricter one also a refusal to register the candidate list of a political party breaching the law (in the municipal election).¹³

Quotas are not a discriminating arrangement, on the contrary, they aim to abolish a disadvantage specific social groups are exposed to. In addition to individual inequality, which is natural, systemic inequality exists as well and it has a negative impact on the real possibility to engage in politics. Quotas try to straighten this inequality and contribute to a situation when the representation in political leadership posts copies individual abilities, rather than the competence of an advantage group. Democratic competition is not broken by applying the quotas, because the voters have every right to decide whom to elect. On the contrary, in current candidate lists, it is frequently virtually impossible to support women, because only men can be found there. For instance, in the last Czech Senate House Election, in six election districts, only men were nominated.

Quotas are the most efficient and the least expensive measure aimed at equal representation of women and men in politics. Moreover, they can be applied temporarily, leading to a 30% critical limit, and then they can be abolished (see the case of Denmark). Nowadays, the legislative electoral quotas are applied by 43 countries of

12 Source: <http://www.quotaproject.org/displayCountry.cfm?CountryCode=SE> [online, downloaded 07/04/2009].

13 Source: <http://www.quotaproject.org/displayCountry.cfm?CountryCode=FR> [online, downloaded 07/04/2009].

the world, 15 countries even deploy constitutional quotas. In addition to internal party (voluntary) quotas, we find them in 168 parties of 69 countries.¹⁴

4. Parity as a fundamental condition of democracy

Women under-representation in politics is in contradiction to the democratic principles of the European civilization. **No modern European democracy without gender equality!** European Women's Lobby started its Parity Campaign (50/50 Campaign) with this motto last year. Many important people have signed the campaign, e.g. José Barroso (President of the European Commission), Orham Pamuk (writer, Nobel prize winner), Mary Robinson (ex-president of Ireland), Bertrand Delanoë (Paris Mayor), Vladimír Špidla (Czech European commissioner), Olga Sommerová (famous Czech film director).

Equal representation of women and men is profitable for the whole society, no country can afford to waste the potential of half of its population.

Now, there are five Czech female Members of the European Parliament (EP).¹⁵ Thus, they comprise 21% of all the Czech Members of the European Parliament. Viewed in the Czech context, this is a "good" percentage, but compared to the other European countries, we see and understand the numbers differently. The Czech Republic is at the bottom of the list as far as female representation in the EP is concerned, only Malta, Cyprus, Poland and Italy rank lower. The average of women's representation in the EP is 30 %.¹⁶

Unfortunately, the oncoming elections to the European Parliament will not bring a marked change, as we can estimate from the candidate lists of the Czech political parties. Five female politicians have a real chance to be elected to the EP.¹⁷ The table below shows women's representation on the candidate lists for the European Parliament Election in 2009.

Women's representation on the candidate lists for the European Parliament Election in 2009

Political Party	No. of Women in quintuple (sequence)	No. of Women in denary (sequence)
ODS	0	1 (9.)
KDU-ČSL	2 (1., 4.)	2 (1., 4.)
EDS	3 (1., 3., 5.)	4 (1., 3., 5., 8.)
SZ	2 (2., 4.)	5 (2., 4., 6., 8., 9.)
ČSSD	1 (5.)	2 (5., 7.)
KSČM	1 (5.)	3 (5., 6., 7.)

¹⁴ See flyer *Flash about the quotas*, published by o. s. Forum 50% in 2008.

¹⁵ The paper was written before the elections to the EP.

¹⁶ Source: <http://www.ipu.org/wmn-e/regions.htm> [online, downloaded 07/04/2009].

¹⁷ In the end, four women were elected to the EP.

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<http://www.volby.cz/pls/kv2006/kv221?xjazyk=CZ&xid=0&xv=7&xnumnuts=0> [online].

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Civic Association Forum 50% promotes balanced representation of men and women in politics and in public life. It was founded in 2004. In its activities Forum 50% focuses on the active support of female politicians across the political spectrum, on the gender analysis of elections and on the status of women in Czech politics in general. It also organizes awareness-raising events for the public. Forum 50%, further, holds press conferences and panel discussions and publishes specialized publications dealing with the issue of political participation of women.

Children as Witnesses of Domestic Violence

Petra Švecová, o. s. ROSA

1. The issue's background

In the Czech Republic, 38% of women experience some form of violent behaviour from an intimate partner. In families in which domestic violence occurs, children are often affected, either as witnesses or as victims. According to ROSA's statistics, children of its clients witnessed violence in 94% of the cases, 40% of them became direct targets of violence. They were physically or mentally abused by the violence perpetrator, or they were assaulted in the act of defending their mother.

Several surveys have proved that there is some form of correlation between child abuse and domestic violence. For example, a study carried out in the United States of America shows that 50% of men who often attack their wives also frequently assault their children. According to the same study, 90% of children are aware of the violence their mother is exposed to (thus the parents' notion that they are able to hide the attacks and the injuries turns out to be false).¹⁸

So it is not only direct violence: children's mere presence at the site of these acts often constitutes a traumatic event for life. The European Parliament's resolution of January 2008 therefore calls on Member States to treat the children who witnessed domestic violence as victims of crime (similarly, World Health Organization sees their presence as a form of psychological torture). In Canada, for example, children's presence to the act of domestic violence is considered a criminal offense.

Still, in the Czech Republic, authorities and courts usually fail to see a child's presence as a serious issue. In most cases, committing the act of domestic violence in the presence of a child is not seen as an aggravating circumstance, sometimes it is not even an obstacle to allowing alternating child care or the violent partner's custody. Children are therefore forced by child welfare services to come into contact with the violent parent against their will, often while hiding with their mother in an asylum house because of threats to life or health (whether mother's or their own) – despite the fact that child protection is obliged to focus on children endangered by domestic violence and to protect their interests

¹⁸ COHEN – WALTHAL 2003.

(Act 134/2006 Coll.). “Meanwhile, it is quite common that domestic violence is not even given a proper name in the Czech Republic – child welfare workers and courts only refer to “family disputes” in their reports, assessments and judgments. This shows a misunderstanding of domestic violence and its consequences for its victims – both women and children witnessing domestic violence,” says ROSA's director Marie Vavroňová.

This is despite the fact that in recent years, organizations providing help to victims of domestic violence have often experienced the setting where children become a means of manipulation and blackmail or generally a means of re-gaining control over their mother, the victim of domestic violence. Victims are frequently threatened that they will lose their child if they leave, children face psychological pressure to disclose the address of the asylum house, etc.

This is in contrast with practices abroad: 13 states of the USA have already adopted the recommendation of the National Council of Juvenile and Family Courts Judges, which states that “it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence”.

According to the European Economic and Social Committee (EESC), an advisory body of the European Union, protection from violence must always take precedence over the [parent's] right to access. In 2006, the European Economic and Social Committee decided to draw up an opinion on *Children as indirect victims of domestic violence*¹⁹ and recommended that each Member State should specifically address the issue of children as indirect victims of domestic violence. When children grow up in the context of domestic violence, they are exposed to numerous stress factors that can have significant and long-term effects on their well-being and behaviour.

Spain's model might also prove inspirational. Its Civil Code established that in divorce cases, in which there are “reasonable indications” (*indicios razonables*) that domestic violence occurred in the relationship, alternating child care shall not be allowed.²⁰ The views of children over the age of 12 are taken into account (they can be even younger, should the court decide so). If one parent behaves violently towards another, the court usually does not restrict contact with the violent parent. However, such contact takes place under assisted supervision (but courts sometimes see the mere presence of a child as a form of abuse, and contact is therefore restricted, especially if the child refuses such contact). If there was direct violence against a child, restriction of contact rights takes place automatically.

2. Witnessing domestic violence and its impact on children's mental health

¹⁹ CELEX number in the EUR-Lex database (<http://eur-lex.europa.eu/cs/index.htm>) is 52006IE0416, see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:325:0060:01:EN:HTML>.

²⁰ POTMĚŠIL.

Children witnessing domestic violence can be affected both mentally and emotionally.

They experience feelings of anger and fear and they do not know how to deal with them. They feel guilty for not being able to stop the violence, for somehow contributing to it or for still loving the perpetrator in spite of his behaviour. They live in constant fear of future attacks and yet they are worried that they will lose their parents or that the violent partner will go to jail if they share their experience with someone.

They are confused about their feelings – they fear and hate their violent parent, but at the same time they still like him/her. As a psychologist Mgr. Eva Šilarová (who runs ROSA's groups for children from families affected by domestic violence) points out, these children call the violent partner "God", "omnipotent", etc. This clearly shows that they are aware of the inequality in the family. According to Eva Šilarová, all it takes to understand their situation is to recall the usual meaning of the words "family", "home", "mom" or "dad". For most of us, they are synonymous with security and safety.

Children in families affected by domestic violence lack such feelings. They are uncertain as to what is going to happen at home and what atmosphere will prevail. Many of them begin to perceive the attacks as something they are responsible for. They claim they "should not have been born", they adopt feelings of guilt about these aggressive acts – domestic violence is usually "justified" by trifles incomprehensible to common sense (things in the wrong place, other meal than the perpetrator wanted, etc.). They do not know how to act not to contribute to violence; they are unsure as to whether they could have "provoked" the attack. They also tend to think they are "not welcome" in the family.

Children witnessing violence are endangered from a very early age. While infants and toddlers do not understand the situation completely, they still sense danger, a tense atmosphere, they hear the shouting, etc. According to various studies, such experience with violence at an early age, when children need to feel safe, can adversely affect brain development – later concentration and learning difficulties, difficulties to feel empathy and develop healthy relationships may occur.

They may often experience trust and intimacy problems as well. Because domestic violence is not "an isolated argument", but rather a systematic abuse that tends to recur and to increase in severity over time, a child's development, physical and mental health, is being put in jeopardy.

Moreover, these children's experience with volatility, contradictory behaviour and constant attacks has serious impact on their relationships with their peers; their perceptions and reactions have been affected. Some may have self-control and communication problems, some may show developmental lags. They often become "little adults", because they are forced to take on responsibilities inappropriate for their age. On the other hand, they may also display behaviour typical of earlier development phases.²¹

Due to acquired behaviour patterns, some are more aggressive or conversely, more timid, some suffer from depression, psychosomatic difficulties or post-traumatic stress

disorder. Girls generally tend to have low self-esteem and self-confidence. Their problems are usually of internal nature, be it somatic complaints or depression. By contrast, boys often exhibit externalized problems, such as aggression. Of course, some girls too adopt a violent behaviour pattern and act aggressively towards the mother or their schoolmates; likewise, some boys internalize their experience and are prone to psychological and psychosomatic problems, self-harm and depression. The actual impact of witnessing domestic violence depends on several factors, such as a child's gender and age, a degree of brutality, the response of surrounding environment (support or indifference), the use of corporal punishment or likelihood to make an emotional tie to the perpetrator.²²

At the same time, domestic violence has a serious impact on the physical health of children. Many of them suffer from stress-induced ailments, such as headaches, stomach pains, fevers – especially if still living in the same household with the perpetrator of violence. They repeatedly experience anxiety attacks, sleep disorders or developmental regressions. Some children, who feel threatened by violence, exhibit post-traumatic reactions manifested in recurring dissociative states. Post-traumatic stress disorder symptoms include: recurrent re-experiencing of the trauma, nightmares, avoiding people and situations which remind them of the event, avoiding once enjoyed activities, feelings of loneliness, emptiness and sadness, irritability, anger, increased tendency to being startled.

In addition to that, continuous exposure to violence provokes a defensive reaction: children think that if they emotionally detach themselves from their surroundings, nothing bad can happen. As a result, they may face serious problems in their adult lives. The impact of witnessing domestic violence is therefore long-lasting: PTSD symptoms may not disappear and they may show up when choosing a partner, when raising one's own children, etc. Moreover, domestic violence can be considered a learned behaviour – children tend to repeat their parents' behaviour.

As Mgr. Eva Šilarová points out, parents serve as models of how to relate to the world and how to inhabit it. Children growing up in a permanent "cycle of violence" have a much lesser chance to enter into relationships and to start a family. They may learn that violence is legitimate, therefore the probability that violence will occur in the next generation is high. Those exposed to domestic violence, be it as witnesses or as victims, may perceive such behaviour as normal and natural and act violently themselves or adopt the role of the victim. The statistics confirm this – according to ROSA's 2005 survey, 72% of victims and 20% of perpetrators grew up in families affected by domestic violence.

Witnessing domestic violence in childhood may be a cause of depression, low self-esteem (women) and PTSD symptoms (men) in adulthood.²³ In addition to this, children will learn how to avoid responsibility and blame others for their failures.

21 VARGOVÁ 2006.

22 PELED – DAVIS 1995.

23 ENDLESON 1999.

3. Legal aspects

From the perspective of court proceedings, the issue of children witnessing domestic violence can be seen as a conflict between parents' rights and children's rights. For instance, JUDr. Iva Pavlíková often faces the fact that otherwise identical cases are decided differently by different courts, with almost contradictory decisions. This makes helping victims rather difficult. The matter becomes further complicated by the fact that we are still used to perceiving a child as an "object", and not as a "subject". A child becomes a vehicle of our plans and ideas and we disregard his or her own wishes and especially his or her "well-being". The main consideration when assessing issues related to custody and to child-parent contact should be a child's well-being. However, what this term in a particular case means remains unclear. In many countries, child's well-being is considered a main criterion when resolving custody disputes or deciding on parental rights (e.g. contact rights). Thus it would be helpful to have more instructive legislation, where "well-being" would be clearly defined. While children have the right to see both their parents (these are children's rights, not only parents' rights), their safety and rights to a life without violence must always take precedence.

The experts also conclude that current Czech laws may, paradoxically, favour the perpetrator. A conflict between parents' rights and children's rights may result in a situation, where the perpetrator wins child custody or where the child is forced to visit the violent parent. As one of the participating MPs observed, this is in fact the continuation of abuse, which should not be tolerated. Children's interests must always come first, not those of adults, and we should be able to prevent systemic abuse of children, which is what happens in some cases. It is, therefore, necessary to assess the situation on a case-by-case basis and minors' rights must be acknowledged by authorities.

The judges and legal experts also agree that they are increasingly confronted with various pressure groups – as one of the experts pointed out, child custody evaluations have become "a matter of personal courage". If the decision goes against the wishes of the perpetrator, it is not uncommon they face complaints, intimidation and obstruction. This often results in long delays in court proceedings: the perpetrator's objections, case transfer requests or appeals greatly contribute to this. The participating child protection workers have similar experience. The representatives of various professions identify this as one of the most serious issues in regard to children witnessing domestic violence and therefore consider it necessary to focus on.

4. Conclusion

Key challenges for the future are the following: the fact that domestic violence is still not taken into account in authorities' and courts' custody decisions; increased pres-

sure from interest groups on custody evaluations and court proceedings; and gaps in cooperation of various professionals. The possible modification of interim measures governing child custody is also discussed, as well as the need for a media campaign showing the impact of witnessing domestic violence.

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Civic association ROSA is a Czech non-profit, non-governmental organization which specializes in providing help to female victims of domestic violence. It was established in 1993. The main goal of its activities is to make the issue of domestic violence more visible, to help the victims and to improve the system of domestic violence victim's support in the Czech Republic.

Anti-Discrimination

Linda Sokačová (with contribution from Martina Štěpánková),
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1. Second Generation Discrimination

The recent European Commission proposal for a new anti-discrimination directive²⁴ has sparked a debate on effectiveness and forms of anti-discrimination measures and their positive and negative impact. Experts believe that the current anti-discrimination legislation is failing, particularly when it comes to issues called “second-generation discrimination” that concern not only direct but also indirect discrimination. “The problems of the second generation emerge when the intentional and conscious element of discrimination begins to disappear. ...one cannot unambiguously identify violation of a rule,” observes J. De Munck²⁵. The situation in the Czech Republic is a case in point. Employers and other institutions make progressively more effort to cover up their real discriminatory intentions rather than discriminate directly. A written document that states that a job applicant was rejected on the grounds of her gender or age is no longer easy to find.

Similarly, discrimination is rarely based on a single ground in real life. So-called ‘multiple discrimination’, i.e. discrimination based on multiple grounds, is far more common. This is a situation in which several grounds for discrimination play their role, gender and age or gender and ethnicity, for example, multiplying the discriminatory effect. A job applicant can be rejected on grounds of both gender and ethnicity. Direct evidence of discrimination is often difficult to find. All these factors complicate the position of discrimination victims in the process of legal settlement or recovery whether ‘in’ or ‘out’ of court (when the situation is addressed with the help of non-legislative means such as mediation).

There is another kind of multiple discrimination in the society. A person faces discrimination based on a variety of her characteristics but always on different occasions. In the labour market, a woman employee is refused promotion because women are considered ill-suited for management positions, but in another situation the same person

²⁴ July 2, 2008 the European Commission presented a draft of new social provisions that included a new anti-discrimination directive prohibiting discrimination on the basis of age, disability, sexual orientation and religious conviction or belief in areas other than employment. Given that legislative provisions only cannot remedy the situation, the draft is accompanied by active strategies promoting equal opportunities. These include a variety of positive measures aimed to balance out the position of discriminated groups, awareness-raising activities on anti-discrimination policies and strategies to foster a dialogue on the positive impact of equal opportunity on diversity in the workplace. More on: [http://zpravodaj.feminismus.cz/clanek.shtml?x=2115204&als\[nm\]=2115056](http://zpravodaj.feminismus.cz/clanek.shtml?x=2115204&als[nm]=2115056).

²⁵ THE FIGHT AGAINST DISCRIMINATION 2008, pg. 21–23.

faces discrimination on the grounds of ethnicity when she is prevented from entering a club because of being Roma.

This “new” discrimination naturally requires new approaches and new solutions on legislative, governmental and civic levels. The concepts of human rights, legislation as well as public policy must be combined, where human rights ought to serve as the strongest argument for promoting anti-discrimination measures.

For these to be effective, a number of conditions must be met:

- a) (potential) victims of discrimination must be able to assess the situation and realize discrimination is or has taken place.
- b) there must be responsible institutions able to develop discrimination prevention programs as well as eliminate the effects of discrimination.

At the same time, we must be able to adjust and update existing anti-discrimination policies and procedures to reflect changing social conditions.²⁶

2. Equal Opportunity and Anti-Discrimination Provisions in Current Czech Legislation

The issue of equal opportunities and discrimination is present in following legal documents:

Labour Code

- Equal treatment of all persons exercising their rights to employment
- Harassment and sexual harassment

The Labour Code is concerned with labour-law relations and refers to the vetoed Anti-Discrimination Act.

Employment Act²⁷

Labour Inspection Act

Anti-Discrimination Act Draft

Act on Service of Public Servants²⁸

- § 80 in Chapter I “Prohibition of Discrimination in Public Service Labour Relations” establishes essential principles of equality.

²⁶ Ibidem.

²⁷ Bill No. 218/2002 Coll

²⁸ Bill No. 218/2002 Coll.

E.U. directives and recommendations

3. Anti-Discrimination Act in the Czech Republic²⁹

The right to equal treatment, one of the pillars of modern society, is everybody's essential human right. No one should be treated differently because of their age, gender, race, disability, sexual orientation, religion, etc. Even though the right to equal treatment is established in the Universal Declaration of Human Rights, it cannot be claimed and exercised in everyday life unless there is a law that enables it.

The Anti-Discrimination Act determines specific situations and grounds when discrimination is prohibited. The Anti-Discrimination Act shall prohibit discrimination based on gender, age, disability, race, ethnicity, nationality, sexual orientation, religious belief and conviction or worldview. Discrimination will be prohibited in the areas of employment, access to employment, access to education and health care, provision of social benefits and the provision of goods and services including housing.

The Anti-Discrimination Act will also determine situations in which differential treatment is permitted. The Act further defines legal terms related to discrimination. Primarily, it defines direct and indirect discrimination, harassment and sexual harassment. The Act will provide victims with effective instruments to protect themselves against discriminatory treatment. Discrimination victims will be able to demand that discrimination against them is stopped and its effects are eliminated, or they may demand satisfaction (such as an apology) or monetary compensation of immaterial damage (so-called 'damages').

An anti-discrimination authority will be established – Ombudsman – that will systematically address issues of equality and discrimination. Ombudsman would serve as the agency victims can turn to for help.

4. Other Countries' Experience with Anti-Discrimination Measures

There is no unified concept of anti-discrimination provisions across the European Union countries. There are differences in the scope of national anti-discrimination legislations and in the forms anti-discrimination authorities responsible for monitoring and assistance to victims. In the area of gender-based discrimination and specifically in regard to equal opportunities for women and men, anti-discrimination bodies take two basic

²⁹ In May 2008 President Vaclav Klaus vetoed the anti-discrimination act and returned the legislation back to the Chamber of Deputies. V. Klaus used his right of veto after the act was approved by the Senate where the provision was subject to lengthy debate. As of May 2009 it still remains unclear whether the President's veto is going to be overruled by a majority vote in the Chamber of Deputies due to continuous rescheduling of meetings on the issue. V. Klaus justified his decision as following: "I consider this law to be useless, counter-productive and of low quality and its consequences very problematic. (...) The law seeks to eliminate inequality. Inequality, however, is a natural phenomenon. Whenever we make decisions, we use our own preferences and equally subjective experiences." For the veto argument in its entire length, go to Attachment 1.

shapes: a) there are authorities dealing with discrimination and equal opportunities in general, or b) specific institutions or departments focusing on gender-based discrimination and equal opportunities are housed within larger authorities addressing discrimination in general.

It is hard to say which model is more suitable as the specific national contexts and the respective national situations concerning discrimination and equal rights are of importance.

Austria

As other European countries, Austria has ratified the U.N. *Convention on the Elimination of All forms of Discrimination Against Women* (CEDAW) and as an E.U. member, Austria has adopted E.U. gender-equality and anti-discrimination directives into its legislation. A 1979 law on equal treatment of women and men in the private domain (BGBl No. 108/1979 – Bundes-Gleichbehandlungsgesetz 1979) and the 1993 law on the public domain (BGBl No. 100/1993 – Bundes-Gleichbehandlungsgesetz 1993)³⁰ form the legislative basis of the current anti-discrimination provisions. January 1, 2009 Austria passed a law on budget reform that employs gender budgeting as one of the main principles of promoting equal opportunities for women and men.

The Ombudsman for Equal Opportunities (Anwältin für Gleichbehandlungen) with national jurisdiction is responsible for addressing cases of discrimination. This authority is actively involved in a number of projects by women's and gender NGOs dealing with matters related to gender-based discrimination (such as equal pay, discrimination in the labour market, etc.). In addition, the Office of the Ombudsman publishes information and research materials on equal rights and discrimination, as do other state and public institutions.

On local and regional levels, anti-discrimination measures and equal rights agendas have been taken up by some municipal councils and city halls. The Vienna City Administration, for example, is engaged in a variety of ways. It has been paying attention not only to equality among women and men employees of the City Administration; it also provides counseling for citizens. Similar departments or officials authorized to promote equal treatment can be found in other Austrian cities too.

Belgium

In Belgium, there are two authorities focused on equal rights and specifically on equal rights among women and men. A Centre for Equal Opportunities and Opposition to Racism, founded in 1993, is an independent public institutions whose main mission is to promote equal opportunities. It focuses on issues of race, skin color, ethnicity,

³⁰ SPÁČILOVÁ 2004.

nationality, sexual orientation, age, religious beliefs and others. The Centre's budget was 4 367 000 EUR for 2008, with 65 full-time staff and 20 project-based and expert partners in the same year.

In 2003, an Institute for Equality Between Women and Men was established. The Institute deals specifically with discrimination of women and men by developing frameworks, strategies and instruments aimed at establishing equal opportunities for women and men. Developing and maintaining a network of key actors in the area of gender, a database of gender experts and institutions, and conducting research and analysis on gender-related topics constitute some of its activities. One of the goals of the Institute is dissemination of the results and outcomes of its programs. In 2008, the Institute employed 27 staff and its budget was 4 367 000 EUR. Gender inequalities and equal rights of women and men are viewed as a topic of its own not only in Belgium but also in Finland, Latvia and Romania.

Both the Institute for Equality Between Women and Men and the Centre for Equal Opportunities and Opposition to Racism promote equality and anti-discrimination policies on local levels as well. The Institute is coordinated by a network of local experts on equal opportunities and the Centre produced a publication on promoting diversity and equal opportunities for local and regional representatives.

5. Positive Action

In the European Union, the term 'positive action' usually covers a wide range of measures to compensate past and recent disadvantages resulting from discrimination. Prof. Mark Bell of the Centre for European Law and Integration at the University of Leicester distinguishes between formal equality and equality in practice: "Equality is sometimes assumed to mean simply that all individuals are to be treated in exactly the same way, regardless of sex, ethnicity, etc. Whilst identical treatment results in 'formal equality', it may not be sufficient to bring about equality in practice. In academic literature, this is summarised in the term 'substantive equality'".³¹ 'Positive action' is often confused with 'positive discrimination' and therefore tends to be criticized for (un)intentionally leading to giving unfair advantage to certain social groups. The European Court of Justice has laid down the difference between positive action and illegal discrimination. Giving unconditional and habitual preference to women or to ethnic minorities in selection procedures for example, constitutes illegal discrimination.

For positive actions to be effective, the society must be well-informed about them and these measures must be subject to public debates. The participation of target groups in developing positive action programs and their implementation is equally key. Besides the support of the general public there must be support on behalf of the decision makers,

³¹ PUTTING EQUALITY INTO PRACTICE 2007, Pg. 6–7.

public institutions, and the management of the company or institution the program is designed to serve. The most commonly identified obstacles are shortage of human and financial resources, lack of awareness about the benefits and impact of positive measures, and a bias based on understanding the measure as "reverse discrimination." Views and understanding of the concepts of discrimination and positive actions vary from country to country, which leads to a variety of anti-discrimination project frameworks and implementation according to their respective local, regional and national contexts.

Examples of positive action³²

Equal rights against breast cancer: a program for socially disadvantaged women in Hungary

In cooperation with Roma organizations and representatives, a project focused on raising awareness about the importance of preventing breast cancer among Roma women was carried out in Hungary. Women were provided preventive check-ups with the help of a mobile ambulance or in a center to which transportation was arranged.

Holland: Trade Unions Roze

Roze Trade Unions were founded in response to the homophobia prevalent in workplaces and in job hiring processes in the country. Roze, a network of LGBT (lesbian, gay, bisexual and transgender) has built a website and a platform for mutual communication, information exchange, event organizing and campaigns with the aim of raising awareness about issues LGBT persons experience in the labour market.

6. Myths on (Anti-)Discrimination

Myth 1: There is No Discrimination in the Czech Republic

Some political representatives and experts claim there is no need for anti-discrimination measures in the Czech Republic because discrimination does not exist in this country. Such claims are in conflict with volumes of statistical and sociological data, however. Here we are referring to representative quantitative statistics on gender pay gap, numbers of women and men with part-time or temporary contracts, or to numbers of women in management positions in private or public sectors annually published by the Czech Statistical Office or by Eurostat.

Gender pay gap in the Czech Republic (gap in pay between women and men, the difference in average gross hourly pay in %) in 2006: 18 %.

³² Examples of good practice used were published in the European Commission's publication International perspectives 2009.

Ratios of employees with temporary contracts in 2006: women: 10.1%, men: 7.5%. Gender gap: 2.6%.

Ratios of women and men in management positions in 2006: women: 29.2%, men: 70.8%.³³

Furthermore, sociological studies and analyses examining the mechanics of the labour market have exposed the discrimination dynamics that are in place in the Czech context.

An extract from an interview with employers on return from maternity/parental leave³⁴:

Respondent: *What sometimes happens is that the position is cancelled while the mother is on parental leave.*

Interviewer: *What do you do then?*

Respondent: *We are a fair company, so what we do is that when the mother comes back, she receives a notice. She stays at home for three months, we pay her, and if she is entitled to days off, she also gets days off. But it's not like we pay the days off, she gets her severance payment though. But we never do what happens in other companies, where they tell her that they could offer her an inferior job, hoping that she will refuse to avoid paying the severance payment, no way. We aren't even in a position to do it, because this thing I have here is an organisational structure where it's impossible to say "we offer you a cleaning lady job" that we don't have at all. (...) well, when she's at home [the woman on maternity and parental leave], there are efforts to save, you know, people and money, and the position can be cancelled. She gets her severance payment and the work is split among others.*

Interviewer: *OK. Do you think that the women are happy when they get the severance payment and have, so to say, nowhere to go?*

Respondent: *I think so. Well, nobody has complained and said they wanted their job back. They are happy to get some money.*

Interviewer: *OK.*

Respondent: *As I am saying, it's not easy when she lives I don't know where and she has to leave the kid somewhere. I don't know about you but I had reduced working hours and at two o'clock I already had to run to pick up the child at kindergarten. The time it takes her to get there, and you also have to spend some time with the kid...*

Public opinion polls on discrimination and direct or indirect experience with discrimination serve as another source of data that give us information to better illustrate the shapes and forms discrimination takes place in society.

Agency Ipsos-Tambor was commissioned by Gender Studies to investigate the ways in which employees in the Czech job market perceive equal opportunities for women and men. Another question examined the options employers offer employees to balance their work and family lives. *Age and gender were the most commonly mentioned*

³³ REPORT ON EQUALITY 2008.

³⁴ SOKAČOVÁ 2006.

discrimination factors in the job market. Age was mentioned by 64% of the respondents; 45% mentioned gender. These numbers rise for expert and manager positions at all levels: (85% for age and 60% for gender). Age-based discrimination was assessed at equal levels by men and women, women perceive gender-based discrimination more strongly (55%) than men (36%).³⁵

The work of non-profit organizations specializing in discrimination attests to the fact discrimination exists in Czech society as well. These groups are engaged in discrimination issues and provide legal and other follow-up assistance to victims of discrimination.

Gender Studies, o.p.s. statistics – organization running a free legal helpline and providing other services to persons discriminated on the grounds of gender and/or age.

2006 (from March 8th): 516 on-line and telephone inquiries.

2007: 1 681 on-line and telephone inquiries.

2008: 859 on-line and telephone inquiries.

Myth 2: Anti-discrimination provisions mean continuous supervision by state institutions

Similarly to other laws and legal regulations, the Anti-Discrimination Act defines the basic terms and establishes the conditions that constitute discrimination, as well as the conditions that do not constitute discrimination. In addition, the Law defines the rightful subjects of legislation. A specific anti-discrimination norm also appoints an authority responsible for dealing with discrimination in society and for monitoring whether anti-discrimination provisions are observed. We do not mean supervision by a state institution but a public authority ensuring that the rights of discrimination victims can be claimed and exercised.

Myth 3: Specific Anti-Discrimination Norm is Not Necessary³⁶

Discrimination is prohibited in the Universal Declaration of Human Rights and in other international human rights treaties (International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on Elimination of Discrimination Against Women (CEDAW), and in Article 14 of the European Treaty on Human Rights and Freedoms), and the Anti-Discrimination Act, would not, essentially, introduce anything new. Even though the abovementioned instruments are in place, their force is to some extent merely proclamative, and requires further legislative elaboration. Victims can hardly use these instruments to protect themselves and to claim their rights. This

³⁵ For more information on the study, go to: [http://zpravodaj.feminismus.cz/clanek.shtml?x=2139437&als\[nm\]=2139204](http://zpravodaj.feminismus.cz/clanek.shtml?x=2139437&als[nm]=2139204). Also Newsletter *Equal Opportunities for Companies*, 1/2009.

³⁶ ŠTĚPÁNKOVÁ – ČIŽINSKÝ 2007.

might have been the reason why the prohibition of discrimination in the Constitution was not subject to any objections, doubts or debates. As soon as an operational, executive Anti-Discrimination Act, a law that is not only proclamative and one that can put equality to practice in everyday life, is about to be passed, there are voices questioning its purpose. Building on the provisions contained in the Universal Declaration and other treaties, the Anti-Discrimination Act defines terms related to equality and discrimination issues, and establishes what differential treatment does not constitute discrimination. And above all, the Act provides victims of discrimination tangible legal tools to effectively defend themselves against discrimination. The Act shall be applicable to specific law relationships in the private sector as well (for example in situations of renting a flat, labour relations, relations with doctors, and others).

Myth 4: Anti-Discrimination Provisions Prevent Subjective Decision-Making and Freedom of Choice

The equal opportunity concept (between women and men) is often accused of infringing on freedom of choice and on freedom in general. The goal of anti-discrimination provisions is not to restrict but rather to secure freedom as well as free choice for all members of society, including for people with limited options and for those at a disadvantage due to stereotypes and prejudiced ways of thinking on behalf of employers, service providers, and others. Anti-discrimination provisions secure the participation of disadvantaged social groups in different areas of economic and social life according to individual skills, abilities, and preferences. These provisions serve as a tool to restrict social exclusion and therefore boost freedom and free choice.

Myth 5: Anti-Discrimination Measures and Equal Rights Advocate Sameness for All

Equal opportunity and anti-discrimination ideals seek to establish a level playing field for everybody regardless of their skin color, gender, age, religion, or their marital status, etc. Their point is to prevent giving preference on the basis of specific characteristics in favor of judging people based on their individual skills, abilities and experience.

The concepts of anti-discrimination and equal rights between women and men respect individual differences and emphasize the fact that individual differences cannot be used to generalize, discriminate, or disadvantage people.

Myth 6: Transferring the Burden of Proof and Violation of the Presumption of Innocence

A typical argument against anti-discrimination provisions is that the principle of presumption of innocence is violated by transferring the burden of proof. The burden

of proof transfer and proving innocence is not required, however, until the moment the court decides that the case submitted exhibits signs of discrimination. The rule of transfer of the burden of proof comes into force only if this is established. This formula responds to the unequal power positions of the person discriminated against and the discriminating party that is always in advantage.

Myth 7: Positive /Affirmative Action is Reverse Discrimination

Positive measures aim to balance out the position of people or social groups experiencing long-term disadvantage or discrimination. Their goal is to provide equal opportunity. This does not mean giving preference to one group over another, to women over men or to the elderly over a younger generation, for instance, but rather to eliminate the barriers that stand in the way of equal opportunities on both institutional and individual levels. Tools such as quota or diversity principles are available at the institutional level, at individual level we can use special education programs that meet the specific needs of disadvantaged groups (computer courses for women or starter classes for the Roma community).

Positive action, and specifically quota, face the criticism that they allow for hiring people with insufficient qualifications only because of their gender, skin color or marital status. However, positive action responds to situations when a decision must be made between two equally qualified and experienced candidates and when qualifications and experience are not the final decision-making factors. In similar cases the overall diversity of the environment must be reflected. Unjustified preferential treatment of any gender, ethnic or age group is considered illegal discrimination according to the European Court of Justice.

Myth 8: Anti-Discrimination Measures Are Often Abused

Pursuing a discrimination lawsuit, whether in or out of court (negotiating with an employer), is a process that requires great resources in terms of time as well as finances, often with unpredictable results. Lawsuits tend to last several years, and negotiations with employers, in addition to taking a long time, can aggravate the employee's position in the meantime. For these reasons is abuse of anti-discrimination provisions minimal. Abuse for purposes of personal gain is equally rare.

However, it is true that a misinterpretation of the term ‚discrimination‘ is common in society, and that uninformed people tend to call non-discriminatory situations discriminatory even when they are not. Negotiations and settlements of situations in which discrimination occurs do not reflect this popular behavior, however. It is typical for opponents of equal opportunities and anti-discrimination policies to interpret the term ‚discrimination‘ and use it to label situations legally defined as exceptions.

7. Recommendations

Indicators (quantitative and qualitative) should be developed and used for evaluating discrimination in different areas. The indicators would also serve to assess the success rate, or lack thereof, in confronting different types of discrimination.

The European Commission recommends:

- a) Developing indicators to assess the success rate of anti-discrimination provisions utilizing the following methods, for instance to create a working group that would co-develop indicators and categories to be used for different types of discrimination; the working group would also ensure integration of anti-discrimination methods into public tender processes and thus attract more publicity to anti-discrimination policies.
- b) In cooperation with the civil society there should be an effort to measure inequalities in order to (monitor and) expose the discrimination that takes place in the member states. (The Commission recommends publishing annual data on discrimination and inequalities.)
- c) Assessing progress of anti-discrimination measures.
- d) Implementation of anti-discrimination measures into activities of national anti-discrimination authorities. Regular annual reports on discrimination in member states are other potential activities.³⁷

8. Glossary of Terms

Discrimination

A treatment of a person or a group based on stereotypes or a categorization rather than on individual judgment.

Discrimination – Direct

Action in which one individual is treated less favorably than another in a similar situation for a reason that constitutes discrimination.

Gender-Based Discrimination – Direct

A situation in which a person is treated less favorably due to her or his gender (for instance an advertisement saying: “seeking men for the position of Director”).

Discrimination – Indirect

A situation in which a seemingly neutral decision, distinction or process gives advantage to one individual over another based on a discriminatory characteristic. A situation in

which a seemingly neutral decision, distinction or process is objectively justifiable by its goal, and when the means of reaching that goal are necessary and adequate, is not considered a situation of indirect discrimination. A situation in which a legal or physical person is obliged to take adequate steps to eliminate disadvantages a person with disability may experience as a result of such a decision, distinction or a process, is not considered a situation of indirect discrimination.

Gender-Based Discrimination – Indirect

A situation in which a seemingly neutral law, policy, or practice has disproportionately negative effects on individuals of a specific gender (for example, an employer decides that part-time employees do not qualify for supplementary pension plans while full-time employees have their pension plans paid. Such a policy discriminates women because women make up the majority of part-time employees.)

Anti-Discrimination Provisions

Prohibition of discrimination and anti-discrimination provisions are grounded in the principle of fair judgment of a person or a group, formed on the basis of individual qualities and abilities rather than on stereotypes or categorizations.

Affirmative Action

Measures designed to eliminate or prevent discrimination of a specific social group, or measures that aim to level disadvantages based on traditional attitudes, behaviors or structures (often incorrectly labeled as ‘positive discrimination’).

Anti-Discrimination Act (Act on Equal Treatment and the Legal Means of Protection Against Discrimination)

This Act integrates relevant directives of European communities³⁸ and in the spirit of the Universal Declaration of Human Rights and international conventions incorporated in

³⁸ Council Directive 76/207/EEC of February 9, 1976 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.
Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 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.
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women
Council Directive 79/7/EHS of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.
Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational and social security schemes.
Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes.
Council Directive 86/613 of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood
Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services since 2004
Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

³⁷ THE FIGHT AGAINST DISCRIMINATION 2008.

the system of law, it determines the right to equal treatment and prohibits discrimination in the following areas:

- a) the right to employment and access to employment
- b) access to profession, enterprise and other independent profit-making activities
- c) job and service relations and other dependent activity including remuneration
- d) membership and activity in union organizations, employee councils or employer associations, including the benefits such organizations offer their members
- e) membership and activity in professional associations, including the benefits these public corporations provide to their members
- f) social security
- g) award and provision of social security benefits
- h) access to health care and health care providers
- i) access to education and education providers
- j) access to goods and services including public housing and in decision-making about public housing provision.

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Gender Studies, o.p.s. Glossary of Terms <http://www.feminismus.cz>

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Gender Studies, o.p.s. is a non-governmental non-profit organisation that performs the function of an information, consultation and education centre in the area of relations between women and men and their position in society. The goal of the organisation is to gather, analyze, work with and disseminate information related to gender-relevant issues. Via specific project, GS actively influences change concerning equal opportunities in different areas such as institutional mechanisms, labour market, women's political participation, information technologies etc. GS also runs a library covering a variety of publications and materials related to feminism, gender studies, women's and men's rights etc.

Position of Migrant Women in the Czech Republic

Eva Kavková, European Contact Group in the Czech Republic

1. Information on female and male migrants in the Czech Republic

The globally expanding phenomenon of migration is already affecting the Czech Republic very strongly. The number of migrant men and women is growing quickly. Czech society is thus forced to come to terms with living with the newcomers. It is important to ensure that a particular issue of feminisation of migration is reflected in research, legislation and practice. It is also necessary to take into account the fact that women comprise a notable group experiencing situations connected to migration and integration into a new society. The number of women migrants is growing and so women have to be perceived as a part of migration processes just as men. Women do not only accompany men passively, but they also have their own specific needs and interests. Women are subject to gender-specific risks, they choose different strategies and may face different obstacles and problems.

Today, above 400,000 foreigners live in the Czech Republic legally. As of December 31, 2007, records show 392,315 foreigners living in the country of whom 261,409 are of a third country origin (countries outside of the EU) – this group comprises 107,562 women (41.1 %). Permanent residency permits in this period were held by 104,916 individuals of whom 48,702 were women.³⁹ As of December 31, 2007, 2030 people were granted asylum (international protection) of whom 853 were women.⁴⁰

Formal legal status is not the only decisive factor for a successful integration of migrants into the Czech society. The living conditions and opportunities provided to migrants greatly influence the stance and the behaviour of the Czech majority towards foreigners. A number of research projects reveal the nature of the Czech majority's attitude towards foreigners. This includes the stereotypical perception of foreigners as second-class persons, in particular as regards the "immigrants from the East" (GRYGAR – ČANĚK – ČERNÍK 2006). This type of attitude is frequently manifested in discrimination and unequal treatment of migrants.

³⁹ See http://www.czso.cz/csu/cizinci.nsf/tabulky/ciz_pocet_cizincu-001 [online].

⁴⁰ See http://www.czso.cz/csu/cizinci.nsf/tabulky/ciz_pocet_cizincu-006 [online].

Legal framework of migration

Act No. 326/1999 Coll., on the *Residence of Foreigners* (the "Residence of Foreigners Act"), and Act No. 325/1999 Coll., on *Asylum* (the "Asylum Act") comprise the basic legislation governing the status and the rights and obligations of foreigners living legally in the Czech Republic. The Residence of Foreigners Act distinguishes between three types of residency in the country (within the group of foreigners of a third country origin, i.e., from outside of the EU): short-term residence, long-term residence (both being types of a temporary residence) and permanent residence (granted after five years, sometimes sooner). The basic law on refugees is the Asylum Act, which has been valid since January 1, 2000. In the Czech Republic, proceedings on granting international protection (formerly asylum) have been in place since the country's establishment in 1993, at which time the Czech Republic also adopted the *Convention Relating to the Status of Refugees* (what is called the Geneva Convention). The Czech Republic applied for participation in this convention as early as 1990.

Asylum legislation governs some gender-specific measures. In certain cases, women (applicants for international protection) are deemed threatened or vulnerable persons, a group that should receive a greater care, especially during the proceedings of granting them international protection (international protection proceedings) and while residing in asylum facilities. These measures, however, are defined only vaguely and are not based on an approach that is sensitive to either gender or culture. They are also difficult to implement in practice (e.g. an interview conducted or interpretation provided by a person of the same sex is not a rule or an obligation, but takes place only, if the applicant so requests). The following excerpts from the Asylum Act concern the definition of a vulnerable person as well as the interviews that applicants undergo during asylum proceedings.

"For reasons worthy of special consideration or at the express request of the international protection applicant, the Ministry shall ensure that the interview be conducted, and, if it is in its possibilities, interpretation be provided, by a person of the same sex." (Section 23 of the Asylum Act)

"The operator of an admission or accommodation facility shall take into account the international protection applicant's special needs if such person is: a minor without a guardian; a person under 18 years of age; a pregnant woman; a person with a medical handicap; a person who has been tortured, raped, or subject to some other serious form of psychological, physical or sexual violence; and, in cases worthy of special consideration, some other person. After completing the tasks under Section 46(1), a minor without a guardian is on the basis of a court ruling placed in an educational facility for institutional upbringing or placed in the care of the person designated in the court ruling." (Section 81 of the Asylum Act)

Recommendations: Gender- and culture-sensitive asylum procedure

There are no legally binding documents in this field, despite the fact that UNHCR has published several recommendations. Employees of the Ministry of the Interior, who

are responsible for asylum procedure, do not have any obligation to follow these rules and recommendations.

There is a special information department within the Ministry which gathers information on the position of women in third countries where the asylum seekers come from. They also produce manuals for those workers who interview asylum seekers. However, there is no integral conceptual system of training which would also focus on other gender aspects of an asylum procedure. Persecution of women (based upon political, religious or other reasons) often has a different form from the persecution of men, a fact which is not sufficiently reflected in the Czech asylum procedure.

Asylum seekers are not informed in advance about the possibility to ask for an interpreter of the same sex and thus they find it difficult to make use of this right.

Advice and Recommendations:

- Adopt the UNHCR recommendations in the field of international protection concerning persecution for reasons of gender identity in the context of article 1A, 2nd paragraph of the *Convention Related to the Status of Refugees* (1951) and related *Protocol* (1967). This should be done in a form of directives and rules linked to asylum procedures.
- Modify the concept of a well-founded fear, so that it contains various forms of gender-based violence and discrimination.
- Consider all the five reasons for a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion from a gender-sensitive point of view. Reasons for the persecution of women can be significantly different from the reasons for the persecution of men.

In the field of asylum procedure:

- Organise compulsory trainings for workers of the Asylum and migration policy department of the Ministry of the Interior, in particular for those who interview asylum seekers. Trainings should focus on the gender dimension of asylum procedures.
- Involve third country nationals into this training. Personal experience is a great benefit in this case.
- Organise special training for workers of the Asylum and migration policy department of the Ministry of the Interior on gender-related violence and discrimination. It is important for them to understand cultural differences and trauma which influences asylum seekers' communication patterns and behaviour.
- Female asylum seekers should be notified of the gender aspects of asylum procedures, so that they are aware of the fact that gender-related violence and discrimination are a reasons for which they may be granted asylum.
- Asylum seekers should be informed about the possibility to ask for an interpreter of the same sex.
- Asylum seekers should have an option to be interviewed in the absence of their family members.

2. Political and institutional framework for the integration of foreigners into the Czech Republic

The method used to integrate migrants and the integration conditions are, to a significant degree, defined by the state's (target country's) policies. The government's fundamental conceptual document defining the integration policies of the Czech Republic is the *Koncepce integrace cizinců* [Foreigner Integration Policy (the "FIP")] of 2005 (an updated version of the FIP came into force in 2006). The target group of the state's integration policy, to which the FIP applies, is the foreigners settled long-term in the Czech Republic and living legally in the country for at least one year. This definition includes foreigners who have been granted residency (i.e. permanent residency or temporary residency based on a long-term visa or a long-term residence permit) and foreigners who have been granted asylum (the state Integration Programme is, however, designated in particular for them – see below). Conversely, the target group does not include the citizens of the Member States of the European Union or asylum seekers (applicants). In 2005, "Specific Targeted Measures", which should serve as key conditions for successful integration under the conditions prevalent in the Czech Republic, were laid down: knowledge of Czech, economic independence, ability to get by in the society, and relationships with the members of the Czech majority.⁴¹

In its policies and concepts, the Czech Republic has not adopted any specific gender-sensitive measures. The FIP touches upon gender issues in some areas; it does not, however, deal with specific problematic areas and situations, nor does it propose the exact procedure to follow in order to remedy any shortcomings in promoting equal opportunities in the integration of foreigners. The FIP does not provide a comprehensive overview of specific measures that would lead to an equal standing between migrant men and migrant women; it only refers very generally to problematic areas of which it is aware (KRCHOVÁ – VÍZNEROVÁ 2008, s. 27).

Advice and Recommendations:

- Effective state integration policy must be based upon gender- and culture- sensitive approach.
- When creating and developing the integration concept and measures within each ministry, it is important to respect the fact that migrants are not a homogenous group. Each measure and related activities must match the problems and the needs of individual migrant groups (according to gender, age, ethnic, cultural, religious and other affiliations) – it should respect their specific parameters.

⁴¹ See <http://www.mvcr.cz/clanek/integrace.aspx?q=Y2hudW09MQ%3d%3d> [online].

3. Equal opportunities of women and men (migrants) within the State Integration Programme

The State Integration Programme (the “SIP”; Chapter IX, Sections 68–70 of the Asylum Act) is a state-run integration initiative for asylum holders (i.e. migrants who have been granted asylum in the Czech Republic pursuant to the Asylum Act). The programme promotes activities in the following areas: free Czech language courses; acquisition of accommodation; and, partially, employment. This programme is voluntary and is offered to asylum holders at the moment when they are granted asylum. If they decide to take part in the SIP, they have to fulfil all the obligations connected to it.

The Ministry of Education, Youth and Sports organises free Czech language courses, according to the Asylum law (325/1999). These courses are carried out by certified organisations.

The results of a research carried out by the European Contact Group in 2007/2008 revealed several flaws in this system. Limited possibilities to attend the courses due to family commitments or work obligations are the most important ones. Courses are often organised in the hours which overlap with the usual working hours of many refugees. Work obligations thus do not allow them to participate. This is very often the case of men. Women, on the other hand, are disadvantaged due to unequal division of roles within the family and the necessity to take care of their children (with no babysitting available).

Refugees also have a choice to ask for individual language courses. This possibility very often depends on the size of a city or a town where they live – as the ECG found out. People living in small towns or villages are thus disadvantaged.

Advice and Recommendations:

- Adjust the hours in which the language courses are organised to the individual needs of refugees who are participating in the State Integration Programme.
- Those organisations, which provide the language courses, should map the needs of their clients and adjust the courses to their possibilities and capacities.
- Provide babysitting alongside the language courses to support equal opportunities of both parents to attend the courses.
- Enable individual language courses also in small towns and villages.

4. Economic integration

Economic independence and activity at the labour market, as stems, for example, from the qualitative survey Na rovinu (NA ROVINU 2007), are very important for many women. Women emphasise the significance of paid and legal work and consider it to be a significant component of a foreigner’s successful integration into majority society. For women,

work represents not only a means to make a living, but also a way to economic and personal independence. Women stress the importance of having their own income also in connection with refusing to be dependent on the help and assistance from the state.

The area of economic integration and employment belongs to those fields where migrants find themselves in an unequal position. The gender category becomes evident upon segmenting the job market. The traditional division of work according to gender persists: women are prevalent in certain sectors and jobs, men in others (with the pay in feminised professions being significantly worse). The situation becomes even more problematic in the case of migrants who fulfil the demand of current economies for unqualified and cheap labour. This, to a great extent, takes place within the shadow economy and the secondary or illegal job market, outside of the state’s control, without any social security, health insurance, or protection against discrimination and violation of human rights. “Gender inequalities are thus further strengthened by class, ethnic, national, and racial inequalities, and the oppression of women is reproduced through a division of labour based on gender and race” (UHDE – VÍZNEROVÁ 2006).

Such unqualified and poorly paid work done by migrant women includes care and housework. The global phenomenon of hiring migrant women as care providers (taking care of children, the elderly or the ill) – who make up for insufficient public care system – and maids can also be found in the Czech Republic. Paid care represents a form of uncertain, poorly paid and inflexible employment, often without basic social security and health insurance. As “employers” enjoy lower financial costs and the work permit process is complicated, this work often takes place on the illegal labor market (UHDE 2008).

Gender inequality and sexual discrimination appear at the point of entering the labour market (e.g. discriminatory job advertisement or job interview) and at work, in terms of remuneration or discrimination when carrying out parental duties. Significant differences in pay exist between migrant men and migrant women. Research, the target group of which was economic migrants from China, Vietnam, Russia and Ukraine (i.e. the most numerous group of foreigners from third countries in the Czech Republic), found out that women generally earn up to 3500 Czech crowns less than men. The difference in pay between the sexes exists even in the case of the same kinds of jobs (ANALÝZA 2007, p. 46).

Advice and recommendations: equal opportunities of migrant women and men at the labour market, multiple discrimination of migrant women

- Adopt the antidiscrimination law
- Take into account specific position and needs of migrant women when designing equal opportunities policy and strategies
- Improve cooperation between Job offices and employers
- More effective state control in the field of respecting antidiscriminatory approach at the labour market

- Eliminate barriers and enable equal access to a possibility to combine work and family duties – flexible working hours, part-time jobs, better access to childcare, etc.
- Inform migrant women on possibilities to combine work and family duties
- Awareness-raising of migrants in the field of antidiscrimination measures at the labour market

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The European Contact Group in the Czech Republic (ECG) is a non-profit organization that promotes equal opportunities for men and women, fights against racism and discrimination of foreigners and changes ingrained stereotypes and prejudices present in the Czech Republic and in Europe.

Rights of Women during Pregnancy and Childbirth and Rights of Parents after Their Child's Birth

Petra Sovová, The Movement for Active Motherhood

1. The problem of care beneficiaries in the Czech Republic

If you visit any of the maternal hospitals in the Czech Republic, the medical staff is likely to be all smiles; you will be told that birthmothers are duly respected, that the hospital is used to working with birth plans and that it supports a 24-hour mother-child contact and breast-feeding. The mothers should be satisfied. But is it really so?

Reality is not so simple. In general, it is true that those women who are content with the services rendered are the ones who have not thoroughly prepared themselves for birth and do not have any requests that would collide with a hospital custom. On the other hand, mothers who are prepared, educated and have a concrete idea of what the birth should look like, have a hard time. They will be told that in order to safeguard their child from harm, it is necessary to undergo a large number of procedures and obey a long list of regulations. Further, they are informed that as mothers, they have almost no right to decide about the birth, since the process and the result are the responsibility of the obstetricians.

And what are the requests of the mother likely to be? A majority of educated mothers expect that medical hospitals would give them the possibility to give birth in line with latest medical recommendations based on authentic research – for example, the guidelines presented by World Health Organization (WHO). The freedom to choose a position to lie in; use of medication and body intervention only in situations when necessary and with the patient's informed assent; presence of a close person during birth; the freedom to leave the hospital according to one's own choice. And, above all, the atmosphere of trust, the absence of feeling menaced and the knowledge that the mother is completely respected.

Additionally, women in the Czech Republic have limited options in choosing who provides the service – they can choose the obstetrician, but not the midwife. The reason

is that there are not enough of the latter. Their services, furthermore, are not covered by the mother's health insurance. Even though midwives are competent to care for pregnant women and administer physiological birth by law, they are often limited by administrative departments of the state and sometimes even not given a license. The administrative departments often require that midwives be employed at a maternal hospital in order to be eligible to receive a license. Such behavior is a breach of the regulation 80/155/EHS and as such is completely unacceptable. It is discriminatory towards both mothers – receivers of the care – and midwives – providers of the care.

2. Optimal maternity services

In line with this, we cheer **10 Steps to optimal maternity services presented by the International MotherBaby Childbirth Organization (IMBCI)** in March 2008. These stem from latest researches and establish principles which should be practiced by all providers of optimal birth care and which summarize the above-mentioned requirements. The initiative points out that **the needs of the mother-child pair should have a higher priority than the needs of the care providers, the institution or the medical field.** These principles are also presented as *10 Steps to Optimal MotherBaby Maternity Services*. Due to the importance of this document we publish its essential part:

10 Steps to Optimal MotherBaby Maternity Services⁴²

An optimal MotherBaby maternity service has written policies, implemented in education and practice, requiring that its health care providers:

Step 1 Treat every woman with respect and dignity, fully informing and involving her in decision making about care for herself and her baby in language that she understands, and providing her the right to informed consent and refusal.

Step 2 Possess and routinely apply midwifery knowledge and skills that enhance and optimize the normal physiology of pregnancy, labour, birth, breastfeeding, and the postpartum period.

Step 3 Inform the mother of the benefits of continuous support during labour and birth, and affirm her right to receive such support from companions of her choice, such as fathers, partners, family members, doulas, or others. Continuous support has been shown to reduce the need for intrapartum analgesia, decrease the rate of operative births and increase mothers' satisfaction with their birthing experience.

42 Source: <http://www.imbci.org/USERIMAGES/File/IMBCI%20%20%2004-05-08.pdf> [online, downloaded 07/06/2009].

Step 4 Provide drug-free comfort and pain-relief methods during labour, explaining their benefits for facilitating normal birth and avoiding unnecessary harm, and showing women (and their companions) how to use these methods, including touch, holding, massage, labouring in water, and coping/relaxation techniques. Respect women's preferences and choices.

Step 5 Provide specific evidence-based practices proven to be beneficial in supporting the normal physiology of labour, birth, and the postpartum period, including:

- Allowing labour to unfold at its own pace, while refraining from interventions based on fixed time limits and utilizing the partogram to keep track of labour progress;
- Offering the mother unrestricted access to food and drink as she wishes during labour;
- Supporting her to walk and move about freely and assisting her to assume the positions of her choice, including squatting, sitting, and hands-and-knees, and providing tools supportive of upright positions;
- Techniques for turning the baby in utero and for vaginal breech delivery;
- Facilitating immediate and sustained skin-to-skin MotherBaby contact for warmth, attachment, breastfeeding initiation, and developmental stimulation, and ensuring that MotherBaby stay together;
- Allowing adequate time for the cord blood to transfer to the baby for the blood volume, oxygen, and nutrients it provides;
- Ensuring the mother's full access to her ill or premature infant, including kangaroo care, and supporting the mother to provide her own milk (or other human milk) to her baby when breastfeeding is not possible.

Step 6 Avoid potentially harmful procedures and practices that have no scientific support for routine or frequent use in normal labour and birth. When considered for a specific situation, their use should be supported by best available evidence that the benefits are likely to outweigh the potential harms and should be fully discussed with the mother to ensure her informed consent. These include:

- shaving
- enema
- sweeping of the membranes
- artificial rupture of membranes
- medical induction and/or augmentation of labour
- repetitive vaginal exams
- withholding food and water
- keeping the mother in bed
- intravenous fluids
- continuous electronic fetal monitoring (cardiotocography)
- pharmacological pain control

- insertion of a bladder catheter
- supine or lithotomy (legs-in-stirrups) position
- caregiver-directed pushing
- fundal pressure (Kristeller)
- episiotomy
- forceps and vacuum extraction
- manual exploration of the uterus
- primary and repeat caesarean section
- suctioning of the newborn
- immediate cord clamping
- separation of mother and baby

Step 7 Implement measures that enhance wellness and prevent emergencies, illness, and death of MotherBaby:

- Provide education about and foster access to good nutrition, clean water, and a clean and safe environment;
- Provide education in and access to methods of disease prevention, including malaria and HIV/AIDS prevention and treatment, and tetanus toxoid immunization;
- Provide education in responsible sexuality, family planning, and women's reproductive rights, and provide access to family planning options;
- Provide supportive prenatal, intrapartum, postpartum, and newborn care that addresses the physical and emotional health of the MotherBaby within the context of family relationships and community environment.

Step 8 Provide access to evidence-based skilled emergency treatment for life-threatening complications. Ensure that all maternal and newborn healthcare providers have adequate and ongoing training in emergency skills for appropriate and timely treatment of mothers and their newborns.

Step 9 Provide a continuum of collaborative maternal and newborn care with all relevant health care providers, institutions and organizations. Include traditional birth attendants and others who attend births out of hospital in this continuum of care. Specifically, individuals within institutions, agencies and organizations offering maternity-related services should:

- Collaborate across disciplinary, cultural, and institutional boundaries to provide the MotherBaby with the best possible care, recognizing each other's particular competencies and respecting each other's points of view;
- Foster continuity of care during labour and birth for the MotherBaby from a small number of caregivers;
- Provide consultations and transfers of care in a timely manner to appropriate institutions and specialists;

- Ensure that the mother is aware of and can access available community services specific to her needs and those of her newborn.

Step 10 Strive to achieve the BFHI 10 Steps to Successful Breastfeeding:

- Have a written breastfeeding policy that is routinely communicated to all health care staff.
- Train all health care staff in skills necessary to implement the policy.
- Inform all pregnant women about the benefits and management of breastfeeding.
- Help mothers initiate breastfeeding within a half-hour of birth. Place babies in skin-to-skin contact with their mothers immediately following birth for at least an hour and encourage mothers to recognize when their babies are ready to breastfeed, offering help if needed.
- Show mothers how to breastfeed and how to maintain lactation, even if they should be separated from their infants.
- Give newborn infants no food or drink other than breastmilk, unless medically indicated.
- Practice “rooming in”-- allow mothers and infants to remain together 24 hours a day.
- Encourage breastfeeding on demand.
- Give no artificial teats or pacifiers (also called dummies or soothers) to breastfeeding infants.
- Foster the establishment of breastfeeding support groups and refer mothers to them on discharge from the hospital or clinic.

3. Childbirth and legislation

It is characteristic of Czech obstetrics that most of the above-mentioned requirements fall into a category that is, generally and quite pejoratively, called *alternative childbirth* within medical circles, and which is currently possible only at a few maternal hospitals; although it should be general practice. Despite the fact that suggestions by IMBCI and WHO are not legally binding, Czech legislation gives a mother almost limitless authority to decide about her own body and that of her child and the medics are liable to provide her with all the care possible, in accordance with recent medical knowledge.

Code 20/1966 about care and health of the people:

§11

Medical care is provided by medical institutions belonging to the state, municipalities, persons or corporate bodies in accordance with recent medical knowledge.

As such, medical institutions are liable, as elsewhere in the world, to provide care according to the principles of Evidence Based Care.

According to Code 20/1966 about care and health of the people, all procedures are to be undertaken only with the agreement of the patient.

General rules described in the fifth article of the Agreement on Biomedicine states that *any healthcare procedure can be undertaken only on the condition that the patient gave his/her explicit assent, based on his/her free will and adequate information.* The term “procedure” in the above stipulation is understood as any intervention targeting the patients bodily integrity – be that preventive care, determining a diagnosis, therapy, rehabilitation or research.⁴³

A recently widespread situation involving conflict is when a mother wants to leave the confines of the hospital as soon as possible and to return home (quite understandably, with her child). It is common practice that medical institutions refuse to release the child sooner than 72 hours after the birth, in order to make certain examinations. In most cases, this practice is **against the law**; to limit the rights of the parent on behalf of the welfare of the child, very specific criteria have to be met. Unfortunately, the situation is made worse by a confusing measure implemented by the Ministry of Health, which defines the methods a medical institution has to follow when releasing a newborn child into home care, and which can easily lead to unlawful conduct by medical personnel.

The Declaration of Basic Rights states in its eighth article that personal freedom is guaranteed. According to this article, no one can be deprived of his or her personal freedom in any other manner than according to the law. In the sixth paragraph of the eighth article, there is a stipulation referring specifically to health service, in accordance with which the law establishes specific circumstances stating when a person can be held or accepted at a medical institution without his/her own explicit assent. Additionally, such a situation has to be reported to the court of justice, which has seven days to determine, if the person may or may not be held.

It is then possible to **conclude** that:

- A birthmother of full legal capacity always has the right to refuse healthcare
- A mother, as the plenipotentiary, has the right to refuse further hospitalization of her child, unless the child’s life is in danger; the medical staff is obliged to properly inform the mother about the situation and if she still insists, to respect and act in accordance with her written statement
- If the child’s life is in acute danger, the medical staff must take due action, even if it is against the will of the plenipotentiary.

A degree of danger a child’s life is in has to be thoroughly assessed using the best of recent medical knowledge and it also has to be properly documented. Diagnoses that are not based on the objective assessment of the given situation or prearranged diagnoses are against the law.

⁴³ In situations where agreement cannot be obtained, action can be taken immediately, if absolutely necessary for the patient’s welfare.

4. Excellent results of Czech obstetrics

Parents frequently experience manipulation and threats; they are usually told only half of the truth about an offered procedure – they are scarcely told about the negative effects or alternatives. This is true even though the law states in several places the requirement of a patient’s assent being based on proper information. For example, the Agreement about People’s Rights and Biomedicine states in its fifth article that a person undergoing medical intervention has to be properly informed about the nature of the procedure, the risks and all the negative effects, in advance of the procedure.

The basic argument used by medical staff is prenatal mortality, as if childbirths were only a question of mere survival. Even acquiring this statistical number has its drawbacks; the Czech Republic has a much higher number of artificial interruptions of pregnancy attributed to the mother’s medical condition (18% in comparison to 1–3% in other EU countries). Comparing these statistics presents another problem altogether – the definitions on which this data is based differ from country to country.

And to add a small detail – in the Czech Republic, you have to pay for another person to be present during the childbirth. This is atrocious exploitation that, according to ENCA (European Childbirth Association), has no parallel in other developed European countries.

5. Conducting childbirth elsewhere in Europe⁴⁴

Germany

The law states that a midwife has to be present at each birth. Midwives work in hospitals and birthing centers or assist with home births. Around 2% of births take place out of hospital, and more than one percent of those take place at home. There are 120 birthing centers where the personnel consists only of midwives. A research from 1999 showed very low perinatal mortality and overall satisfactory results regarding births that took place at home or at birthing centers, which led to lessening the fear of risks when birthing out of hospital and helped the people perceive it as being high quality. The services of midwives are covered, to a great extent, by health insurance. Since 2007, health insurance in Germany has covered births in birthing centers completely.

Great Britain

The big change in the development of birthing service came at the beginning of the nineties, when the government chose to fund only such care that is supported by sci-

entific evidence – Evidence Based Care. A group of twelve Members of Parliament and four expert advisers undertook extensive research (initiated by a female Member of Parliament, who birthed at home). On the basis of this research, a proposal for changes in the field of obstetrics was submitted to the Parliament. The success of this independent study was further underscored by the epic failure and questionable quality of a different study on the same topic, which was conducted by a team of physicians (they were not able to present any scientific proof that birthing in a hospital is safer than birthing elsewhere – all they did was request more funding and technical equipment). The government approved the independent study and made the necessary changes in obstetrics. The British Medical Journal published several studies proving that home birthing is a safe alternative to hospital birthing.

2000 – The official statement of the Department of Health: “All women should have the right to choose their preferred place of giving birth, including home birth, and the State guarantees them proper conditions for their choice.

2002 – Around 2% of births take place at home (which amounts to about 15 000 children a year), in some areas the percentage goes up to 20% (Torbay) or even 43% (Albany practice).

2004 – Material published by the State: *The National Service Framework for Children, Young People and Maternity Services*, chapters **Post Birth Care for Mothers** and **Post Birth Care for Babies** (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4089101). This document presents a vision of Maternity Services in Great Britain in ten years (2014), including proposed standards that should be attained by the year 2009.

Motto: Promoting Normality and Choice. Apart from other obligations, the British Government wants to make sure that each woman be cared for by a midwife for the whole duration of her pregnancy.

2007 – The Department of Health published further materials, namely *Maternity Matters: Choice, access and continuity of care in a safe service*. This document is a guide on how to implement the above-mentioned Government obligations and bring them into practice. According to statistical information, a number of home births and births taking place in midwifery units (centers within maternal hospitals staffed only by midwives) is rising.

The Netherlands

Most women are cared for only by midwives during pregnancy. A pregnant woman visits a midwife roughly in her twelfth week and remains in her care for the whole duration of gravidity. If a problem manifests itself, the midwife sends the woman to a gynecologist. If and when the problem is solved, the pregnant woman returns back to the midwife. Health Insurance does not cover only the midwife’s immediate care during childbirth, but also up to 60 hours of maternal nurse care – the maternal nurse takes care of the mother and the child 7,5 hours a day, for the whole week after birth.

⁴⁴ Sources: Aperio, European Network of Childbirth Associations, Coalition for Improving Maternity Services, official medical reports from particular countries.

Austria

Several birthing centers exist here and 1.2% of births take place at home. Health Insurance covers half of the costs associated. After a year of service in a maternal hospital, midwives can become freelance and assist with births that take place out of hospital. The law states that midwives can take care of a woman from the point of the child's conception until birth. Assisting with home births is legal.

Switzerland

Several birthing centers exist here and 1.2% of births take place there. Another percent of births are planned home births with the assistance of a midwife. The midwife's work is covered by the mother's health insurance, which is obligatory.

Argentina

Since 2005, every woman has had the legal right to be accompanied by a person of her choice during birth.

6. Recommendations

In a Czech maternal hospital it is possible, despite all the difficulties, to carry through "your own" childbirth, but it costs a lot of energy that could be used better on our children and us. We urge women, or more generally, parents, to always try to communicate with the medical staff, especially if they are certain about the validity of their conclusions and maybe can even support them with a scientific proof. Strengthening the birthing experience and guaranteeing a harmonious beginning of your life together with your child is definitely worth the effort.

As a conclusion, we have formulated the requirements for significantly bettering our own, Czech obstetrics:

- The Czech Ministry of Health should create a new concept of obstetrics in such a manner that would guarantee accessible, affordable, proper and satisfactory care.
- The Czech Ministry of Health should define primary birth care and say who can provide it and how.
- The public should have access to data about pre-birth care, birth care and post-birth care. Our society should be well-informed about the birth care options a mother has, so that each woman could decide for herself which option suits her best.
- The government should support the education of midwives, in accordance with the EU guidelines, to thoroughly prepare them to dutifully perform pre-birth, birth and post-birth care.

- The government should ensure that the suggestions given by WHO about proper birth methods are respected on all levels, so that:
 - a woman about to give birth has a right to psychological support in the form of a close person being allowed to be present during birth, without the condition of financial compensation
 - women are not forced into uncomfortable and unsuitable positions during birth
 - women are free to move about before birth and choose a convenient position for delivering
 - any procedures that are unnecessary or lack scientific backing are not routinely performed
 - a healthy newborn baby could be left with his/her mother after birth
- The government should help to create conditions that would change the approach of the professional staff towards women for the better, and to create conditions under which the women would be free to knowledgeably decide about their perinatal care.

7. Sources:

Péče v mateřství. In: Maternity Services, Department of Health 2004. Dostupné online na: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4089101.

Péče v průběhu normálního porodu: praktická příručka. Ministerstvo zdravotnictví. 2002.

<http://www.aperio.cz/>

<http://enca.eu/index.php?id=537>

<http://www.imbci.org/ShowPage.asp?id=174>

<http://www.motherfriendly.org/>

Peter Sovová is a co-founder and a member of the Movement for Active Motherhood. She promotes normal natural birth and she is the author of a number of informative texts.

The Movement for Active Motherhood, since its foundation in 1999, aims at changing the Czech obstetrics towards more natural and safer childbirth. Further, it demands respect for the rights of women during child delivery. Currently, it also focuses on other aspects of motherhood; it promotes active, responsible and enlightened approach of parents towards education and childcare.

Czech Women's Lobby Positions

Czech Women's Lobby declares its support to the feminist belief that women have the right to political, social and economic equality with men. Czech Women's Lobby lobs for and asserts the interests of all women regardless of their race, ethnic origin, health condition, sexual orientation, age, religion or belief. At the same time, CWL promotes diversity and acknowledges and asserts diverse values and needs of women with regard to the above mentioned characteristics. Czech Women's Lobby accepts variety of its organizations as well as variety of feminist trends professed by individual organizations. At the same time, however, CWL requires shared attitudes to the following issues:

Sexuality and reproductive rights of women

Czech Women's Lobby rejects ideologies disabling women the control of their own bodies. CWL requires equality in sexual relationships and says no (not only) to sexual violence against women. CWL supports freedom to choose when one would like to have a family and to decide whether one will have children and how many. CWL calls for education and awareness in the area of sexual and reproductive rights available to all. CWL holds a view that women should have access to contraception of their choice and access to safe and legal abortion. At the same time, Czech Women's Lobby does not promote abortion as a family planning method. Czech Women's Lobby promotes the right to freely choose care in pregnancy and at delivery and emphasizes health care in accordance with latest available scientific development.

Prostitution and human trafficking

Czech Women's Lobby perceives trafficking in women as a material breach of human rights. Prostitution should not be related to terms such as "coercion" or, on the contrary, "free will". These are always relative terms which must be perceived in economic, political, social and cultural contexts. It is necessary to assert various strategies both protecting women's rights and holding those profiting from sexual

industry liable. Czech Women's Lobby also asserts shifting responsibility to women's customers. Women's rights should include access to health care, police protection, training and education opportunities, legal services and legal representation, including residence permits to women from non-EU countries, support, consultancy and other services available to all women.

Violence against women

Czech Women's Lobby explicitly denounces all forms of violence against women, both in public and private spheres. Violence against women (domestic violence, sexual abuse, rape or other gender-conditioned acts able to induce physical, sexual or psychic harm) is violation of human rights and therefore it is necessary for both government and non-government bodies to cope with it and to adopt measures necessary for its elimination and protection of victims. Violence must be approached as a global social phenomenon with certain cultural and historical background and specific dynamics.

Women in decision-making positions

Czech Women's Lobby asserts equal representation of women and men in decision-making positions in politics and central bodies of state administration. Czech Women's Lobby considers equal division of power between men and women a basic principle of democracy. Insufficient representation of women in politics can also mean that life experience of one half of the population is not taken into account in an appropriate way. Since women face a number of barriers, Czech Women's Lobby introduces measures assisting equality of men and women in decision-making positions, e.g. edifying campaign, education and supporting programmes targeted at women willing to participate in public, intra-company quotas or legally defined quotas.

Women in labour market

Czech Women's Lobby promotes labour market without discrimination on the basis of sex. The following principles are part of it:

Non-discrimination approach to recruitment, equal pay for the same work and the work of the same value, equal chances of career growth for men and women of all ages, same chances in labour market regardless of sex, reasonable pension not decreased for the time spent on parental leave, getting rid of sexual harassment at workplace, promoting work/life balance.

Gender roles and stereotypes

Czech Women's Lobby fights against gender roles and stereotypes which continue spreading in the European context and are preserved mainly through education systems and the media. Czech Women's Lobby rejects clichés depicting women as inferior to men, sexual subjects or people connected primarily with domestic work. CWL encourages equal access to education and including gender equality in curricula. CWL says no to negative and humiliating depiction of women, their symbolic overlooking, condemnation or trivialization in the media.

Czech Women's Lobby – basic information

The CWL is a network of non-profit organizations promoting women's rights in the Czech Republic. The CWL is a member of the European Women's Lobby, the largest umbrella organization of women's associations in the European Union.

Main aims and priorities of the Czech women's lobby are:

- Cooperation, networking and formulation of joint points of view and positions of Czech women's and gender NGOs.
- Medialization and opening of important public discussions, definition of lacks connected with the question of equal opportunities for women and men.
- Lobbying and promotion of interests of all girls and women living in the Czech Republic from the European perspective, i. e. interests of women from marginalized and socially excluded groups, women from ethnic and national minorities and foreign/migrant women.
- Cooperation with the Czech executive branch, provision of an expert base.
- Monitoring in the field of gender equality.
- Acknowledgment and promotion of diverse values and needs of women with regard to their cultural, national, ethnic, religious, social, sexual and other specific identities.

For more information: <http://czlobby.cz/>

E-mail: czlobby@seznam.cz

Tel: 00420 777 222 826

Czech Women's Lobby members

**Aperio – Společnost pro zdravé rodičovství
(Aperio – Healthy Parenting Association)**

<http://www.aperio.cz/>

Asociace podnikatelek a manažerek (Business and Professional Women)

<http://www.podnikanizen.cz/>

Česká asociace dul (Czech Doula Association)

<http://www.duly.cz/>

Český helsinský výbor (Czech Helsinki Committee)

<http://www.helcom.cz/>

Český svaz žen (Czech Women's Union)

<http://www.csz.cz/>

Evropská kontaktní skupina v ČR

(European Contact Group in the Czech Republic)

<http://www.ekscr.cz/>

Fórum 50 %

<http://www.padesatprocent.cz/>

Gender Studies

<http://www.genderstudies.cz>

Hnutí za aktivní mateřství (The Movement for Active Motherhood)

<http://www.iham.cz/old/>

Klub K2

<http://www.klubk2.cz/>

Manushe

<http://www.slovo21.cz/index.php?id=manushe>

Moravská asociace podnikatelek a manažerek

(Moravian Association of Women Entrepreneurs)

<http://www.mapm.cz/>

NESEHNUTÍ Brno – NEzávislé Sociálně Ekologické HNUTÍ

<http://www.nesehnuti.cz/>

Otevřená společnost (Open Society)

<http://www.otevrenaspolecnost.cz/>

proFem

<http://www.profem.cz/>

ROSA

<http://www.rosa-os.cz/>

Rozkoš bez rizika (Bliss Without Risk)

<http://www.rozkosbezrizika.cz/>

Soroptimist International

<http://www.soroptimistpraha.cz/>

UNIPA

<http://www.unipa.cz/>

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