

EUROPEAN SOCIAL CHARTER

THE SEVENTEENTH (SIMPLIFIED) REPORT
ON THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER
SUBMITTED BY THE GOVERNMENT OF THE CZECH REPUBLIC

31 DECEMBER 2019

The Czech Republic has been invited to submit a report on the application of the accepted provisions of the 1961 European Social Charter belonging to the thematic group “Employment, training and equal opportunities”, until 31 December 2019 which includes Articles 1§1, 1§2, 1§3,15§2, 18§4 and Article 1 of the 1988 Additional Protocol.

The European Committee of Social Rights has invited the State Parties to limit the report to replies to specific and targeted questions for each of the above-mentioned provision. The report should contain replies to any conclusion of non-conformity of the previous cycle. According to the applicable rules, the last Conclusions XXI-1 (2016) concerning the thematic group 1 (Reference Period - 01/01/2011 - 31/12/2014) only refer to the information submitted by the Government of the Czech Republic on the follow-up given to the relevant decisions of the European Committee of Social Rights (“ECSR”) in the framework of the collective complaints procedure.

The last report concerning the thematic group 1 (Reference Period 01/01/2011 - 31/12/2014) containing detailed information to all questions raised by ECSR, submitted in November 2015, was not evaluated.

Coming out from the most recent Conclusions which are Conclusions XX-1 (2012) devoted to the same thematic Group 1 “Employment, training and equal opportunities”, the Czech Republic submits targeted information concerning two situations of non-conformity of Articles 1§3 of the 1961 European Social Charter and Article 1 of the 1988 Additional Protocol.

Article 1- Right to work

Paragraph 3 - Free placement services

The Committee concludes that the situation in the Czech Republic is not in conformity with the Article 1§3 of the 1961 European Social Charter on the ground that it has not been established employment services operate in an efficient manner.

Based on the latest international comparable data, the unemployment rate in the Czech Republic is the lowest one within the EU and within the frame of OECD countries as well¹. Countries with comparable results even slightly higher are only Japan and Iceland.²

Number of Vacancies Notified to the Public Employment Services

In thousands and percentage (concluded registrations rate)	2015	2016	2017	2018
Newly registered	602,0	564,4	500,2	465,5
Terminated registrations	602,0	636,1	600,9	514,6

¹ Source: Eurostat: <https://ec.europa.eu/eurostat/documents/2995521/10059840/3-30092019-AP-EN.pdf>

² https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=une_rt_a&lang=en

Placement by Employment Agencies	128,0 (21,3%)	97,7 (15,4%)	92,9 (15,5%)	80,4 (15,6%)
Placed by other manner*	338,4 (56,2%)	321,1 (50,5%)	294,9 (49,1%)	244,8 (47,6%)

* *Advisory, signposting to a suitable employment, re-skilling or up-skilling as part of a growth and development pathway, re-training organised by the etc. Source: Ministry of Labour and Social Affairs*

Employment agencies provide its services also to employers, such as interviewing applicants, regular monitoring including active search of vacant posts, cooperation with local authorities and other relevant institutions via guidance, counselling and legal advice covering all levels of governance etc.

Promoting lifelong learning is a long-term priority. The Government's activities are focused on labour market and skills forecasting and promoting of future education. Learning opportunities, including retraining courses should respond to the labour market needs. The Czech Republic currently therefore implement the project "Labour market prediction" (Compass) to set up a system of labour market prediction at national and regional level. Another project called "Competence 4.0" aim at identification of future skills need supporting cooperation between companies and schools.

In order to enhance participation of disadvantaged groups in life-long learning, the system of career guidance plays a key role. It is at same time necessary to enhance both financial and non-financial incentives for participation of disadvantage groups in life-long learning. This is the focus of special project "Supporting vocational training of employees" (POVEZ II).

Cooperation with employers

In thousands	2015	2016	2017	2018
The total number of individual contacts with employers	32	33	37	37
Appointment arrangements	-	13	17	18
Public tendering	-	2	3	2.6
Advisory Council Meetings	140	161	157	154

Source: Ministry of Labour and Social Affairs

Legal Advisory

Number of Participants in Activities Realised by Employment Agency				
	2015	2016	2017	2018
ISS* – Focused on schools and students	94 905	99 027	97 251	98 121
ISS* – Focused on job seekers	29 762	30 778	31 641	35 714
Group Advisory	99 676	110 418	85 666	103 846
Individual Advisory	150 049	129 914	121 668	182 119

** ISS - Information and Support Service of the Employment Agency (guidance, counselling and legal advice in matters of employment and occupation). Despite the significant decrease of the total number of job seekers during the last years, the number of participants of advisory activities raises (especially in 2018). Source: Ministry of Labour and Social Affairs*

Unemployment Trends in the Year 2019

	Unemployed thousand persons	Share of Unemployed per cent	Vacant Jobs thousand jobs
January	245,1	3,3 %	331,5
February	241,4	3,2 %	333,1
March	227,1	3,0 %	339,3
April	209,8	2,7 %	339,9
May	200,7	2,6 %	346,6
June	195,7	2,6 %	342,5
July	205,1	2,7 %	346,6
August	204,8	2,7 %	350,6
September	201,9	2,7 %	345,4
October	196,5	2,6 %	337,5
November	197,3	2,6 %	338,7

Update: December 9, 2019

Source: Ministry of Labour and Social Affairs

Information on Unemployment in the Czech Republic

By 30 November 2019, Employment Agencies registered 197,289 job seekers altogether. That is by 771 more than at the end of October 2019. The number of job seekers decreased by 17,721 persons compared with the same period of the preceding year when the number of available job seekers in age 15 to 64 years was 177,276 persons (job seekers currently available for work).

In the course of job, Employment offices registered 37,886 newcomers altogether. That is by 387 job seekers less than in the preceding month and by 3,256 newly registered job seekers less than in November of the preceding year.

In November 2019, the registration was terminated with 37,115 job seekers. 23,230 persons have taken up new jobs.

By 30 November 2019, 10,062 school leavers with all levels of education and juveniles were registered. Thus they share in the total unemployment by 5.1 %.

At the end of November 2019, Employment offices registered 104,493 female job seekers that is 53.0 % of the unemployed in total and 32,717 persons with reduced working capacity, which makes 16.6 % of the unemployed in total.

In November 2019, Employment offices paid off unemployment benefits 71,467 job seekers, that is 36.2 % of all job seekers under registration (October 2019 – 35.2 %, November 2018 – 33.1 %).

By November 30, 2019, there were 13,769 jobseekers supported through financial benefits of active employment policy.

By November 30, 2019, the share of unemployed was 2.6 % (October 2019 – 2.6 %, November 2018 – 2.8 %).³ time series - <https://www.mpsv.cz/web/cz/casove-rady-mn-a-pno>.

Unemployment rate (EUROSTAT – ILO, NSA data) was 2.2 % in October 2019.⁴

Article 1 of the 1988 Additional Protocol - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

The Committee concludes that the situation is not in conformity with Article 1 of the Additional Protocol on the ground that the legislation only permits equal pay comparison between employees working for the same company or undertaking.

The Czech legislation guarantees employees the right to remuneration for work and the right to fair remuneration.

Art. 28 of the Charter of Fundamental Rights and Freedoms of the Czech Republic in connection with Art. 3 para 1 of the Charter of Fundamental Rights and Freedoms

³ Time series - <https://www.mpsv.cz/web/cz/casove-rady-mn-a-pno>.

⁴ Source: Ministry of Labour and Social Affairs

<https://www.mpsv.cz/documents/625317/625943/textangl11119.pdf/eae0653b-b2a0-7430-7770-e622e69acecd>

sets the constitutional basis for elimination of discrimination in remuneration for dependent work.

Anti-discrimination Act in connection with the Charter of Fundamental Rights and Freedoms, transposed EU legislation and international treaties that are part of the Czech legal order, and defines the right to equality by an exhaustive enumeration of impermissible grounds of discrimination and legal protection against discrimination.

Labour Code in its Sec. 1a stipulates principles of fair remuneration, equal treatment of employees, and the prohibition of discrimination. The principle of equal treatment of employees and the prohibition of discrimination is one of the basic principles expressing the values protected by public policy (Sec. 1a Subsec. 2 of the Labour Code). In relation to Sec. 588 of the Civil Code, the definition of the “public order” is relevant to assessing the possible nullity of a legal act (even without a petition, the court will consider the nullity of the legal act that is clearly contrary to morality or is contrary to law and apparently disturbs public order).

According to the Labour Code, a fair remuneration is only a remuneration provided on the ground of equal treatment of employees (Sec. 16 Subsec. 1 of the Labour Code).

The Labour Code guarantees the right to equal pay for equal work or work of equal value to all employees of the same employer regardless of whether they perform their work in an employment relationship or based on agreements on work performed outside employment.

The same work or work of an equal value means the work of equal or comparable complexity and difficulty and involving the same responsibility, performed in the same or comparable working conditions, at the same or comparable work performance, and with the same work results. Therefore, it can be derived that if different employees do not perform work that is equal in all comparative aspects, the employer cannot pay the same wage or remuneration for this work because that would discriminate the employees who, according to the statutory criteria, performs a work of a higher value.

In accordance with the established case law of the EU Court of Justice, assessments of a work’s equality or comparability must take into account variety of factors, e.g. the nature of the work, training and specific working conditions.

The Czech Republic does not agree with the application of the principle of equal pay in a broader sense than within a single employer. It is of the view that labour costs shall be determined by the market principles of supply and demand in the labour market not by legislation. There are significant differences in living standards between regions of the Czech Republic and within individual regions. The differences then reflect the different level of earnings for the same or similar work caused by the principle of supply and demand.

From the regional perspective and the perspective of individual sectors, it is hard to define where the principle may still be applied and where not. In case of application

to the whole country, it is not completely clear how could be met the Committee's requirement of equal pay when in some countries regions may apply different tax rates and other income-related charges. Equality in gross wages then may not constitute equality in disposable income, i.e. the income after taxes. Furthermore, such an overall application of remuneration rules would be inconsistent with the freedom of contract and the freedom of entrepreneurship and the labour market participants could claim this infringement in court.

Another question is how and by whom the reference wage for different types of work should be defined? The Czech Republic is of the view that this would be an extremely difficult process with a high probability of an erroneous result.

The Committee mentions three cases in which it considers that the national legislation should require wage comparisons beyond a single employer. This requirement cannot be accepted due to the fact that the data on wages/salaries are personal data and as such are subject to constitutional protection under Article 10 of the Charter of Fundamental Rights and Freedoms, i.e. the protection from unauthorised disclosure. Employers are therefore not entitled to disclose data on wages/salaries of their employees. An exception is the obligation to provide information on structured average wage/salary components for statistical purposes, in particular for the information system of salaries administered by the Ministry of Finance. Employers also do not have (and cannot have) the possibility to collect information about specific earnings of employees of other employers. They have no access to their workplace, nor detailed knowledge of specific conditions of work and the results of work of other employers' employees, i.e. information necessary for application of the comparative criteria set out in Sec. 110 of the Labour Code through which the compliance with the principle of "equal pay for equal work and work of equal value" could be assessed. Thus it is not only impracticable to observe the above mentioned principle between different employers, but it wouldn't be even fair to require such a methods.

For these reasons it is not even possible to compare employees of different Czech companies which are covered by the same high level (sectoral) collective agreement (second situation) or employers associated within a holding or conglomerate (third situation). Firstly, it is not a single-source financing and secondly, identical conditions in the collective agreement do not automatically lead to the same economic results and consequently to the same earnings. Collective agreements always determine salary/wage conditions regardless of gender. Given that equal treatment obligation is regulated by law and the collective agreements address the above-standard provisions only, it is not necessary to repeat the provisions laid down by law in the collective agreements again. Comparison could be made between employees of employers who set the emoluments under the same regulations and the funding of salaries can be assigned to a single source (first situation). These are employees whose employer is the State (Czech Republic).

In general, the feasibility of such a principle is dubious also because it can be achieved either by reducing the remuneration that exceeds the threshold set by the reference wage, or by setting the reference wage at the level of the highest wages in

the entire sector. The first scenario does not definitely bring benefits to employees who have had higher wages because they mostly live in cities and regions with higher living costs. Regarding matching the lower wages to the level of the highest wages in these sectors, this would very likely lead to an inflationary pressure which would then increase the cost of living and the wage increase would not lead to an increase in available funds of employees in areas with lower costs of living. Furthermore, it would reduce the disposable income of employees living in areas with high living costs (their wages would not rise and inflation would increase their cost of living). Thus the benefits would be either negative or negligible here as well.

The Czech Republic submitted information regarding the conditions under which it exercises the right of workers to equal wages, salary or remuneration for equal work or work of equal value (Sec. 110 of the Labour Code) in the Opinion on the Conclusions of the European Committee of Social Rights to the 11th Report on the Application of the European Social Charter. In the same way the Czech Republic explained its long-term view that the principle of equal pay for equal work and work of equal value between employees of different employers cannot be applied in the form required by the European Committee of Social Rights.

In this regard, the Czech Republic considers appropriate to re-emphasize the economic patterns that are generally applicable and long established in all economies, and which we believe may not be appropriate and desirable to regulate significantly by the intervention of the State.

Wage, as the labour cost, is closely related to the cost of living and the labour market situation (the ratio between supply and demand for labour) in particular locations. The situation on the labour market then stimulates the movement of labour to areas with higher earnings. It is also quite common that capital (investments) is transferred to locations with lower costs (including wages). The result is the creation of new jobs and development and increased standard of living in the given region. In terms of economic laws, this movement should not be limited. Moreover, as we already mentioned, the price of labour (wages) depends also on the cost of living, which may regionally differ. Therefore, it is not possible to rely automatically solely on a comparison of nominal wages for the same work or work of equal value.

In light of the above, the Czech Republic ask the Committee to describe a mechanism that would satisfy their interpretation of 1961 European Social Charter, particularly in terms of the macroeconomic impact and effect of the economic function of the wage.

The monitoring of compliance with the measures aimed at promoting equality and non-discrimination is carried out by the State Labour Inspection Office and its Regional Inspectorates (hereinafter referred to as "SLIO"). Given the seriousness of discriminatory behaviour and unequal treatment, the checks of compliance with law are regularly placed on the SLIO long-term agenda.

Monitoring and checks realised by SLIO

Equal treatment and non-discrimination at work		
	2018	by Oct. 31, 2019
Number of notifications received in labour law relations in total	4021	3440
Number of notifications received in the equal treatment and non-discrimination field	286	310
Number of inspections carried out	560	451
Number of inspections carried out based on the notification	272	276
Breach of Sec. 16 Subsec. 1 of the Labour Code (unequal treatment)	76	52
Breach of Sec. 16 Subsec. 1 of the Labour Code (non-discrimination)	5	11
Breach of Sec. 110 Subsec. 1 of the Labour Code (equal payment)	45	31
Breach of Sec. 302 of the Labour Code (favourable working conditions)	7	11
Breach of Sec. 276 Subsec. 9 (handling the complaint)	4	3
Breach of Sec. 1a Subsec. c) (principle of fair remuneration)	3	1
Breach of Sec 1a Subsec. e) (principle of equal treatment)	1	0
Breach in total	141	108
Measures imposed	31	17
Sanctions imposed	21	11
Total amount of fines imposed in CZK	531 000	498 000