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CZECH REPUBLIC

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name "Alliance Defending Freedom"), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right to life, marriage and the family, and religious freedom in the Czech Republic, and the improvements which the Czech Republic can make with respect to these issues.

(a) Right to Life

3. The Charter of Fundamental Rights and Freedoms, enacted in 1991 by the Czechoslovak Federative Republic and enjoying constitutional status in the present Czech Republic, declares in Article 5 that "everybody has the capacity to possess rights" and in Article 6(1) that "everybody has the life to life [and that] human life is worthy of protection even before birth." Article 6(2) provides that "nobody may be deprived of his life," but Article 6(4) states that "deprivation of life is not inflicted in contravention of this Article if it occurs in connection with conduct which is not criminal under the law."
4. Abortion is regulated by the *Zákon České Národní Rady o Umělém Přerušení Těhotenství* [Law of the Czech National Council on Abortion (hereinafter Law on Abortion)] of Oct. 20, 1986, Coll. No. 66/1986 Sb.
5. Article 4 of the Law on Abortion provides that abortion is legal up to twelve weeks' gestation, with doctor's permission up to twenty-four weeks, and at any time in cases of "grave deformities" in the unborn child. Even in cases where a child is severely disabled or "deformed," however, this does not negate the inherent dignity of all human beings, regardless of their age, size, or medical status, and does not rob them of the inherent right to life or give anyone the right to unilaterally end their lives.
6. Only those abortions which are recommended by doctors are fully covered under public health insurance, but even privately procured abortions are not particularly expensive, which would otherwise act as a disincentive to seek recourse to abortion. Health professionals are obliged to provide women seeking abortions with information on the medical risks and offer them information about methods of contraception. Although laws mandating information about alternatives to abortion are welcomed, there are still potential issues of religious and moral conscience at play here for health practitioners.
7. There is, however, no right to abortion under international law, and claims that States have an obligation to permit it are false, as the right to life is protected under Article 6 of the ICCPR. Article 6(5) forbids the death penalty being carried out on a

pregnant woman, and the *travaux préparatoires* of the ICCPR explicitly state that “the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.”¹

8. Similarly, other early UN texts note that the intention of the paragraph “was inspired by humanitarian considerations and by consideration for the interests of the unborn child.”² The Preamble to the Convention on the Rights of the Child also requires special safeguards and legal protection to be provided to children “before as well as after birth.”
9. Euthanasia and assisted suicide are not currently legal in the Czech Republic, and the government rejected a private member’s bill in June 2016 seeking to legalize euthanasia in certain cases. Reports have also emerged that euthanasia is often illegally practiced by Czech doctors on a de facto basis.³

(b) Marriage and the Family

10. The Czech Civil Code defines marriage as being the union of a man and a woman, but in 2006 registered partnerships for same-sex couples were introduced. Registered partnerships grant certain marital rights, such as inheritance, hospital, spousal privilege, and alimony rights, but not joint adoption, widow’s pension, or joint property rights.
11. A 2016 Constitutional Court decision struck down a law which prohibited sole adoption by an individual in a registered partnership, and the government subsequently pledged to amend the law to allow step-parent adoption of a partner’s biological child as well.
12. The Czech Republic also has one of the highest divorce rates in the world, although this may be due in significant part to the steep decline in marriage rates overall since 1950. Children growing up in a stable family unit with two married biological parents have become the exception rather than the rule, with out-of-wedlock births, single parent-headed households, step-families, and blended families becoming more and more usual.
13. As in much of the Western world, the obligation to protect and support the family as the natural and fundamental group unit of society under Article 23 of the ICCPR is not being fulfilled in the Czech Republic, given that this duty of society and the State is oriented towards the ensuring of stable family units. Moreover, moves towards

¹ A/C.3/SR.819, para. 17 & para. 33; In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

² Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI, Article 10.

³ Angus Reid Institute, Most Czechs Agree with Euthanasia, 2010, http://angusreid.org/most_czechs_agree_with_euthanasia/.

enshrining marital and quasi-marital relationships for same-sex couples undermines the goal of the protection of the family.

14. Concerns also exist with respect to the erosion of other fundamental freedoms and rights as a result of redefining marriage and the family. For example, in other jurisdictions in which same-sex marriage has either been legalized or its legalization is all but inevitable, so-called “hate speech” laws have been utilized against the clergy and faithful of religious denominations for speaking on the issues of homosexuality and the definition of marriage according to traditional religious and moral teaching.⁴
15. Even if one disagrees with these sentiments, the rights to freedom of opinion and expression under Article 19 of the ICCPR should not be unnecessarily infringed for the sake of sparing hurt feelings where actual incitement to violence or gross mistreatment does not occur.
16. Similarly, people of faith who personally run businesses catering to the public, and who have no objection to serving individuals who identify as LGBT, have been fined, subjected to re-education orders, and in some cases forced to shut down as a result of not being able to creatively participate in same-sex marriage advocacy or a same-sex wedding in good conscience due to their sincere and deeply-held religious or moral beliefs regarding the nature of marriage.⁵
17. These are violations of the right to freedom of thought, conscience, and religion under Article 18 of the ICCPR, and all countries that have redefined marriage or are seeking to do so must take this into account when it comes to fulfilling their obligations to protect these rights.

⁴ ADF Legal, Approval of Same-Sex "Marriage" Leads to Censorship of Speech, 2013, <http://www.adflegal.org/detailspages/blog-details/allianceedge/2013/01/15/approval-of-same-sex-marriage-leads-to-censorship-of-speech>; ABC News Australia, Anti-discrimination complaint 'an attempt to silence' the Church over same-sex marriage, Hobart Archbishop says, 2015, <http://www.abc.net.au/news/2015-09-28/anti-discrimination-complaint-an-attempt-to-silence-the-church/6810276>; Catholic Herald, Spanish cardinal reported over 'hate crime,' 2016, <http://www.catholicherald.co.uk/news/2016/06/07/spanish-cardinal-reported-over-hate-crime/>.

⁵ ADF Legal, Jack Philips, <http://www.adflegal.org/detailspages/client-stories-details/jack-phillips>; ADF Legal, Jon and Elaine Huguenin, <http://www.adflegal.org/detailspages/case-details/elaine-photography-v.-willock>; ADF Legal, Baronelle Stutzman, <http://www.adflegal.org/detailspages/case-details/state-of-washington-v.-arlene-s-flowers-inc.-and-barronelle-stutzman>; ADF Legal, 3 Common Myths Used Against Christian Bakers like Aaron and Melissa Klein and Jack Phillips, 2016, <http://www.adflegal.org/detailspages/blog-details/allianceedge/2016/04/07/3-common-myths-used-against-christian-bakers-like-aaron-and-melissa-klein-and-jack-phillips>; ADF Legal, Brush & Nib Studio, <http://www.adflegal.org/detailspages/case-details/brush-nib-studio-v.-city-of-phoenix>; Belfast Telegraph, Forcing Ashers bakery to make pro-gay marriage cake could amount to cruelty, appeal hears, 2016, <http://www.belfasttelegraph.co.uk/news/northern-ireland/forcing-ashers-bakery-to-make-progay-marriage-cake-could-amount-to-cruelty-appeal-hears-34709014.html>.

Recommendations

18. In light of the aforementioned, ADF International suggests the following recommendations be made to the Czech Republic:
 - a. Recognize the right to life of all human life from conception until natural death, working to end abortion, whether socially, economically, or legally, and refrain from introducing new policies that violate the obligation of the State to protect life, such as euthanasia and assisted suicide.
 - b. Institute policies designed to safeguard and protect the family unit as the natural and fundamental group unit of society, and work to reduce divorce and family breakdown.
 - c. Retain the current definition of marriage as the union of one man and one woman, and refrain from enshrining a legal right on the part of individuals in same-sex unions to adopt and parent children that is prioritized over family units with both a mother and a father.
 - d. Ensure that the rights to freedom of opinion, expression, thought, conscience, and religion under Articles 18 and 19 of the ICCPR are guaranteed and protected with respect to all citizens, and that these rights are not infringed, especially by overreaching anti-discrimination regimes and so-called “hate speech” laws.



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