



# Citizens of the European Union in the Czech Republic

**Recommendations 2021**

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# Mission of the Defender

Since 2001, the Defender has been defending individuals against unlawful or otherwise incorrect procedure of administrative authorities and other institutions, as well as against their inactivity. The Defender may peruse administrative and court files, request explanations from the authorities and carry out unannounced inquiries on site. If the Defender finds errors in the activities of an authority and fails to achieve a remedy, the Defender may inform the superior authority or the public.

Since 2006, the Defender has acted in the capacity of the national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Defender systematically visits facilities where persons are restricted in their freedom, either ex officio or as a result of dependence on the care provided. The purpose of the visits is to strengthen protection against ill-treatment. The Defender generalises his or her findings and recommendations in summary reports on visits and formulates standards of treatment on their basis. Recommendations of the Defender concerning improvement of the ascertained conditions and elimination of ill-treatment, if applicable, are directed both to the facilities themselves and their operators as well as central governmental authorities.

In 2009, the Defender assumed the role of the national equality body. The Defender thus contributes to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, sex/gender, sexual orientation, age, disability, religion, belief or worldview. For that purpose, the Defender provides assistance to victims of discrimination, carries out surveys, publishes reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2011, the Defender has also been monitoring detention of foreign nationals and the performance of administrative expulsion.

In January 2018, the Defender became a monitoring body for the implementation of rights recognised in the Convention on the Rights of Persons with Disabilities, also helping European Union citizens who live and work in the Czech Republic. The Defender provides them with information on their rights and helps them in cases of suspected discrimination on grounds of their citizenship.

The special powers of the Defender include the right to file a petition with the Constitutional Court seeking the abolishment of a secondary legal regulation, the right to become an enjoined party in Constitutional Court proceedings on annulment of a law or its part, the right to lodge an administrative action to protect a general interest or to file an application to initiate disciplinary proceedings with the president or vice-president of a court. The Defender may also recommend that a relevant public authority issue, amend or cancel a legal or internal regulation. The Defender advises the Government to amend laws.

The Defender is independent and impartial, and accountable for the performance of his or her office to the Chamber of Deputies, which elected him or her. The Defender has one elected deputy, who can be authorised to assume some of the Defender's competences. The Defender regularly informs the public of his or her findings through the media, web, social networks, professional workshops, roundtables and conferences. The most important findings and recommendations are summarised in the Annual Report on the Activities of the Public Defender of Rights submitted to the Chamber of Deputies.

# List of Abbreviations

**Anti-Discrimination Act** – Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended.

**Children with DMT** – children with a different mother tongue.

**EU/Union** – European Union.

**Workers' Freedom of Movement Regulation** – Regulation (EU) No 492/2011 of 5 April 2011 of the European Parliament and of the Council on freedom of movement for workers within the Union

**TFEU** – Treaty on the Functioning of the European Union, Official Journal C 326, 26.10.2012, pp. 47–390.

**SLI** – State Labour Inspectorate.

**Schools Act** – Act No. 561/2004 Coll., on preschool, primary, secondary, higher vocational and other education (the Schools Act), as amended.

**Labour Inspection Act** – Act No. 251/2005 Coll., on labour inspection, as amended.

**Healthcare Services Act** – Act No. 372/2011 Coll., on healthcare services and the conditions of their provision (the Healthcare Services Act), as amended.

**Public Defender of Rights Act** – Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

**Labour Code** – Act No. 262/2006 Coll., the Labour Code, as amended.

# Foreword

“Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality [...]”<sup>1</sup>

“[...] this is not merely a hollow or symbolic concept, but [...] the basic status of all nationals of EU Member States, giving rise to certain rights and privileges in other Member States where they are resident.”<sup>2</sup>

Seventeen years ago, on 1 May 2004, Czech citizens became citizens of the European Union. Since then, many Czechs have made use of their right to free movement and residence in the Union, and moved to another country. On the other hand, a number of people from other EU countries have crossed the borders to the Czech Republic in search of a better life. Some came primarily to work here, others to study, and still others for different reasons. Some of these newcomers stay in the Czech Republic only temporarily, for example until they graduate or just for a few years to gain work experience, and then move on or return to their home country. Others find a new home in Czechia and stay here permanently.

Being a foreigner usually entails various difficulties, such as a language barrier, lack of knowledge of the local environment, customs, law and official procedures, and even local prejudices against foreigners. In any case, people who move to another Member State within the European Union have the right to the same treatment as nationals of the host country. This is also true of the Czech Republic. Based on complaints I, as the Public Defender of Rights, receive from EU citizens, I know, however, that this is not always the case.

I regularly deal with complaints filed by foreigners – citizens of the European Union – who turn to me with problems related to their foreign nationality or, in general, to the fact that they have moved to another country within the Union. Their complaints concern various areas of life – typically work and employment, co-ordination of social security, healthcare and insurance, provision of goods and services, housing, education and other official matters.

1. Judgment of the Court of Justice of 20 September 2001. Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve. Case C-184/99, paragraph 31.
2. Opinion of Advocate General Geelhoed of 11 November 2004. The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills. Case C-209/03, paragraph 28.

Since 2018, the Defender has been entrusted by the law with competence in matters related to the freedom of movement of citizens of the European Union and the European Economic Area and their family members. It is therefore my task to monitor everyday issues encountered by migrant EU citizens in the Czech Republic. I am thus able to identify weaknesses in our legal order and administrative practice, and strive to improve the legal environment. The Defender's work aimed to help EU citizens involves a range of activities at both individual and systemic levels – the Defender provides assistance and support to EU citizens, communicates and deals with national authorities, publishes up-to-date information and, last but not least, conducts surveys and analyses on the free movement of EU citizens, and makes recommendations in this area.

It is reasonable to believe that EU citizens are often not familiar with the Defender's mandate relating to the exercise of their right of free movement, or are even unaware of the very existence of this institution. It is thus quite likely that the range and number of complaints I, as the Defender, receive from EU citizens do not match exactly the problems these people actually face and their frequency.<sup>3</sup> I can exercise my competence as Defender under Section 21d of the Public Defender of Rights Act properly only if I become privy to the issues encountered by EU citizens in the Czech Republic in some way other than just from their complaints.

This is why I decided to carry out a comprehensive survey aimed to examine the experience of migrant workers from the European Union and their family members who are currently residing in the Czech Republic: in particular, in the areas of work and employment, healthcare and dealing with authorities.

The focus of the survey is on the area of work and employment because of the fundamental importance of these matters in the life of an individual. The application of equal and fair conditions to Czech citizens and to citizens of the EU by employers is crucial for the free movement of workers in the Union's internal market. It is therefore essential to determine what problems EU citizens face in this area and how they address them, or why these problems are not addressed.

The survey also maps the experience of EU citizens in dealing with the authorities, since the work of public authorities falls within the Defender's original competence, and the Defender can thus use the findings from this survey in his work contributing to the improvement of the public administration. The survey also focuses on the sectors of healthcare and education. Previous surveys have shown<sup>4</sup> that these are areas where foreigners most often face a disadvantage.

Since the aim of the survey was to examine the experience of EU citizens living in the Czech Republic, it was most appropriate to inquire directly individuals belonging to this target group. Based on a number of other surveys, we know that people from vulnerable groups, including foreigners, often do not address their problems because they do not know how, are afraid to speak up, have to deal with more serious and urgent issues, or consider any such effort worthless as they do not believe that filing a complaint would help.<sup>5</sup> The numbers of anti-discrimination lawsuits and statistics on discrimination complaints are therefore merely the tip of the iceberg, and in order to learn more about the real situation of EU citizens living in the Czech Republic, we need to ask them directly. Of course, given the method chosen, the survey results inherently describe perceived discrimination, and it can be assumed that not all the situations perceived by EU citizens as discriminatory actually involve discrimination in the legal sense. Even so, this procedure serves well to provide a better picture of the problems faced by foreigners and how common these problems are.

EU citizens living in the Czech Republic form a very diverse group. They include people from all EU countries, who thus come to the Czech Republic with different habits and expectations, and from different backgrounds. At the same time, migrants arrive in the country to perform both skilled and unskilled work – the position of people in these two groups also varies greatly. It can be stated in general that foreigners are a vulnerable group on the labour market. This, however, is much more true of people working in low-skilled positions

3. Every year, the Defender receives dozens of complaints from EU citizens related to the exercise of their right of free movement within the Union.
4. For example, the Results of the survey on working conditions for citizens of Bulgaria, Romania and Moldova in the Czech Republic; Survey report. Diaconia of the Evangelical Church of Czech Brethren – National Programmes and Services Centre, 2014, available at: [https://aa.ecn.cz/img\\_upload/224c0704b7b7746e8a07df9a8b20c098/vyzkumna\\_zprava\\_bulhari\\_rumuni.pdf](https://aa.ecn.cz/img_upload/224c0704b7b7746e8a07df9a8b20c098/vyzkumna_zprava_bulhari_rumuni.pdf); Position and attitudes of migrants with long-term residence in the Czech Republic. Counselling Centre for Citizenship, Civil and Human Rights, 2013, available at: [https://aa.ecn.cz/img\\_upload/224c0704b7b7746e8a07df9a8b20c098/zprava\\_z\\_vyzkumu-1.pdf](https://aa.ecn.cz/img_upload/224c0704b7b7746e8a07df9a8b20c098/zprava_z_vyzkumu-1.pdf).
5. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. Fundamental Rights Report 2019. Luxembourg: Publications Office of the European Union, 2019. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-fundamental-rights-report-2019\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-fundamental-rights-report-2019_en.pdf).

than of those who have skilled jobs. The survey focuses on all these groups – its ambition is to map the problems of EU citizens living in the Czech Republic across the professional groups and across the countries where these people come from. The survey also deals specifically with EU citizens in the position of agency workers – indeed, according to previous surveys,<sup>6</sup> these people are among especially vulnerable individuals and encounter more frequent violations of their rights.

The present survey, dealing with the experience of EU citizens living in the Czech Republic, is unprecedented in its scope. The majority of previous surveys<sup>7</sup> focused on foreigners in general, i.e. both citizens of the European Union and third countries, or only on third-country nationals, or were narrower in scope or focused only on a specific location.

Given the scope of the survey, the Office of the Public Defender of Rights outsourced the data collection and evaluation work to the MindBridge agency. The analytical report from the survey is annexed to this Recommendation. The present Recommendation contains a summary of the main survey findings and a description of the relevant legislation; based on these foundations, it formulates recommendations addressed to individual stakeholders.

The data were collected during the last quarter of 2020 and in early 2021.<sup>8</sup> The survey consists of two parts. The quantitative questionnaire survey was carried out using a face-to-face interview technique on a sample of 1,021 respondents over the age of 18 who are citizens of EU Member States other than the Czech Republic and, at the time of the survey, were resident in the Czech Republic and engaged in dependent activities in the country (as employees or self-employed persons). The questionnaires were created in several language versions (Czech, English, Romanian, Bulgarian and Polish). Based on data from the Czech Statistical Office, quotas were set for the selection of respondents in terms of their nationality, the region of their residence in the Czech Republic, education attained, age and gender. The qualitative survey took place in the form of semi-structured interviews with 30 respondents (10 interviewed with agency workers and 20 with regular employees). The research sample included respondents from various sectors, with differing educational background, length of stay/work in the Czech Republic, age and gender. The interviews were conducted in several languages (Czech, English, Spanish, Romanian, Bulgarian and Polish).

The purpose of this Recommendation is to follow up on the findings obtained from the analytical survey report and the Defender's activities, and on their basis, make individual recommendations that would help to improve the unsatisfactory situation. Most of the recommendations pertain to the area of employment, which is consistent with the focus of the survey. The aim of these recommendations is primarily to reinforce the rights of EU citizens in the Czech Republic, especially by increasing their awareness and improving the enforceability of their rights. Further recommendations concern the activities of public administration in relation to foreigners, while others focus on education, housing and integration in a broader sense. The purpose of these recommendations is to make public administration more accommodating to foreign nationals and to help foreigners integrate into society.

The individual recommendations are intended primarily for authorities – ministries and the State Labour Inspectorate – as well as municipalities and administrative regions. I consider these recommendations a certain

minimum standard that a modern country which has been part of united Europe for almost two decades should guarantee to foreign nationals in its territory. I will monitor compliance with this standard within my powers.

I would like to add that the Recommendation corresponds to the legal state of affairs as of 1 October 2021.

In Brno, on 15 November 2021

JUDr. Stanislav Křeček  
Public Defender of Rights

6. For example, the Results of the survey on working conditions for citizens of Bulgaria, Romania and Moldova in the Czech Republic; Survey report. Diaconia of the Evangelical Church of Czech Brethren – National Programmes and Services Centre, 2014, available at: [https://aa.ecn.cz/img\\_upload/224c0704b7b7746e8a07df9a8b20c098/vyzkumna\\_zprava\\_bulhari\\_rumuni.pdf](https://aa.ecn.cz/img_upload/224c0704b7b7746e8a07df9a8b20c098/vyzkumna_zprava_bulhari_rumuni.pdf).
7. For example, the Survey of the social situation of foreign nationals in the territory of the Capital City of Prague; Final project report. Poradna pro integraci, o.s.; Organizace pro pomoc uprchlíkům, o.s., 2010, pp. 50-51; available at: [https://aa.ecn.cz/img\\_upload/224c0704b7b7746e8a07df9a8b20c098/pruzkum\\_socialni-situace-cizincu-1-.pdf](https://aa.ecn.cz/img_upload/224c0704b7b7746e8a07df9a8b20c098/pruzkum_socialni-situace-cizincu-1-.pdf); Analysis on foreigners in the Prague 4 Municipal District; Survey report. Charles University in Prague, Faculty of Science, Department of Social Geography and Regional Development, and the Prague Multicultural Centre. 2015, pp. 51-63, available at: <https://metropolevsech.eu/wp-content/uploads/2019/07/Analyza-cizincu-v-mestske-casti-Praha-4-2015.pdf>; Results of the survey on working conditions for citizens of Bulgaria, Romania and Moldova in the Czech Republic; Survey report. Diaconia of the Evangelical Church of Czech Brethren – National Programmes and Services Centre, 2014, available at: [https://aa.ecn.cz/img\\_upload/224c0704b7b7746e8a07df9a8b20c098/vyzkumna\\_zprava\\_bulhari\\_rumuni.pdf](https://aa.ecn.cz/img_upload/224c0704b7b7746e8a07df9a8b20c098/vyzkumna_zprava_bulhari_rumuni.pdf); Position and attitudes of migrants with long-term residence in the Czech Republic. Counselling Centre for Citizenship, Civil and Human Rights, 2013, available at: [https://aa.ecn.cz/img\\_upload/224c0704b7b7746e8a07df9a8b20c098/zprava\\_z\\_vyzkumu-1.pdf](https://aa.ecn.cz/img_upload/224c0704b7b7746e8a07df9a8b20c098/zprava_z_vyzkumu-1.pdf).
8. The selected methodological procedure is described in detail in Chapter 4 of the Survey Report.

# Summary of the survey findings

1. Almost one third (31%) of EU citizens working in the Czech Republic who were included in the survey stated they had felt discriminated against in their working life in the Czech Republic because of their nationality (in the sense of State citizenship or "ethnic" nationality)\*. EU citizens most often perceive discrimination on the grounds of their nationality with regard to remuneration (15%), followed by job assignments (13%) and job search (12%).
2. The situation of highly skilled and low-skilled workers from EU countries differs significantly. Workers with a university degree felt discriminated against to a much lesser extent than those with secondary education without graduation or with primary education. Perceived disadvantage at work is much higher among employees working for employment agencies than among regular employees.
3. Employees from EU countries working under agreements outside an employment relationship (agreement to complete a job, agreement to perform work) are much more likely to feel disadvantaged compared to their Czech colleagues than those who have a regular full- or part-time job (based on an employment contract).
4. There are no significant differences in discrimination between men and women (EU workers). Only with regard to career advancement and job search are women more likely than men to feel disadvantaged on the grounds of their nationality or language.
5. The feeling of discrimination in working life is related to the level of knowledge of the Czech language. EU citizens who speak fluent Czech less often felt disadvantaged compared to their Czech colleagues even in cases where the Czech language was not a prerequisite for a certain position.
6. Almost two thirds (62%) of EU citizens living in the Czech Republic included in the survey in no way defended themselves against conduct they considered discriminatory. Half of those who did fight back tried to resolve the discrimination themselves in some way, most often with their supervisor. More than half (57%) of the respondents who tried to address their situation were eventually satisfied with the solution. At the same time, approximately one fifth of the respondents stated that they considered their problems too trivial to any take steps to resolve them. Another fifth did not address their situation because they did not have enough evidence to prove discrimination. Slightly more than a tenth (13%) of the respondents said they had not addressed perceived discrimination because they were unsure whether or not discrimination had occurred, or because they had not known whom they should contact in this matter.
7. EU citizens living in the Czech Republic who commented on individual work situations in the survey most often perceived discrimination in: přidělování jiné práce, než jaká byla dohodnuta (25 %),
  - » assignment of work other than agreed (25%);
  - » assignment of worse work than to Czech workers in a comparable position (23%);

- » failure to pay wages (salary) in the agreed amount or by the agreed deadline (18%);
- » payment of lower wages (salary) than to Czech employees doing the same or similar work (18%);
- » prioritising Czech workers in promotion, although they were not better qualified (17%);
- » ordering a large amount of overtime (16%).

There are also problems with bullying, poorer access to further education and training, and recognition of education or other qualifications by the State or the employer. While certain other inappropriate steps taken by employers are less frequent in percentage terms, they are nevertheless serious in nature; this is true, for example, of a failure to register employees for health or social insurance, discouraging them from reporting work accidents, and forcing them to perform work without an employment contract.

8. EU citizens do not always perform work corresponding to their education. This varies considerably depending on their citizenship – four fifths of Slovak citizens and citizens of countries other than listed below consider their work corresponding to their education. On the other hand, this is true only of 66% of respondents from Poland, 63% from Bulgaria and 52% from Romania.

## Findings concerning agency workers

9. People from Eastern Europe are generally more likely to be hired by an employment agency. This option is used primarily by workers who are new to the Czech Republic. Those who already have some experience working in this country, or have a family or friends here, prefer to be recruited directly by the employer. A transition from being bound to an employment agency to being a regular employee tends to be difficult to achieve, even if desired.
10. This is because, along with the actual job, employment agencies often provide their workers with transport, accommodation and interpreting. These services tend to be subject to unreasonably high fees or their provision is further conditioned (especially in the case of housing). Agency workers are in a particularly vulnerable position, firstly because they tend to stay in the Czech Republic for a shorter period of time and are less aware of the employees' rights and defence options, and secondly because of the interdependence of their job with the provision of accommodation, to which workers lose entitlement if they are dismissed.

## Experience outside the area of work and employment

11. EU citizens are mostly satisfied with Czech healthcare. Negative experience relates primarily to cases of unauthorised refusal of care and inappropriate behaviour of healthcare professionals.
12. As regards experience with the authorities, EU citizens living in the Czech Republic repeatedly criticised the Department for Asylum and Migration Policy of the Ministry of the Interior and the Immigration Police (foreigners often do not distinguish between these two institutions). They complained about extreme unwillingness, inappropriate behaviour and absent language skills of the staff.
13. Respondents tend to appreciate communication with other authorities, although even here, there have been some complaints about inappropriate behaviour or unwillingness of the officials. The language barrier is more often a problem in regions with fewer foreigners.
14. Respondents mostly rated the quality of Czech schools as good. Nevertheless, some parents mentioned inappropriate behaviour of school staff who had treated their child differently or failed to address the fact that their child had been bullied by other children because of his or her nationality. Such complaints were more frequent among parents of children with darker skin.

Details are provided in the survey report annexed to this Recommendation.



# Legal regulation

The Czech Republic joined the European Union in May 2004 and, by doing so, it became bound by the EU's legislative acquis, including the rules on the free movement of persons. The legal framework for the free movement of persons has evolved significantly over the time, with foundations for the free movement of workers already laid by the Treaty establishing the European Coal and Steel Community, which entered into force in 1952.

The primary purpose of the European Communities was to create a common market where free movement of goods, persons, services and capital would be guaranteed. In order to ensure that people could move freely within the common market and would not be deterred by a number of administrative and practical obstacles, a number of laws have been adopted to enable and subsequently facilitate free movement.

The reasons for the introduction of the common market, which later became the internal market, were mainly economic in nature. The facilitation and promotion of the free movement of persons was aimed at optimising the allocation of labour and maximising the resulting economic benefits in the internal market.

People can move within the internal market as workers, as entrepreneurs established in the host country or as workers posted based on free movement of services. An economic activity is required for all types of free movement of persons within the internal market – for workers, in the form of employment in another Member State; for establishment, in the form of a business operated regularly in another Member State; and for free movement in the context of the provision of services, either as an entrepreneur setting up in another Member State for a limited period of time or as a worker posted to another Member State by their employer. Different rules apply to each of these categories of persons as regards their rights towards the host Member State.

Over time, the European Communities began to transform from an economically oriented international organisation to an international organisation focusing on individuals – citizens of the European Union – and began to interconnect at the political level. Citizenship of the Union was introduced as an overarching concept for individual rights in the EU. The rights conferred by Union citizenship may be invoked by all EU citizens regardless of their economic activity or the duration of their stay in another Member State. Thus, EU citizenship rights are vested in workers and entrepreneurs, craftsmen and scientists, as well as people studying or otherwise economically inactive; people who are long-term residents in another Member State or who have even acquired the citizenship of the country to which they have moved; people who are merely passing through another Member State as tourists or hitchhikers; and also people who have never exercised their right to free movement and live in their home country.<sup>9</sup>

9. In particular, the right to vote and stand for election to the European Parliament; the right to petition the European Parliament; the right to apply to the European Ombudsman or other EU bodies and institutions; and the right to diplomatic and consular protection by another Member State.



# 1. Work and employment

## 1.1 Access to employment

Citizens of any of the countries of the European Union and the European Economic Area have free access to the labour market in the Czech Republic.<sup>10</sup> This means that the State cannot make their employment subject to a permit or impose other obstacles. The only exception to the principle of equal access to employment applies to public administration. The State requires Czech citizenship for positions connected with the exercise of public authority. However, where the State does allow citizens of other countries to also hold a position in public administration, it must comply with the duty of equal treatment of such employees during the employment or service relationship.

The duty not to discriminate against employees on grounds of their nationality applies to all employers, regardless of whether the employer is the State or a private entity.

The survey report shows that 12% of EU citizens felt disadvantaged in job search because they were not Czech nationals. Such a disadvantage can be found in job advertisements (an advertisement contains a condition of Czech nationality/citizenship) or may arise directly in the selection and recruitment process.

## 1.2 Conditions of employment and its termination

Provisions governing the employment of persons from EU countries are relatively straightforward in Czech law. This is because employees from EU countries ought to have exactly the same status as Czech citizens in employment relations and must not be disadvantaged in the course of the employment relationship as compared to Czech citizens.

The Labour Code makes no distinction among employees based on their citizenship and their country of origin and allows for no such differentiation. Quite the contrary, it lays down the duty of equal treatment, including on the grounds of citizenship.<sup>11</sup> The duty of equal treatment applies to all working conditions, including remuneration, career advancement and options for further education, and also to termination of employment.

In addition, EU workers are entitled to equal treatment in access to membership in trade union organisations and to exercise of all the rights related to membership in a trade union.<sup>12</sup>

A number of questions in the survey focused on the existence of various disadvantages in the context of the existence or termination of the employment relationship. Respondents could indicate all situations in which they felt disadvantaged. Compared to Czech employees, respondents most often complained about lower salaries (15% of respondents), and also about the fact that they were assigned worse work – harder work, work under worse conditions, or inferior work (13%), and also that the employer preferred Czech employees in career advancement (8%). These data differed significantly depending on the highest education attained by the respondent. For example, unequal remuneration on the grounds of nationality (State citizenship) was experienced by 25% of respondents with primary education, 20% of respondents with secondary education without graduation, 15% of people with secondary education with graduation and 6% of university graduates. Overall, 31% of respondents felt disadvantaged at work because they were not Czech nationals.

## 1.3 Agency employment

Many foreigners from EU countries have a job in the Czech Republic as agency workers. Agencies that focus on recruiting foreign workers directly in their country of origin often provide these individuals, along with a job, with accommodation in the Czech Republic, and possibly also transport and interpreting both at work and outside of work (e.g. at the authorities or doctors).

In agency employment, a tripartite relationship is created among the employee, the employment agency and the user once the employee is assigned to the user; the user and the agency share the employer's duties towards the employee.<sup>13</sup> The user assigns work tasks to the employee and organises the employee's work, and is required to create favourable working conditions and provide for occupational safety and health protection. The agency's task is then primarily to schedule the employee's working time and annual leave, deal with impediments to work and pay salary to the employee. The employment agency and the user are jointly obliged to ensure equal treatment of agency workers, on the one hand, and of the user's comparable employees (regular employees), on the other hand, in the area of working and salary conditions. If they fail to comply with this duty, the agency workers affected may assert their right to equal treatment with their employer, i.e. the agency.<sup>14</sup>

Even in the case of agency employment, employers-agencies have the duty to treat employees equally, regardless of their nationality (State citizenship).

Answers given by the survey respondents indicate that agency workers from EU countries feel disadvantaged primarily in comparison to regular employees, rather than compared to Czech agency workers. It has to be borne in mind in this respect that a number of agencies focus directly on employees from abroad and these agencies have very few or no Czech employees. It is therefore pointless to try and compare the conditions of Czech and foreign agency workers in these cases. By setting worse working and/or salary conditions for foreign agency workers as compared to regular employees, the user and the agency may commit discrimination on grounds of nationality (State citizenship) (in addition to breach of the duty of equal treatment between agency workers and regular employees).

Agency work is often considered by foreign workers to be less advantageous than standard employment. According to the respondents, it is not easy or it is even perceived as impossible to progress from being an agency worker to being hired a regular employee and still continue working for the same employer (formerly, the user) (due to existing arrangements between the relevant agency and the user). Most employees who wish to stay in the Czech Republic for a longer period of time eventually try to change their status of agency workers, and find a new position directly with an employer. A job mediated by an agency is usually the first one for foreign employees after they arrive in the Czech Republic. On the one hand, agency jobs are attractive for newly hired employees thanks to services which are often provided by agencies to their employees

10. Article 45 TFEU; Article 1 of the Workers' Freedom of Movement Regulation; cf. also Title I of Act No. 435/2004 Coll., on employment, as amended.

11. Section 16 of the Labour Code.

12. Article 8 of the Workers' Freedom of Movement Regulation.

13. See VYSOKAJOVÁ, Margerita, KAHLE, Bohuslav, DOLEŽÍLEK, Jiří et al. *Zákoník práce: Komentář*. (Labour Code: Commentary.) Prague: 2008, Wolters Kluwer. In: ASPI [legal information system]. Wolters Kluwer ČR, a. s., commentary on Section 309.

14. The duty of equal treatment of agency workers applies regardless of whether these workers are Czech citizens or foreigners; see Section 309 of the Labour Code.

(especially housing). On the other hand, a newly arriving worker is the most vulnerable, and this can be easily exploited by unscrupulous employment agencies – newcomers are not yet oriented in the new environment, they do not know how to defend themselves against the employer’s actions, they often do not understand Czech, and they are completely dependent on the agency – their employer – not only as regards the actual job, but also in accommodation.

Breach of duties in the area of agency employment constitutes an administrative infraction under the Labour Inspection Act. While infractions in the field of agency employment tend to be committed primarily by employment agencies, users can also be found guilty of unlawful conduct in this regard, as they might fail to ensure that a temporary assignment agreement contains information required by the Labour Code, including information on the working and salary conditions applicable to comparable employees. The actual failure to ensure salary and working conditions for agency workers that are no worse than comparable conditions for the user’s regular employees constitutes an infraction only on the part of the employment agency, not of the user.<sup>15</sup>

15. Sections 20a and 33a of the Labour Inspection Act.309 zákoníku práce.

## 2. Schools and education

The Schools Act emphasises that EU citizens shall have access to education and school services under the same conditions as Czech citizens.<sup>16</sup> Sectoral legislation also lays down various measures to facilitate the inclusion of students-foreigners in education (especially free language courses),<sup>17</sup> or to compensate for a disadvantage associated with insufficient knowledge of Czech. Those who have been educated in the Czech Republic for less than 4 years prior to taking the secondary-school graduation examination are entitled to special treatment when taking the Czech-language part of this examination.<sup>18</sup> In addition, if there is a more significant language barrier, students with a different mother tongue may be considered to have special educational needs and benefit from various support measures.<sup>19</sup>

The analytical survey report revealed that some respondents, or rather their children, felt discriminated against in education because they were foreigners. They complained, for example, about teachers adopting a worse attitude toward foreign children and about bullying among children. Respondents reported that problems were encountered primarily by EU citizens differing in their appearance from the majority of the Czech population (e.g. skin colour). In general terms, the interviews with respondents revealed that whether EU citizens evaluated their experience with Czech education positively or not depended mainly on the specific school their children had attended or were attending, and their specific teachers. Indeed, there are significant differences between schools in their approach to foreign students. The Defender's experience also shows that the scope and form of teaching Czech as a second language and the setting of conditions for non-native speakers of Czech in the uniform entrance examinations for secondary schools and in the secondary graduation examinations are also problematic in relation to EU citizens.<sup>20</sup>

16. Section 20 (1) of Act No. 561/2004 Coll., on preschool, primary, secondary, higher vocational and other education (the Schools Act), as amended.

17. Section 20 (5) of the Schools Act, in conjunction with Section 10 et seq. of Decree No. 48/2005 Coll., on primary education and certain requisites of compulsory school education, as amended, and with Section 1e of Decree No. 14/2005 Coll., on preschool education, as amended.

18. Specifically, this may include extension of the time allocated for the didactic test in the Czech language and literature by 30 minutes, and the possibility of using a translation dictionary. Section 20 (4) of the Schools Act, in conjunction with Section 5 (2) of Decree No. 177/2009 Coll., on detailed conditions of completion of education in secondary schools through a school leaving examination, as amended.

19. Within the meaning of Section 16 of the Schools Act and Decree No. 27/2016 Coll., on education of pupils and students with special educational needs and exceptionally gifted pupils and students, as amended.

20. The problems encountered by students with a different mother tongue are summarised in the Defender's Annual Report on Protection Against Discrimination in 2018; Public Defender of Rights. Annual Report on Protection Against Discrimination in 2018. [online] Brno: Public Defender of Rights, 2019, pp. 39-41. Available at: <https://www.ochrance.cz/dokument/2018/2018-DIS-vyrocní-zpráva.pdf>.

## 3. Access to healthcare

The Healthcare Services Act does not explicitly prohibit discrimination on grounds of nationality (State citizenship); nonetheless, the rules for the provision of healthcare services are set in a manner that does not allow for distinguishing among patients based on their nationality. EU rules on social security co-ordination, too, are based on the idea that people are entitled to the same benefits (including the same healthcare) in their country of affiliation, regardless of their nationality. Given that the Directive on patients' rights in cross-border healthcare also prohibits discrimination on grounds of nationality in cases of planned travel for healthcare, it can be concluded that the principle of equal treatment of EU citizens in access to and in the provision of healthcare applies generally.

The survey showed that the most frequent problem faced by migrant workers in relation to the provision of healthcare is that the employer fails to register them for health insurance. In that case, the employees are often left completely without Czech health insurance, and if they are not insured in another EU country, they are forced to pay directly for their healthcare. This unlawful practice is an example of abuse of the weaker position of foreign employees.

Foreigners most often encounter discrimination by healthcare services providers in the form of unlawful refusal to accept them as patients or harassing comments about their origin. In some cases, communication between healthcare professionals and patients is also an issue as they do not speak the same language.

## 4. Prohibition of discrimination on grounds of nationality (State citizenship)

The core legislation governing the prohibition of discrimination on grounds of nationality of other EU Member States is based on the Treaty on the Functioning of the European Union. Given its central importance in EU law, the prohibition of discrimination on grounds of nationality is comprised in a number of provisions for various branches of the law. Discrimination against workers from other Member States is thus enshrined in Article 45 TFEU, while Article 56 TFEU prohibits discrimination against recipients and providers of services in the cross-border provision of services within the European Union. The general prohibition of discrimination on grounds of nationality can be found in Article 18 TFEU. The provision comprised in that article is subsidiary to the prohibitions on discrimination on grounds of nationality enshrined in other parts of the TFEU, which have the position of *lex specialis* in relation to Article 18. This provision has direct effect and can therefore be invoked directly by individuals. However, it applies only to the relationship between the State and an individual and thus lacks a horizontal direct effect. However, the direct effect also applies to entities that are not the State as such, but have general (collective) powers, whether legally recognised or *de facto*, and apply collectively certain rules to a particular activity. Examples include various professional and trade associations, chambers and unions, certification bodies, trade unions, etc.<sup>21</sup> Based on this provision, migrant EU citizens may invoke the prohibition of discrimination in the Czech Republic especially in a situation where they are in some way disadvantaged by the State or entities derived from the State. From the viewpoint of EU law, acts of the State are considered to include not only acts of governmental authorities, but also those of bodies of local and regional governments and public-law entities, including entities established by a governmental authority or some other public-law entity (e.g. schools, healthcare facilities established by ministries, municipalities or regions).<sup>22</sup>

As far as purely Czech legislation is concerned, the relevant provisions are enshrined primarily in the Anti-Discrimination Act. The Anti-Discrimination Act prohibits discrimination on the grounds of nationality (understood as State citizenship) in areas defined by the Workers' Freedom of Movement Regulation, specifically in the areas of work and employment, social and tax benefits, trade union membership, access to vocational training, municipal housing and access of children to education. These areas do not overlap substantively with areas where the Anti-Discrimination Act prohibits discrimination based on traditional protected characteristics. Given that discrimination on grounds of nationality (State citizenship) in these areas

is prohibited directly by the relevant EU regulation, the sense in duplication of these provisions in the Anti-Discrimination Act lies in the fact that the Act defines specifically various forms of discrimination, also covering discrimination on grounds of nationality, and enables the victims of discrimination to defend themselves through an anti-discrimination lawsuit. In addition to the Anti-Discrimination Act, discrimination on grounds of nationality is also prohibited by other legal regulations, usually also implementing EU law (e.g. the prohibition of discrimination against the recipients of services on grounds of nationality or place of residence, set out in the Free Movement of Services Act<sup>23</sup>).

### 4.1 Protected characteristics of nationality (in the sense of State citizenship) and "ethnic" nationality

The Anti-Discrimination Act prohibits discrimination on the grounds of both nationality (in the sense of State citizenship; in Czech: *státní příslušnost*) and "ethnic" nationality (in Czech: *národnost*). The distinction between these two grounds of discrimination might not always be apparent in practice.

The protected characteristic of "ethnic" nationality has been part of the Anti-Discrimination Act since its entry into effect. Unlike other protected characteristics that were included in the Anti-Discrimination Act from the outset, this characteristic is not a product of implementation of EU anti-discrimination directives. "Ethnic" nationality is understood as subjectively perceived affiliation to a certain nation in the sense of ethnicity. An "ethnic nation" consists of people sharing a common culture, history, habits, language, etc.<sup>24</sup>

The meaning of "ethnic" nationality (national origin) substantially overlaps with the concept of ethnicity (ethnic origin). The distinctive criterion between these two terms lies primarily in the fact that every individual can choose their "nationality" and thus change it during their life. On the other hand, ethnic origin tends to be perceived as an objectively determinable category without any choice.<sup>25</sup> Sometimes the difference between these two categories is also described in terms that while persons of other nationality have their own territory in a State, members of ethnic minorities do not possess their own State.<sup>26</sup>

In terms of protection under anti-discrimination law, it tends to be more important, in the case of discrimination on grounds of "ethnic" nationality, whether a person is perceived as a member of a particular nation or national minority by other people (based on their name or physical appearance), rather than whether this individual subjectively feels to be a member of a particular nation.<sup>27</sup> The Anti-Discrimination Act also provides protection against discrimination on the basis of perceived grounds<sup>28</sup> – i.e. situations where the discriminating person believes that the person concerned is a bearer of a certain protected characteristic without this actually being the case, and disadvantages the given individual for this reason.

Nationality in the sense of State citizenship was added to the Anti-Discrimination Act as a prohibited ground for differentiation in 2018 in connection with an amendment to the Public Defender of Rights Act, which entrusted the Defender with the agenda of promoting free movement of persons within the EU. In this sense, nationality thus designates affiliation to a State, to a political nation, i.e. State citizenship.<sup>29</sup> It is therefore a category that can be objectively (officially) identified and changed based on the conditions laid down by the

23. Section 12 of Act No. 222/2009 Coll., on the free movement of services, as amended.

24. HUSSEINI, Faisal, BARTOŇ, Michal, KOKEŠ, Marian et al. *Listina základních práv a svobod: Komentář*. (Charter of Fundamental Rights and Freedoms: Commentary.) 1st edition (1st update). Prague: C. H. Beck, 2021. Beck – online [online], commentary on Art. 3, marg. No. 109–111; also WAGNEROVÁ, Eliška, ŠIMÍČEK, Vojtěch, LANGÁŠEK, Tomáš et al. *Listina základních práv a svobod: Komentář*. (Charter of Fundamental Rights and Freedoms: Commentary.) Prague: 2012, Wolters Kluwer. In: ASPI [legal information system]. Wolters Kluwer ČR, a. s., commentary on Art. 3 (2).

25. See e.g. WAGNEROVÁ, Eliška, ŠIMÍČEK, Vojtěch, LANGÁŠEK, Tomáš et al. *Listina základních práv a svobod: Komentář*. (Charter of Fundamental Rights and Freedoms: Commentary.) Prague: 2012, Wolters Kluwer. In: ASPI [legal information system]. Wolters Kluwer ČR, a. s., commentary on Art. 3 (2); or HUSSEINI, Faisal, BARTOŇ, Michal, KOKEŠ, Marian et al. *Listina základních práv a svobod: Komentář*. (Charter of Fundamental Rights and Freedoms: Commentary.) 1st edition (1st update). Prague: C. H. Beck, 2021. Beck – online [online], commentary on Art. 3, marg. No. 111.

26. HUSSEINI, Faisal, BARTOŇ, Michal, KOKEŠ, Marian et al. *Listina základních práv a svobod: Komentář*. (Charter of Fundamental Rights and Freedoms: Commentary.) 1st edition (1st update). Prague: C. H. Beck, 2021. Beck – online [online], commentary on Art. 24, marg. No. 16.

27. KVASICOVÁ, Jana, ŠAMÁNEK, Jiří et al. *Antidiskriminační zákon: Komentář*. (Anti-Discrimination Act: Commentary.) Prague: Wolters Kluwer, 2015, p. 120.

28. Section 2 (5) of the Anti-Discrimination Act.

29. 29 HUSSEINI, Faisal, BARTOŇ, Michal, KOKEŠ, Marian et al. *Listina základních práv a svobod: Komentář*. (Charter of Fundamental Rights and Freedoms: Commentary.) 1st edition (1st update). Prague: C. H. Beck, 2021. Beck – online [online], commentary on Art. 3, marg. No. 110.

21. SCHWARZE, Jürgen et al. *EU-Kommentar*. 4th ed. Baden-Baden: Nomos Verlagsgesellschaft, 2019, pp. 553–554; or DAVIES, Gareth. *Nationality Discrimination in the European Internal Market*. The Hague: Kluwer Law International, 2003, pp. 150–155.

22. 22 STEHLÍK, Václav, HAMULÁK, Ondřej, PETR, Michal. *Právo Evropské unie: Ústavní základy a vnitřní trh*. (European Union Law: Constitutional Foundations and the Internal Market.) Prague: Leges, 2017, p. 128.

law. While nationality in the sense of State citizenship, on the one hand, and “ethnic” nationality, on the other hand, will often coincide, this will not always be true – typically in the case of historical national minorities (members of national minorities who have long resided in the territory of a State and therefore have the citizenship of that State) or foreigners who have already acquired the citizenship of the State to which they moved but have retained the nationality of their place of origin.

The right of free movement within the Union operates with the criterion of nationality in the sense of State citizenship. The concept of ethnic origin is used in EU’s anti-discrimination legislation, and what Czech law understands as nationality can be classified under ethnic origin in EU law. Therefore, nationality understood as State citizenship and “ethnic” nationality are used as prohibited grounds of discrimination in different situations.<sup>30</sup>

An example of discrimination on grounds of “ethnic” nationality is less favourable treatment of a Czech citizen of Polish nationality. On the other hand, if, for example, an employer does not hire a Polish citizen in fear of excessive formalities involved in employing foreigners, this will constitute discrimination on the grounds of nationality in the sense of State citizenship. Discrimination on grounds of “ethnic” nationality might only be directed against certain nations – a potential employer will not want to employ Bulgarians and Romanians, but will have no problem hiring Austrians or Slovaks – which is not typical of discrimination on grounds of nationality understood as State citizenship.

The protected characteristics of “ethnic” nationality and nationality (State citizenship) are also related to language. Indeed, language is one of the defining elements of a nation and thus one of the criteria for determining nationality (meaning “ethnic” nationality). At the same time, it is closely related to nationality understood as State citizenship because the State as an institutionalised structure of a political nation officially recognises a certain language (less often several languages) as the official means of communication in the given country. Most European States were founded on the national (ethnic) principle and, according to the language of this nation, they also introduced their official languages.<sup>31</sup>

30. See also FELLEROVÁ PALKOVSKÁ, Iva, VINTROVÁ, Anna Katerina. Veřejný ochránce práv jako nezávislý orgán chránící práva migrujících občanů EU. (Public Defender of Rights as an Independent Body Protecting the Rights of Migrant EU Citizens.) In: Ročenka veřejného ochránce práv 2019: Ročenka uprchlického a cizineckého práva (Defender’s Yearbook 2019: Yearbook of Refugee and Foreigner Law) [online] Brno: Office of the Public Defender of Rights, 2019, pp. 186–188. Available at: <https://www.ochrance.cz/dokument/rocenka-cizinci-2019/rocenka.pdf>.

31. Report of the Public Defender of Rights on a case where discrimination was not found of 27 May 2020, File No. 6601/2019/VOP. Available at: <http://kvopap:81/KVOPESoSearch/Nalezene/Edit/60691>.



# Recommendations

The survey has shown a number of negative phenomena associated with the employment of foreign workers. It revealed that almost one third of employees from EU countries felt disadvantaged or discriminated against compared to Czech employees because of their nationality (State citizenship).

Although it cannot be automatically concluded that what the employees perceived as discrimination was always also discrimination in reality, the survey indicates how serious and widespread the problem of less favourable treatment of employees from EU countries is in the Czech Republic.

The survey also showed the problematic nature of precarious work. Employees working on the basis of agreements outside an employment relationship and employees of employment agencies are significantly more likely to feel disadvantaged on the labour market. The weakest position is that of employees recruited by employment agencies who have only been working in the Czech Republic for a short period time. They are often dependent on the agency for housing and will find it difficult to change jobs.

It is clear that a situation where 62% of employees in no way defended themselves against perceived discrimination on grounds of nationality (State citizenship) is undesirable. The reason for this is partly their ignorance of defence options and partly a lack of confidence that things could improve.

## 5. Recommendations in the area of work and employment

### 5.1 Publish comprehensible and up-to-date information on the employees' rights and obligations in Czech and in a foreign language, especially in English

**Recommendation addressed to:** State Labour Inspectorate

The basic prerequisite for employees to be able to defend themselves against unlawful conduct of their employer is that they are informed both that the employer's conduct is indeed unlawful and about the means they can use to seek redress. It is therefore important that the websites of the relevant authorities and

institutions provide important information concerning the rights and obligations of employees and employers, including the "users" in the case of temporary agency work. This information should be:

- » easy to find on the institution's website;
- » available in foreign languages, especially in English;
- » written in a plain language that will be understood by both laypersons and foreigners with imperfect knowledge of the language (whether Czech, English or other);
- » regularly updated in all language versions.

This information should be available primarily on the website of the State Labour Inspectorate (the "SLI"). Given the scope of SLI's activities, this information is already displayed on its website. Since the SLI checks compliance with labour law, it has the necessary expertise to provide up-to-date information on this topic. Information on the rights and obligations following from employment that is provided on SLI's website in the Czech language is relatively detailed,<sup>32</sup> but only a very small part of this information is translated into other languages. It is not essential that the whole contents of the website be translated into all language versions. Nonetheless, a broader scope of information should be available at least in English.

As regards the comprehensibility of information on the SLI website, it appears that some information is worded in a way that might be difficult to understand for laypersons or people with lesser knowledge of the language. It would therefore be useful if the information was provided in plainer language, in shorter sentences or expressed graphically. The simplification of the wording need not be at the expense of correctness of the text from the legal point of view. It is thus not necessary to use legal definitions in the information materials; quite the contrary, this tends to impair understandability of the text.

### 5.2 Continue regular inspections of undeclared work by foreigners – EU citizens

**Recommendation addressed to:** State Labour Inspectorate

It is clear from the annual inspection programmes and the annual summary reports on the results of inspections prepared by the State Labour Inspectorate that the individual labour inspectorates devote special attention to undeclared work by foreigners with EU citizenship.

Special attention paid to undeclared work seems necessary for two reasons. Firstly, because undeclared employment persists as a phenomenon, and is not rare,<sup>33</sup> and secondly, because employees working illegally in the Czech Republic are in a particularly vulnerable situation due to the high level of uncertainty regarding their employment relationship, the fear of potential sanctions for undeclared work and the difficulties associated with enforcing their rights given the absence of a properly concluded employment relationship. Employers are also unlikely to pay the compulsory health insurance and social security contributions for employees working illegally, which makes the employees ineligible for the relevant health and social security benefits. Furthermore, in view of the rules on social security co-ordination established in the EU, employees will lose the possibility of drawing benefits from the social security system in their home country and will be left without health and social insurance.

For these reasons, inspections of undeclared work by EU citizens are of crucial importance and the Defender thus recommends that labour inspectorates continue to focus on this area with no lesser intensity. Given

32. It can be found, for example, in the sections "Information materials", "Questions and answers", "Occupational safety" and "Labour-law relationships", at <http://www.suip.cz/>.

33. See e.g. State Labour Inspectorate. Annual Summary Inspection Report 2020, p. 31 et seq. Available at: [http://www.suip.cz/\\_files/suip-81fe4ae011deoad3a45b22c7ce249b8b/suip\\_rocni-souhrnna-zprava-o-vysledcich-kontrolnich-akci-za-rok-2020.pdf](http://www.suip.cz/_files/suip-81fe4ae011deoad3a45b22c7ce249b8b/suip_rocni-souhrnna-zprava-o-vysledcich-kontrolnich-akci-za-rok-2020.pdf).



the importance of inspections concerned with undeclared work, the labour inspectorates should ensure that penalties are imposed on “erring” employers in infraction proceedings at a level that is proportionate, but also effective and dissuasive.

### 5.3 Continue inspections of employment agencies

**Recommendation addressed to:** State Labour Inspectorate

Another area that labour inspectorates pay special attention to are inspections of employment agencies.

Agency employment is considered one of the forms of precarious employment.<sup>34</sup> It provides a lower level of security for the employee, who may be forced to change workplace and type of work more frequently. Primarily, the employees are significantly less assured of further employment if they have a fixed-term employment contract limited by the duration of the employee’s assignment to a specific user and the user can terminate the employee’s temporary assignment with the agency at any time.<sup>35</sup>

It is clear from the analytical survey report presented alongside this Recommendation that respondents working for employment agencies are much more likely to feel abused than Czech agency workers or regular employees of the given user.

Therefore, labour inspectorates should continue to focus more on inspecting employment agencies that employ foreigners – EU citizens, and check not only the specific duties of an employer who is an employment agency towards its employees,<sup>36</sup> but also other duties of employment agencies as employers.

In administrative punishment, labour inspectorates should impose fines for infractions in an amount that reflects the gravity of the infraction and the consequences of the violation of the law (by the employment agency or by the user) for the agency workers. In particular, the conduct of an employment agency or user should be strictly punished if the violation of the employees’ rights bears the hallmarks of abuse of the significantly weaker position of foreign employees of employment agencies.

### 5.4 Focus on inspections concerned with equal treatment of foreign employees – EU citizens

**Recommendation addressed to:** State Labour Inspectorate

Labour inspectorates also commonly carry out inspections focusing on equal treatment. Unequal treatment on grounds of nationality (State citizenship) is explicitly prohibited by the Labour Code. Breach of the duty of equal treatment is also an infraction.

Equal treatment of employees from EU countries and prohibition of discrimination on grounds of nationality (State citizenship) is one of the basic principles underpinning free movement of workers in the EU, as one of the fundamental freedoms in the EU internal market. Consequently, labour inspectorates need to pay increased attention to discrimination on grounds of nationality. Equal treatment on grounds of nationality should be the focus not only in cases where the complainant explicitly invokes unequal treatment on this ground, but also

34. Precarious work is a term for non-standard, uncertain employment that provides the employee with a lower level of security and other benefits than a regular employment relationship. Examples include, in addition to agency employment, work carried out based on agreements on work outside an employment relationship.

35. See also State Labour Inspectorate. Annual Summary Inspection Report 2020, p. 15. Available at: [http://www.suip.cz/\\_files/suip-81fe4ae011deoad3a45b22c7ce249b8b/suip\\_rocni-souhrnna-zprava-o-vysledcich-kontrolnich-akci-za-rok-2020.pdf](http://www.suip.cz/_files/suip-81fe4ae011deoad3a45b22c7ce249b8b/suip_rocni-souhrnna-zprava-o-vysledcich-kontrolnich-akci-za-rok-2020.pdf).

36. Sections 307a to 309a of the Labour Code.

in cases where the complainant claims violation of the rights of foreign workers without directly mentioning discrimination or unequal treatment. Possible unequal treatment on grounds of nationality need not always be inquired into where an employer employs both domestic and foreign employees, but the labour inspectorates should pay increased attention to this phenomenon on their own initiative.

Since discrimination on grounds of nationality is also explicitly prohibited by European Union law, labour inspectorates must also take into account the requirements of European Union law relating to the employment of EU workers.

### 5.5 Consider introducing an out-of-court settlement mechanism for labour-law disputes

**Recommendation addressed to:** Ministry of Labour and Social Affairs

It is apparent from the survey findings that a majority of respondents – EU workers – did not defend themselves against their employer’s unlawful conduct, where one of the reasons for not doing so was that litigation in labour-law disputes is lengthy, costly and relatively highly formalised. Similar findings also follow from the Defender’s 2015 survey on obstacles faced by victims of discrimination in access to justice – only very rarely did people defend themselves against manifestations of discrimination in the area of work and employment.<sup>37</sup>

In most cases, lawsuits against employers are brought by former employees. Only very seldom do employees defend their rights in court during the existence of their employment relationship.<sup>38</sup> In the Defender’s opinion, it would be appropriate to reflect on how to improve this situation and ensure that employees can effectively assert their rights even at a time when they are still employed by the given employer. One of the options that could improve this situation is the introduction of an out-of-court settlement mechanism for labour-law disputes.

A number of various mechanisms could be considered. The introduction of any specific one would have to be preceded by an expert debate led by the Ministry of Labour and Social Affairs, which should involve representatives of employers, trade unions, experts from the academia, non-profit sector, legal profession and justice, representatives of relevant governmental authorities (especially the State Labour Inspectorate), and representatives from among mediators and arbitrators.

Inspiration can be found abroad, as various forms of out-of-court settlement of labour-law disputes are used in a number of European and non-European countries.<sup>39</sup> Experience with out-of-court settlement of consumer disputes by consumer protection supervisory authorities and with proceedings conducted by the Financial Arbitrator could also be used.

The introduction of an effective method of out-of-court settlement of labour disputes would naturally benefit not only foreign employees, but all employees without distinction.

37. The Defender’s 2015 survey revealed that 11% of respondents felt discriminated against in the past 5 years, but almost 90% of them did not report discrimination to authorities or organisations. According to the survey findings, there were only 37 court disputes concerning work and employment in aggregate between 2010 and 2014.

Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti. (Discrimination in the Czech Republic: the Victim of Discrimination and Obstacles to Justice.) The Public Defender of Rights [online]. Brno: (c) Office of the Public Defender of Rights [retrieved on: 2021-06-13], pp. 87–89 and 132. Available at: [https://www.ochrance.cz/uploads-import/ESO/CZ\\_Diskriminace\\_v\\_CR\\_vyzkum\\_01.pdf](https://www.ochrance.cz/uploads-import/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf).

38. BĚLINA, Miroslav. (Ne) zbytná další novela zákoníku práce? (Further Amendment to the Labour Code (Un)necessary?) In: Acta Universitatis Carolinae: Iuridica. [online] Prague: Charles University. 2016 (4) [retrieved on: 2021-06-22], p. 21. Available at: [https://karolinum.cz/data/clanek/3222/iuridica\\_4\\_2016\\_03\\_Belina.pdf](https://karolinum.cz/data/clanek/3222/iuridica_4_2016_03_Belina.pdf).

39. A good overview can be found, e.g. in PICHRT, Jan, ŠTEFKO, Martin, MORÁVEK, Jakub. Analýza alternativních způsobů řešení sporů v pracovněprávních vztazích. (Analysis of Alternative Dispute Resolution Methods in Labour-Law Relationships.) Prague: Wolters Kluwer, 2016; or in the study Individual disputes at the workplace: Alternative disputes resolution. Eurofound. [online] 2010, [retrieved on: 2021-06-22]. Available at: <https://www.eurofound.europa.eu/publications/report/2010/individual-disputes-at-the-workplace-alternative-disputes-resolution>.

In order for out-of-court resolution of labour-law disputes to be effective, it should be possible to resolve disputes quickly, the resolution of a dispute should not be costly for the employee, it should be less formalised than court proceedings, and it should promote amicable resolution of the dispute so as to provide a chance to remedy the relations between the employer and the employee, and so that it is thus an attractive option even during the existence of the employment relationship. Litigation clearly does not meet these requirements and, therefore, does not function well in terms of protecting the rights of employees and employers.<sup>40</sup>

The Defender does not specifically propose here what form the mechanism of out-of-court settlement of labour disputes should take. That would have to follow from the above-mentioned expert debate. At this point, the Defender recommends that the Ministry of Labour and Social Affairs open a debate on this topic and take steps to ensure that all relevant options for out-of-court settlement of labour disputes are explored. Based on this expert debate, the Ministry should then conclude whether the introduction of such a mechanism would be meaningful and, if so, in what form.

## 5.6 Co-operation with the embassies of EU Member States regarding awareness of foreign workers

**Recommendation addressed to:** Ministry of Labour and Social Affairs

In order to ensure awareness of the rights and obligations associated with working and staying in the Czech Republic, one has to consider what information channels could be used to bring the necessary information directly to workers, including those who may be less familiar with the environment of another country – for example, newcomers to the Czech Republic or those with low education. Workers often turn to their country's embassy out of mere ignorance. It would therefore be appropriate to ensure that the embassy staff, especially consulates or consular sections of the embassy, are aware of how best to direct such persons to the relevant authorities or information sources (websites).

Therefore, the Defender recommends that the Ministry of Labour and Social Affairs establish co-operation with embassies of the EU Member States from which most citizens come to the Czech Republic. The aim of the co-operation would be to find out what their citizens most frequently contact embassies about and to provide embassy staff with useful information so that they can further direct their citizens to sources that contain useful information about individuals' rights and obligations, and how to deal with life situations.

40. The aforesaid is also indirectly confirmed by the low number of labour-law disputes – in 2011, 2014 and 2015, labour-law disputes represented less than one per cent of civil disputes. See PICHRT, Jan, ŠTEFKO, Martin, MORÁVEK, Jakub. *Analýza alternativních způsobů řešení sporů v pracovněprávních vztazích.* (Analysis of Alternative Dispute Resolution Methods in Labour-Law Relationships.) Prague: Wolters Kluwer, 2016. pp. 359-364.

## 6. Recommendations in the area of public administration

### 6.1 Maintain institutional websites in English

**Recommendation addressed to:** governmental authorities, territorial self-governing units, and other bodies and institutions

Websites of authorities, territorial self-governing units and other bodies and institutions should be available not only in Czech, but also in English. It is not necessary for all the information on the website to be translated into English. What should always be translated, however, is information on the competences of the given authority, basic information on the procedures it conducts, the requisites of pleadings and contacts, and also information on matters typically relevant for foreigners. In principle, the scope of information should correspond to the range of mandatory disclosures pursuant to the Information Act.<sup>41</sup>

Apart from Czech, the information on the website should be available mainly in English, as English is the language spoken by the largest number of Europeans<sup>42</sup> and is, to some extent, a universal language of communication. Information can also be translated into other languages that the authority in question has found most useful for EU nationals.

Authorities should ensure that information in foreign languages is also regularly updated and that outdated information is no longer available.

### 6.2 Strengthen the language skills of officials who deal with foreigners

**Recommendation addressed to:** governmental authorities, territorial self-governing units, and other bodies and institutions

41. It should include, in particular, the information set out in Section 5 (1)(a) to (e) and (i) of Act No. 106/1999 Coll., on free access to information, as amended.

42. See e.g. European Commission. Special Eurobarometer 386: Europeans and their Languages. [online] June 2021. Available at: <https://europa.eu/eurobarometer/surveys/detail/1049>.

The survey showed that EU citizens frequently find it difficult to communicate with the authorities if they do not speak Czech well. Although Czech is the language of proceedings according to the Code of Administrative Procedure,<sup>43</sup> general basic communication in dealings with authorities can also be conducted in another language (e.g. notifying a foreigner what form to fill in, what documents to submit, how the proceedings will be conducted, etc.). Better knowledge of foreign languages can be expected especially in sectors of public administration having a frequent contact with foreigners, typically workplaces of the Department for Asylum and Migration Policy of the Ministry of the Interior and the Immigration Police, as well as, for example, branches of the Labour Office of the Czech Republic and the Czech Social Security Administration, and transport administration, etc., especially in cities with larger numbers of foreigners.

The Defender therefore recommends that the competent authorities boost the language skills of employees who come into contact with EU citizens so that they are able to communicate in foreign languages at least at a basic level, and thus facilitate more effective communication with foreigners who do not speak Czech. The authorities should also motivate their employees to communicate in foreign languages, primarily by rewarding better those employees who actually use foreign languages.

### 6.3 Communication of administrative authorities in a foreign language

**Recommendation addressed to:** governmental authorities, territorial self-governing units, and other bodies and institutions

In line with the principle of helpfulness<sup>44</sup>, authorities should respond at least to a basic extent to submissions made in a foreign language. The Defender believes that it is unacceptable if someone addresses an authority in a language other than Czech or Slovak and the authority does not respond in any way.

As an absolute minimum, if an authority receives a foreign language pleading,<sup>45</sup> motion<sup>46</sup> or means of evidence, the authority should invite the given person to remove defects in the given pleading and advise them of the need to communicate with the authority in the language of the case, and set a reasonable deadline to cure the defect.<sup>47</sup>

However, if the authorised officials understand the foreign language in which the foreigner communicates or in which they submit means of evidence (especially documents), there is no need to insist on a certified translation. The Code of Administrative Procedure allows the administrative authorities to waive the requirement for a certified translation.<sup>48</sup> Such a procedure will be appropriate especially in a situation where there is only one party to the administrative proceedings, or if the other parties also understand the foreign language in question. The nature of the foreign language document may also play a role in the authority's considerations on whether a translation should be requested, while taking into account the scope and complexity of the foreign language text (a document containing a large quantity of complex text will justify a requirement to provide a translation more than, for example, a form with little text that is, moreover, easy to understand).

43. Section 16 of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.

44. Enshrined especially in Section 4 (1) of the Code of Administrative Procedure.

45. Within the meaning of Section 37 of the Code of Administrative Procedure.

46. Motion to initiate proceedings ex officio within the meaning of Section 42 of the Code of Administrative Procedure or motion to initiate review proceedings pursuant to Section 94 (1) of the Code of Administrative Procedure.

47. In accordance with Section 45 (2), in the case of proceedings on an application, and Section 37 (3) of the Code of Administrative Procedure, for different types of pleadings.

48. Section 16 (2) of the Code of Administrative Procedure. The above is also in conformity with case law of the Supreme Administrative Court; see the resolution of the extended chamber of 14 April 2015, File No. 9 AS 12/2014-60.

## 7. Recommendations in the area of education, housing and integration

### 7.1 Support the activities of integration centres or regional or municipal centres for foreigners that provide counselling and assistance to foreigners, and also of non-profit organisations

**Recommendation addressed to:** administrative regions, municipalities, Ministry of the Interior, Ministry of Education, Youth and Sports, Ministry of Labour and Social Affairs

Foreigners are generally in a more difficult position if they wish to assert their rights, as they have lower awareness of their rights, duties and defence options. This is especially true of foreigners who have been living in the Czech Republic for a short period of time. Centres for foreigners established by territorial self-governing units, the Integration Centres operated by the Refugee Facilities Administration, and non-profit organisations help foreigners with legal and social counselling and thus contribute to smooth integration of foreign nationals in Czech society. Their role is both crucial and irreplaceable. The ministries and territorial self-governing units should therefore support their activities.

### 7.2 Support education of children with a different mother tongue

**Recommendation addressed to:** Ministry of Education, Youth and Sports, founders of schools

The Defender has learned from his work – and this is also confirmed by the analytical survey report presented together with this recommendation – that problems persist in the education of children with a different mother tongue.

Ensuring that the children of migrant workers receive a quality education is essential to their integration into society. In the case of children with a different mother tongue (“DMT”) than Czech, this means primarily teaching Czech as a foreign language. Czech is crucial for these children to be able to truly participate in regular education and thus level their position as much as possible with children whose mother tongue is Czech. Czech language teaching for children with a different mother tongue should be sufficiently intensive and accessible. Children should receive adequate support during regular school hours, either in the form of various support measures (bilingual teaching assistant, smaller class sizes so that the teacher can devote more time to children with a DMT, etc.) or in the form of further staff who can assist in teaching children with DMT and with the integration of these children into the team and in communication with their parents (e.g. bilingual school assistants, intercultural specialists, etc.).

A special topic is the modification of conditions for the uniform entrance examination for secondary schools and the secondary graduation examination. These examinations are designed for Czech native speakers and, therefore, children with a different mother tongue are in a difficult position even if they have a very good communicative level of Czech. In the case of secondary graduation examinations, some students with a DMT can ask for partial exemptions, but this applies only to those who have been educated in the Czech Republic for less than 4 years before taking the examination.<sup>49</sup> According to the literature, it takes at least 5 to 7 years, and in some cases even longer, to learn a foreign language at a level necessary to pass this examination (cognitive or academic language).<sup>50</sup> The rules for passing the uniform entrance examination are even stricter. Students who have received their previous education in a school outside the Czech Republic will be exempt from the Czech language entrance examination. On the other hand, those who have obtained (however short) primary education in the Czech Republic must pass this examination.<sup>51</sup> For students who have only been educated in the Czech Republic for a short period of time, this examination can be an insurmountable obstacle despite partial reliefs that may be awarded based on a recommendation of the school counselling centre for students with special educational needs.<sup>52</sup>

For these reasons, it is desirable to amend the legislation to change the examination conditions for children with a different mother tongue so as to take adequate account of the time it usually takes to master a language at a level necessary to pass the examination. As a result of the current setting of the conditions, students with a different mother tongue may fail the examination despite good communicative knowledge of Czech and a great personal effort, and thus prematurely drop out of the education system, which has a direct negative impact on their professional career, standard of living, and integration into society.

### 7.3 Availability of municipal housing for EU citizens

**Recommendation addressed to:** municipalities, Ministry of the Interior

The position of EU citizens seeking housing on the private market may be more difficult due to their nationality (State citizenship) or poorer knowledge of Czech; this makes municipal housing all the more important for EU citizens. Available housing for EU citizens can only be ensured through a combination of non-discriminatory conditions for the assignment of flats and sufficient size of the housing stock in individual municipalities.

Municipal flats should be available to all EU citizens living in the Czech Republic. Their position as applicants for a municipal flat should not differ from the position of Czech citizens applying for municipal housing.<sup>53</sup>

49. The time limit for the didactic test in the Czech language and literature may be extended for a student with a DMT by 30 minutes, and the student may be allowed to use a translation dictionary. See Section 20 (4) of the Schools Act, in conjunction with Section 5 (2) of Decree No. 177/2009 Coll., on detailed conditions of completion of education in secondary schools through a school leaving examination, as amended.

50. The data are based on the “iceberg theory” devised by the Canadian teacher and researcher J. Cummins. A summary is available, e.g., at: <https://www.inkluzivniskola.cz/kdo-odkud-prichazi-do-cr/teorie-ledovce>. According to the Defender’s information, survey data are unfortunately not available for the Czech language environment.

51. Section 20 (4) of the Schools Act.

52. Extended time limit for passing the test, use of a dictionary. See Section 13 of Decree No. 353/2016 Coll., on the admission procedure for secondary education.

53. Article 18 of the Treaty on the Functioning of the European Union; Article 9(2) of the Workers’ Freedom of Movement Regulation.

Municipalities should therefore set their conditions for the assignment of municipal flats so that they are identical for Czech citizens and for citizens of other EU countries.

Municipalities should also bear in mind that permanent residence of foreigners (including EU citizens) differs from permanent residence within the meaning of the Population Records Act. Permanent residence under the Population Records Act is recorded only for citizens of the Czech Republic and refers to the address of the citizen's residence in the Czech Republic, which is entered in the basic population register.<sup>54</sup> Therefore, permanent residence in the sense of the Population Records Act has primarily a registration function. On the other hand, permanent residence according to the Residence of Foreign Nationals Act is a type of residence permit in the territory of the Czech Republic which is granted to foreigners, both to citizens of the European Union and third countries, subject to fulfilment of the conditions laid down by the law. EU citizens are usually granted permanent residence permits only after 5 years of continuous residence in the Czech Republic.<sup>55</sup> For foreigners residing in the Czech Republic, the place of declared residence fulfils the registration function.<sup>56</sup> In other words, the place of declared residence of foreigners is the equivalent of permanent residence for Czech citizens. If a municipality wishes to provide municipal housing only to persons who have a demonstrable relationship to the municipality as they live and are officially registered in the municipality, the criterion for the existence of this relationship in the case of foreigners should be the place of declared residence, rather than permanent residence.

The Ministry of the Interior supervises the independent competence of municipalities, which also includes the provision of municipal housing. The Defender therefore recommends that the Ministry of the Interior continue to pay attention to the conditions for the assignment of flats that may disadvantage EU citizens, and to exercise its supervisory powers under the Municipalities Act in cases where maladministration is found.<sup>57</sup>

## 7.4 Support Czech language courses for foreigners

**Recommendation addressed to:** administrative regions, municipalities with a larger number of foreigners, Ministry of the Interior

Poor knowledge of the Czech language is often a barrier for foreigners – EU citizens – both at work and outside of work. Especially those who have been settled in the Czech Republic for a long time may be interested in improving their Czech.

In co-operation with municipalities and administrative regions, the State should ensure availability of Czech language courses for foreigners. While Czech language courses for foreigners are provided by commercial language schools, it is desirable that the offer of commercial courses be supplemented by courses organised or supported by municipalities or administrative regions, or by the State (for example, by the integration centres under the Ministry of the Interior). The main reason for this is that the State, municipalities and administrative regions can provide language courses for free or for a reduced price, and compensate for the insufficient supply of language courses in some localities, thereby increasing their accessibility for different groups of foreigners. The Defender therefore recommends that the addressees of this recommendation monitor the supply of and demand for language courses for foreigners in their territory and adapt the courses they organise accordingly.

## 7.5 Support for the integration of foreigners – EU citizens – at a local level

**Recommendation addressed to:** municipalities

Previous surveys focusing on the integration of foreigners into society indicate that the attitude and activity of local governments play a great role in the foreigners' integration into society and conflict-free cohabitation with the majority. The attitude of local governments can influence the relations between foreigners and the majority in both positive and negative ways. It turns out that various cultural and social activities that bring foreigners and the majority society closer together, as well as the active involvement of foreigners in the life and public administration in the given area, and active promotion of discussion on common topics, have a positive impact. Schools, and especially primary schools, can also play an important role in this regard. Thanks to contact with the children's parents, schools can more easily involve parents-foreigners in the social and cultural events in the given area. On the other hand, labelling foreigners as sources of problems and crime negatively influence the atmosphere in society.<sup>58</sup>

The Defender therefore recommends that municipalities with large numbers of foreigners work on the topic of migration and integration of foreigners and try to involve foreigners in the social life of the area through various measures. It is especially useful to organise cultural events and also help overcome the barriers faced by foreigners (e.g. a language barrier, lower legal awareness, etc.).

54. Section 10 (1), in conjunction with Section 1 (1)(a), of Act No. 133/2000 Coll., on population records and birth identification numbers and amending certain laws (the Population Records Act), as amended.

55. Section 87g (1) of Act No. 326/1999 Coll., on the presence of foreigners in the territory of the Czech Republic and amending certain laws, as amended.

56. Section 93 of the Residence of Foreign Nationals Act.

57. Section 124 of Act No. 128/2000 Coll., on municipalities (the Municipal Order), as amended.

58. Survey of the social situation of foreign nationals in the territory of the Capital City of Prague; Final project report. Poradna pro integraci, o.s.; Organizace pro pomoc uprchlíkům, o.s., 2010, pp. 50-51. available at: [https://aa.ecn.cz/img\\_upload/224c0704b7b7746e8a07df9a8b20c098/pruzkum\\_socialni-situace-cizincu-1-.pdf](https://aa.ecn.cz/img_upload/224c0704b7b7746e8a07df9a8b20c098/pruzkum_socialni-situace-cizincu-1-.pdf); Analysis on foreigners in the Prague 4 Municipal District; Survey report. Charles University in Prague, Faculty of Science, Department of Social Geography and Regional Development, and the Prague Multicultural Centre. 2015, pp. 51-63, available at: <https://metropolevsech.eu/wp-content/uploads/2019/07/Analyza-cizincu-v-mestske-casti-Praha-4-2015.pdf>.



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