

Face Equality International (FEI) Research Project

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Czech Republic

No.	Question		Answer
1.	<p>a. Do people with facial disfigurements (marks, scars, etc.) have any legal protection against discrimination?</p> <p>b. Which law relates or mentions the legal protections?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>People with facial disfigurements in the Czech Republic do have legal protection against discrimination. Such protection is in the form afforded under the Czech laws and the UNCPRD (see below).</p> <p>The basis of anti-discrimination protection in the Czech Republic is set out in the Constitution (the Charter of Fundamental Rights and Freedoms), the Disability Assessment Ordinance 359/2009, the Anti-Discrimination Act (No. 198/2009 Coll.), the Labour Code (No. 262/2006 Coll.) and the Employment Act (435/2004 Coll.).</p> <p>Article 3(1) of the Constitution of Czech Republic (the Charter of Fundamental Rights and Freedoms), guarantees everyone the enjoyment of fundamental rights and basic freedoms regardless of their gender, race, colour of skin [...] or other status.¹ Disability is explicitly mentioned in Article 29 of the Constitution and guarantees the right to special work conditions and special protection for women, minors, and people with disabilities².</p> <p>The Disability Assessment Ordinance 359/2009 provides a list of impairments and medical diagnoses, which specifically includes various types of diagnoses/disabilities including related to facial disfigurements such as functional consequences after surgeries of the lips, jaw and tongue, orofacial area injuries, palsy of the oculomotor muscles and eyelids, tic disorders, various skin injuries and burns.³</p>

¹ Charter of Fundamental Rights and Freedoms of the Czech Republic, Act No. 2/1993 Coll, effective 1 January 1993 <https://www.psp.cz/en/docs/laws/listina.html>

² “osoby zdravotně postižené” translated from Czech as “persons with disabilities”.

³ *Supra* note, 11

			<p>The Anti-Discrimination Act (the Act No. 198/2009 Coll.) (“ADA”) that covers disability does not categorically include physical appearance or facial disfigurement within the definition of “disability”. However, the definition of “disability” includes any physical or any form of impairment that preclude the right of persons to equal treatment in the areas defined under the ADA, which include areas such as employment practices. On this basis a good argument can be made that people who have long lasting facial disfigurements for example burn victims or acid attack victims are protected under ADA from discrimination in areas such as employment hiring, remuneration and promotion. We have not been able using our desktop research to identify a precedent in the Czech Republic where this argument was tested. This is possibly because most decisions of the Czech courts other than those of the higher courts like the Constitutional courts are not available in a searchable public database⁴.</p> <p>The Labour Code (No. 262/2006 Coll.) specifically sets out the employer’s obligation to take the necessary technical and organizational measures, at its own expense, to enable work performance by disabled employees.⁵</p> <p>The country has ratified the UN Convention on the Rights of Persons with Disabilities, UNCRPD, which guarantees people with disabilities the full enjoyment of all human rights and promotes their active participation in society.⁶ The Optional Protocol was ratified in 2021.⁷ Thus, the convention is part of the Czech legal systemⁱ and takes precedence over national law in case of incompatibility.⁸ This means that the UN Committee on the Rights of Persons with Disabilities can receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation of the Convention.</p>
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⁴ The Public Defender of Rights, Decision Making of Czech Courts in Discrimination Disputes 2015–2019, 1 October 2020 <https://www.ochrance.cz/uploads-import/ESO/Decision-making%20of%20Czech%20courts%20in%20discrimination%20disputes%202015%E2%80%932019.pdf>. Page 18 notes recommendation that case decision relating to discrimination be published in a public database. https://e-justice.europa.eu/13/EN/national_case_law?CZCHIA&init=true&member=1#tocHeader1 notes Czech courts whose decisions are publicly available.

⁵ Labour Code of the Czech Republic, Act No. 262/2006 Coll, 1 January 2007 https://www.mpsv.cz/documents/625317/625915/Labour_Code_2012.pdf/

⁶ United Nation, Convention on the Rights of Persons with Disabilities, particulars on participating countries including the date of ratification. <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028017bf87&clang= en>.

⁷ United Nation Treaty Collection, Optional Protocol to the Convention on the Rights of Persons with Disabilities, information on participating countries including the date of ratification https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang= en

⁸ European Parliament , Country Report on the Czech Republic for the Study on “Member States’ Policies for Children with Disabilities,” 2013, page 13

<p>2.</p>	<p>a. What is this country's legal definition of disability?</p> <p>b. When do people with a facial disfigurement fit within that definition?</p> <p>c. How does being excluded from that definition affect the protection of their rights?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>The Disability Assessment Ordinance 359/2009 provides a list of impairments and medical diagnoses, which specifically includes various types of diagnoses/disabilities related to facial disfigurements such as functional consequences after surgeries of the lips, jaw and tongue, orofacial area injuries, palsy of the oculomotor muscles and eyelids, tic disorders, various skin injuries and burns.⁹</p> <p>The disability evaluation is carried out by the Medical Assessment Service under the Social Security Administration (Česká správa sociálního zabezpečení) of the MoLSA (Ministry of Labour and Social Affairs)¹⁰ to establish the disability status of the individual and to determine the eligibility for disability pension (invalidní důchod) and employment support. The disability evaluation method involves assessment of the severity of the reduction in a person's ability to work.</p> <p>Depending on the established degree of disability, the disability pension of the I, II and III degrees are granted. The difference between individual degrees of disability is determined by the degree of reduction in individuals' ability to work (a decrease in working capacity by 35%-49% is attributed to I degree disability, by 50%-69% to II degree disability, and by 70% or more to III degree disability). The degree of disability and its modification are within the authority of a specialised insurance physician employed by the Medical Assessment Service.¹¹</p> <p>The duties of employers to employ disabled persons and to create the necessary working conditions for disabled persons are also provided in Sections 76 to 84 of the Employment Act (435/2004 Coll.).¹²</p> <p>The Government Board for Persons with Disabilities was established in 1991 by the resolution of the Czech Government as its coordinating and advisory body for disability.¹³</p> <p>Currently, the "National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021–2025" is in force and was approved in 2020. The plan is the principal document of the Board</p>
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⁹ *Supra* note, 11

¹⁰ Ministry of Labour and Social Affairs, official website <https://www.mpsv.cz/web/en>

¹¹ *Supra* note, 9

¹² Employment Act of the Czech Republic, Act No. 435/2004 Coll, 1 October 2004

https://www.mpsv.cz/documents/20142/1660330/Act+on+employment+2.+8.+2021_od+1.7.2021.pdf/7ce80598-fe2b-2d0a-a4fb-eee26dfa6ba9

¹³ Official website of the Czech Republic, Information on Government Board for Persons with Disabilities <https://vlada.gov.cz/en/ppov/vvzpo/uvod-vvzpo-en-312/#:~:text=Government%20Board%20for%20Persons%20with%20Disabilities&text=The%20Board%20co%20operates%20with,with%20disabilities%20and%20their%20employers> .

		<p>and is based on the Strategy of the government policy towards persons with disabilities.³ However, The National Plan is not directly binding on territorial self-governing units and enforcement has been less than hoped¹⁴.</p> <p>Procedural issues related to the assessment of disability, establishment of the disability status and eligibility for the disability pension are regulated by the Pension Insurance Act (No. 155/1995 Coll.)¹⁵, the Act on Organization and Implementation of Social Security (No. 582/1991 Coll.)¹⁶, and the Annex to the Disability Assessment Ordinance (359/2009)¹⁷.</p> <p>The ADA guarantees the right to equal treatment and protects the rights of people with disabilities and prevents discrimination on the basis of disability. Section 5 of the Anti-Discrimination Act provides the definition of “disability” which includes a physical, sensory, mental, psychological or some other impairment which precludes or may preclude the right of persons to equal treatment [...]; it must be a long-term disability which lasts, or according to the findings of medical science should last, for at least one year.¹⁸</p> <p>ADA covers both direct and indirect discrimination. Direct discrimination is defined as an act or an omission wherein a person is treated less favourably than another in a comparable situation on various grounds which includes disability.</p> <p>Indirect discrimination as regards a disabled person is defined as (a) an act or omission where a person is put at a disadvantage compared to other persons on the basis of an apparently neutral provision, criterion or practice (b) refusal or failure to take appropriate measures to enable a person with a disability to have access to a certain employment, working activities, career progression or other promotion, to use employment advice, or participate in other vocational training, or to use services available to the public, unless such a measure represents an unreasonable burden.</p>
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¹⁴ Council of Europe Commissioner For Human Rights, Comments of the Czech Republic to the report by Council of Europe Commissioner for Human Rights Dunja Mijatović following her visit to the Czech Republic from 20 to 24 February 2023, 26 September 2023, Chapter 3. <https://www.coe.int/es/web/commissioner/-/czech-republic-systemic-change-needed-to-address-long-standing-human-rights-issues-for-roma-and-persons-with-disabilities>

¹⁵ Pension Insurance Act of the Czech Republic, Act No. 155/1995 Coll, 1 January 1996 <https://www.zakonyprolidi.cz/cs/1995-155>

¹⁶ Act of the Czech National Council on the Organization and Implementation of Social Security, Act No. 582/1991 Coll, 1 January 1992 <https://www.zakonyprolidi.cz/cs/1991-582>

¹⁷ Decree Establishing Assessment of the Czech Republic, Decree No. 359/2009 Coll, 1 January 2010 <https://www.zakonyprolidi.cz/cs/2009-359>

¹⁸ Anti-Discrimination Act of the Czech Republic, Act No. 198/2009 Coll, 9 January 2009 [https://adsdatabase.ohchr.org/IssueLibrary/CZECH%20REPUBLIC Anti-discrimination%20Act.pdf](https://adsdatabase.ohchr.org/IssueLibrary/CZECH%20REPUBLIC%20Anti-discrimination%20Act.pdf)

		<p>The following factors need to be taken into account under the ADA to determine whether any specific measure represents an unreasonable burden:</p> <ul style="list-style-type: none"> a) the degree of benefit which the person with a disability has from the implementation of the measure, b) the financial tenability of the measure for the natural or legal person intended to implement the measure, c) the availability of financial and other assistance for the implementation of the measure and d) the capacity of substitute measures to satisfy the needs of the person with the disability. <p>The term "persons with disabilities" used by the National Plan stems from the definition under Article 1 of the Convention on the Rights of Persons with disabilities: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Consequently, their level of protection is consistent with the expectations under the UNCRPD.</p> <p>Interesting to note is the survey in the National Plan which on page 7 (where it summarises a survey done in 2017), there is a category for disability relating to skin.¹⁹ Unfortunately the same report, where it outlines certain specific objectives deals primarily with the more traditional physical disability issues - see also the September 2023 Report by the Council of Europe Commissioner For Human Rights on Persons with Disabilities in Czech Republic.</p> <p>The UNCRPD applies and people with facial disfigurements can complain under the UNCPRD²⁰ and to the Ombudsman in the Czech Republic (officially the Public Defender of Rights). The UN Committee on the Rights of Persons with Disabilities regularly evaluates the situation in individual countries and, if appropriate, suggests recommendations to them to improve the situation. The Ombudsman provides the Committee with underlying documents and informs the Committee of his findings, which the Committee will then take into account in communication with the Government of the Czech Republic</p>
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¹⁹ Government Board for Persons with Disabilities, National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021–2025, 20 July 2020, Page 24 <https://vlada.gov.cz/en/ppov/vvzpo/uvod-vvzpo-en-312/#:~:text=Government%20Board%20for%20Persons%20with%20Disabilities&text=The%20Board%20co%2Doperates%20with,with%20disabilities%20and%20their%20employers>

²⁰ United Nation, Form and Guidance for Submitting an Individual Communication to Treaty Bodies, 22 April 2021 <https://www.ohchr.org/en/documents/tools-and-resources/form-and-guidance-submitting-individual-communication-treaty-bodies>

			<p>and in formulating recommendations. Complaints can be lodged with the Ombudsman²¹. Based on the latest September 2023 Report by the Council of Europe Commissioner For Human Rights on Persons with Disabilities in Czech Republic and responses from the Czech Republic, however, it does not appear that facial disfigurement is a specific priority of the National Plan in Czech Republic. Even for those which are prioritized in the National Plan, the September 2023 Report indicates less than desirable progress in practice.</p>
3.	<p>Are there aspects of disability and/or disfigurement law that ensure a legal right to healthcare, education or employment?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Assuming a disability under Czech law can be established, support has two basic forms. The first is support intended directly for persons with disabilities. The second is an allowance paid to employers who create jobs for persons with disabilities.²²:-</p> <p>Healthcare</p> <p>Depending on the extent of disability, the range or healthcare support varies.²³</p> <p>Article 31 of the of the Constitution of Czech Republic (the Charter of Fundamental Rights and Freedoms) states that "Everybody has the right to protection of his or her health. Citizens are entitled under public insurance to free medical care and to medical aids under conditions set by law. "²⁴</p> <p>The health insurance of persons with disabilities is guaranteed by the Health Insurance Act (Zákon č. 48/1997 Sb.), which provides that the insurance premiums are paid by the state budget for the individuals with disabilities of III degree [...] who have no income from employment or self-employment and do not enjoy any pension from abroad, or this pension does not exceed the monthly minimum wage (§ 7 (1) j)²⁵.</p> <p>The Building Act (283/2021 Coll.) and the Decree No. 398/2009 Coll. stipulate general technical requirements ensuring that all publicly-used places that provide services, education, healthcare or</p>

²¹ The Public Defender of Rights, Complaint Submission, <https://www.ochrance.cz/en/podejte-stiznost/>

²² European Union official website, Czech Republic – Persons with Disabilities, <https://ec.europa.eu/social/main.jsp?catId=1106&intPageId=4476&langId=en>

²³ The Ministry of Labour and Social Affairs of the Czech Republic, Information on disability, <https://www.mpsv.cz/web/en/disability#sabfpwd>

²⁴ *Supra* note, 1

²⁵ Health Insurance Act of the Czech Republic, Act No. 48/1997 Coll, 4 January 1997, <https://www.zakonyprolidi.cz/cs/1997-48>

		<p>accommodation must be accessible by persons with limited mobility and orientation (category includes persons with physical-, sight-, hearing- or mental disability [...]).²⁶</p> <p>Education</p> <p>The right of all children to be educated is enshrined in the Constitution of the Czech Republic (Ústava České republiky No. 1/1993). The Constitution states that everybody is equal in accessing the law and according to the law. Everyone has the equal opportunity to receive education, free of charge, at compulsory and upper-secondary level. The Education Act defines pupils with special educational needs (SEN) and individual target groups:</p> <ul style="list-style-type: none"> • pupils with intellectual, sensory or physical disabilities; • pupils with speech and language impairments; • pupils with multiple disabilities; • pupils with autism; • pupils with specific learning and behavioural difficulties; • chronically ill pupils; • socially disadvantaged pupils. <p>If a disabled person has such SEN requirements, they are entitled to additional support for their education. What has been more controversial, however, is the inclusion of SEN persons in mainstream education. Although efforts have been made in this regard, there was some roll back in 2019.</p> <p>Employment</p> <p>Whilst the laws lay a framework to protect people with disabilities and there are anti-discrimination provisions which disabled persons may use to protect their right to work, the Czech Republic also requires a mandatory proportion of employment of persons with disabilities. Employers who employ more than 25 people are required to employ individuals with disabilities to the proportion of 4 per cent out of the total number of employees. The methods of meeting this obligation, that is employment</p>
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²⁶ Decree on General Technical Requirements Ensuring Barrier-Free Use of Buildings, Decree No. 398/2009 Coll, effective on 18 November 2009, cancelled on 1 January 2024, <https://www.zakonyprolidi.cz/cs/2009-398>

			<p>relationship, acquisition of products and services or penalty payments to the state budget, are considered to be equivalent and may be mutually combined.²⁷</p> <p>See comment in 2 above relating to UNCRPD and the efficacy of implementation under the National Plan, as reported on by the September 2023 Report by the Council of Europe Commissioner For Human Rights on Persons with Disabilities in Czech Republic.</p>
4.	<p>a. How effective are the legal protections? Please describe evidence available of the effect of the legal protections.</p> <p>b. What are deficiencies or areas for improvement in these legal protection measures as they apply and affect people with facial disfigurement?</p> <p>c. What evidence exists to prove that the information and resources guaranteed by law are actually available to disabled persons?</p>		<p>Based on the report prepared for the European Commission by the European network of academic experts in the field of disability (ANED) in December 2018, disabled people's organizations in the Czech Republic consider that the disability assessments carried out in accordance with the Disability Assessment Ordinance 359/2009 are based on medical indicators only and argue that such evaluations should also focus on an individual's ability to function in society, and involve not only medical doctors, but also other professionals such as vocational therapists and social workers.²⁸</p> <p>See comment in 2 above relating to the UNCRPD and the efficacy of implementation under the National Plan, as reported on by the September 2023 Report by the Council of Europe Commissioner For Human Rights on Persons with Disabilities in Czech Republic.</p>

²⁷ The Ministry of Labour and Social Affairs of the Czech Republic, Mandatory Proportion of Employment of Persons with Disabilities
<https://www.mpsv.cz/web/en/disability#sabfpwd>

²⁸ European Network of Academic Experts in the Field of Disability, Disability Assessment in European States ANED Synthesis Report, December 2018,
https://ec.europa.eu/employment_social/empl_portal/ede/ANED%202017-18%20Disability%20assessment%20synthesis%20report%20-%20final%20version_WEB_rev.docx

ⁱ The Czech legal system is a continental system. The most important legislative instruments are laws (*zakony*). More comprehensive acts ('codes' *zakoniky*) encompass a whole area of law and set out the detailed provisions in a systematic way. Laws encompassing a whole area of procedural law and setting out detailed procedural provisions are called codes of procedure (*øády*). Laws on the most important matters of state and on citizens' and human rights (including the Constitution of the Czech Republic and the Charter of Fundamental Rights and Basic Freedoms) are known as constitutional laws (*ústavní zákony*) and there exists a special procedure for their adoption. The Czech Republic has a monist legal system. International agreements ratified by the Parliament become an integral part of Czech legislation and take precedence over other legislation in case of incompatibility.