Record Card

File number	134/2013/DIS
Area of law	Discrimination – labour and employment
Subject	bullying / mobbing / bossing
Type of finding	Report of discrimination found – Section 21b
Result of inquiry	Discrimination found
Relevant Czech legislation	99/1963 Coll., Section 133a 262/2006 Coll., Section 16 198/2009 Coll., Section 1 (1)(c), Section 2 (3)
Relevant EU legislation	
Date of issue	14 December 2015
Date of filing	30 September 2013

Headnote

(I) Bullying or unequal treatment (Section 16 (1) of the Labour Code) by the employer does not necessarily have to consist of making unlawful demands; it may also consist in excessive or selective application of otherwise lawful measures. The fact that the employer exercises its rights *vis-à-vis* a certain employee in the lawful scope does not by itself exclude the possibility that in so doing the employer is bullying the employee or treating him or her unequally (Section 16 (1) of the Labour Code).
(II) Although an employee lacks entitlement to a prolongation of fixed-term employment relationship, an unusually short prolongation, non-prolongation or termination of employment by an employer who usually offers multi-year fixed-term employment contracts gives rise to a suspicion that unequal treatment occurred. If other circumstances indicate that such unusual treatment was motivated by one of the reasons listed in Section 133a of the Code of Civil Procedure, e.g. the employee's age, the employer is obliged to prove that its acts, although lawful *prima facie*, did not violate the principle of equal treatment.

Note: The headnote is not necessarily included in the Defender's opinion.

Document:

Brno, 14 December 2015
File No.: 134/2013/DIS/VP

Report on inquiry
concerning workplace bullying motivated by age and sex

In September 2013, the Public Defender of Rights was approached by Ms A. B., Ph.D. (hereinafter the "Complainant") with a complaint against being discriminated against by her superiors. At that time, the Complainant was an assistant professor at a department (hereinafter the "Department") of a faculty (hereinafter the "Faculty") of a university (hereinafter the "University")(anonymised).

At the time of the filing, the Complainant's superior was the head of the Department and dean of the Faculty, Prof. C. D., Ph.D. She allegedly treated the Complainant

worse than the other employees of the Department. The alleged unfavourable treatment consisted not only in being given additional unpaid work, usually consisting of banal, vaguely defined tasks, but chiefly in creating hostile environment at the workplace. This allegedly consisted in late delivery of itemised salary statements, late preparation of documents for the Complainant's performance evaluation, degrading the Complainant and creating a humiliating environment[1], and most importantly in extending the employment contract only by one year, even though other employees' contracts were prolonged for longer periods. According to the Complainant, in May 2013, the employment contracts of two of the Department's employees above 50 years of age were only extended by a single year.[2] At the same time, a Department's employee who was 33 years old received a 3-year contract extension. One of the five employees[3] received no extension at all and the employment of another employee[4] ended upon expiry of the agreed term in June 2014. The last of the five employees over 50 was, according to the complainant, a relative of the then head of the Department.[5] The Complainant also noted that she and her colleague, Mr E.F., were the only two participants in the project titled "Preparing an educational programme for civil engineers in the Moravian-Silesian Region" who were not selected for a language course that was part of the project, where they were also its oldest participants.

The Complainant later told the University rector, Prof. G.H. (hereinafter the "Rector") about her suspicion; he subsequently informed her through the letter of 13 November 2013 of the results of a review of the circumstances concerning the extension of her employment contract, where in his opinion there was no violation of the right to equal treatment.

Later, Prof. C.D., Ph.D. was replaced as the head of Department by her husband, Mr D.D., Ph.D. (hereinafter the "former Head of Department"). He allegedly commented on the age of the Complainant and one of her colleagues in a degrading manner. The workplace bullying was first aimed at the Complainant and her colleague, but gradually spread even to persons who stood up for them. The Complainant documented the growing pressure by comments of Mr I. J., Ph.D., who allegedly warned other Department's employees that they would be fired if they did not cut ties with the Complainant. Later, the former Head of Department reduced the working hours of some of the employees and fired others.

The Complainant further noted that her courses received negative feedback through the electronic evaluation system. However, with some help from an IT expert, she found out that the negative feedback was posted from her colleague's computer. The students, on the other hand, were happy with her courses and some requested that she continued teaching them.

The Complainant's employment was terminated upon expiry of the term of contract, i.e. on 30 September 2014. The Complainant had been employed by the Department since 2001, always on the basis of fixed-term contracts. First, she concluded a one-year contract (until 30 September 2002) which was subsequently extended, twice for 3 years (until 30 September 2005 and 30 September 2008, respectively), and subsequently for 5 years (until 30 September 2013). The last extension of her employment contract was for one year, until 30 September 2014.

The Complainant also approached the labour inspectorate with an objection against unequal treatment and workplace bullying. On 12 December 2013, she sent her complaint to the competent District Labour Inspectorate. However, the inspection was carried out by the State Labour Inspectorate, since multiple complaints from other employees of the University were received.

A – Subject of inquiry

The case consists in an alleged workplace bullying. However, the competence of the Public Defender of Rights in the area of equal treatment is limited by the scope of the Anti-Discrimination Act.[6] Not every case of workplace bullying constitutes discrimination in the sense of the Anti-Discrimination Act.[7] Therefore, the subject of my inquiry was not and could not have been to investigate the matter of bullying at the Department. My purpose was to provide advice and assistance to the Complainant who considered herself a victim of discrimination.[8] Given the Defender's limited powers to obtain evidence, this report is not to be considered a definitive and complete assessment of whether or not the Complainant was discriminated against. My report thus focuses on the aspects of discriminatory conduct that would have to be proven in any potential court proceedings.

The Public Defender of Rights also protects persons from an unlawful conduct of authorities if it is contradictory to law or does not observe the principles of good governance.[9] The Complainant alleged inactivity on the part of the labour inspectorate; nevertheless, the alleged inactivity was partially a result of the Complainant's own actions[10] and the labour inspectorate eventually did carry out an inspection with the results of which the Complainant agreed. For these reasons, I will not deal with these aspects of the labour inspectorate activities.

B – Findings of fact

B.1 Labour inspectorate

As part of my inquiry, I asked the State Labour Inspectorate for information on the case and copies of relevant materials. On 9 July 2015, I received the inspection record, measures proposed to remedy shortcomings, the University's objection, the response to the objections, supplement to the inspection record, the University's report of measures adopted to remedy shortcomings, and the testimonies of the University's employees recorded as part of the inspection.

According to the inspection protocol of 27 March 2015, the inspection was carried out at the rectorate and the Department since the labour inspectorate received, aside from the Complainant's complaint against alleged unequal treatment by the former head of the Department, also a complaint from an employee of the rectorate and the former Head of Department, who alleged unequal treatment by the dean of the Faculty, Prof. Q. R. The interviews with the Department's employees revealed that there was a hostile environment at the workplace as the former head of the Department gave preferential treatment to a group of his favourite employees while he unfavourably treated a group of employees he disliked. On 25 April 2014, there

was an argument between the former Head of Department and the Complainant which ended after the former Head of Department announced that everybody who would not work according to his instructions would be fired. The next day, some professors received negative feedback for the courses they taught; this feedback was sent from a computer belonging to an employee of the Department, despite the fact the feedback can only be provided by students. It also turned out that some of the professors who received negative feedback were not even teaching the evaluated courses in that year. This is important because negative student feedback was cited as one of the reasons for non-extension of the Complainant's employment contract.

Subsequently, on 28 April 2014, the former Head of Department requested that the Complainant submit, by 30 April 2014, certificates of medical treatment for 17 January, 26 February and 11 April 2014 and to also document the tasks she was working on during a number of days where she worked in the library or the University's main building. Similar requests were also made in respect of several other employees, but not all who received medical attention at the given period or were working in the library or the main building. At the time, the employer was not issuing or indeed using passes.

On 10 February 2014, the Complainant, alone among the Department's employees, was ordered to undergo an extraordinary medical examination by the University's physician. The examination was focused especially on the Complainant's mental condition. Given the circumstances, the labour inspectorate considered this act a frivolous exercise of rights (frivolous conduct).

On 11 June 2014, the former Head of Department proposed to terminate the employment of another employee over 50; however, this was not approved by the union organisation which considered such termination unjustified. The dean of the Faculty also disagreed with the proposal and dismissed the former Head of Department from office, terminating his employment contract on the grounds of redundancy.

The chairman of the union organisation, Mr S.T., Ph.D., testified that the employees of the Department were split between two quarrelling groups where one group defended the Complainant and the other affected employee and the other employees supported the former Head of Department. According to the union chairman's opinion, the whole situation arose because the former Head of Department ill-advisedly hired fresh graduates as junior professors and was firing older, less malleable professors.

The then deputy Head of Department, Mr U. V., Ph.D., stated that the Complainant did not respect the instructions of the former Head of Department, which lead to tension and disagreements between them.

The Complainant's employment was terminated on 30 September 2014 upon expiry of the term of contract. Subsequently, an agreement to complete a job (in Czech: *dohoda o provedení práce*) was concluded with her as the Department lacked sufficient staff to teach all courses. The agreement was concluded with the Complainant by Mr W. X. Ph.D., as an interim Head of Department.

The labour inspectorate further found out that the origins of the conflict could be traced to the extension of the Complainant's employment contract for a mere year, even though the usual term of extension was three years, and five years were not uncommon in certain cases. The Complainant was informed of the one-year extension in May 2013. Subsequently, a selection procedure for the same kind of work the Complainant was performing at the time was announced. The labour inspectorate considered such procedure suspicious and purpose-driven.

Especially in the first half of 2014, colleagues sympathetic to the former Head of Department put pressure on the Complainant. At the same time, pressure was put also on colleagues who supported the Complainant; they were being intimidated and told they had chosen the "wrong side".

The labour inspectorate also found out that for a long time, the employer tolerated late coming to work on the part of teachers who were teaching afternoon courses. Nevertheless, it was expected of some employees to strictly adhere to the working time, even though the resulting overtime work was not paid. The labour inspectorate considered such conduct frivolous.

According to the inspectorate, the employer failed to create satisfactory conditions at the workplace, as besides unsolved workplace disputes, even family members of the persons involved were also being dragged in.

The labour inspectorate also found other errors and cases of unequal treatment, although these were not directly related to the Complainant's case.

B.2 Employer

I also asked a representative of the employer, i.e. the Rector of the University, to comment on the case. In his response of 9 November 2015, he stated that the Complainant's employment contract was extended only for one year because of general reduction of working hours at the Department. Another four employees of the Department also received one-year extensions.

The Rector further stated that the average age of the Department's employees was, before as well as after the term in office of the former Head of Department, approximately 43 years, where the youngest employee was always around 30 while the oldest was over 60.

The Rector's letter confirmed that only selected employees were asked to document the reasons for their absence at work. However, he did not specify the criteria used to select these employees. The average age of the selected employees was 41.5 years.

Concerning the order to attend extraordinary medical examination, the Rector stated that the Complainant was so ordered due to her frequent doctor's visits; she also repeatedly said her medical condition was not good. He documented this by providing the Complainant's letter through which she terminated her participation in a project due to medical reasons, based on a doctor's recommendation.

Finally, the Rector said that although he informed the State Labour Inspectorate of the adopted remedial measures on 11 June 2015, he continued to insist on his objections to the inspectorate's findings.

C – The Defender's assessment of the case

In her complaint, the Complainant described a number of ways in which she was treated unequally. However, some of them could not be verified in any way during the inquiry due to the Defender's insufficient statutory powers to obtain evidence. My legal assessment of the case at hand is thus considerably limited as I did not have a sufficiently clear view of the real situation. The final assessment of the case belongs to the court.

C.1 Right to equal treatment

The right to equal treatment is declared by Article 1 of the Charter of Fundamental Rights and Freedoms (hereinafter the "Charter"), which states that people are equal in dignity and rights. The Charter further details the right to equal treatment for instance in Art. 3 (1), which stipulates a non-exhaustive list of reasons which must not serve as grounds for discrimination among persons in the application of the rights declared by the Charter. This constitutes a general prohibition of discrimination. A person's age is one of the protected grounds. In this case, the Complainant is entitled to exercise the right to obtain means of her livelihood by work pursuant Art. 26 (3) of the Charter.

The right to equal treatment declared by the Charter is further specified by a number of laws.[11] The Anti-Discrimination Act is the general legal regulation in this area. The idea of equality has its counterparts also in other laws and is not limited only to the prohibition of discrimination, protecting people from unequal treatment infringing on their dignity. The prohibition of discrimination is only the basis of the right to equal treatment since it protects human dignity, the underlying idea of the concept of human rights in modern countries governed by rule of law. However, there is also unequal treatment that does not represent discrimination within the meaning of the Anti-Discrimination Act.[12]

A breach of the principle of equality of employees is an example of such unequal treatment. The Labour Code[13], Section 16, stipulates the employer's obligation to ensure equal treatment to all employees, i.e. not only between the employee and the employer, but also among the employees themselves. Such defined right to equal treatment is broader in comparison to the prohibition of discrimination in that it does not prohibit unequal treatment only on the basis of a number of selected grounds.[14] Section 16 (3) of the Labour Code is an exception from the prohibition, as it permits unequal treatment if unequal treatment is required due to material requirements for the performance of work, where the intended objective must be justified and the unequal treatment must be proportionate.

The principle of equal treatment of employees can be violated by, *inter alia*, bullying by the employer or other employees. Workplace bullying (or also workplace violence) is a term for a wide spectrum of actions which are difficult to define. In the broader

conception, they can be described as a negative incident, either verbal or even physical.[15] It does not necessarily have to only consist of direct infringement of the individual's personality by an offence or attack, but can also include threats or influencing of free will (unlawful coercion). In other words, violence may affect the mental and physical part of personality and infringe on positive freedom, i.e. the ability to act in a certain way, as well as on negative freedom, i.e. the possibility to choose from an unrestricted selection of possible options.[16]

For these reasons, some types of bullying behaviour will have the hallmarks of discrimination while others will not. The differentiating criterion consists in the relationship of mutual emanation between unfavourable treatment and one of the protected grounds under the Anti-Discrimination Act. If there is no such relationship, this may represent unequal treatment within the meaning of Section 16 of the Labour Code.

Bullying committed by the employer (bossing) always violates Section 16 of the Labour Code and the affected person's right to equal treatment. The affected person may seek remedy either in court proceedings or via a complaint to the labour inspectorate which is authorised to impose penalties for unequal treatment.[17] In this case, the labour inspectorate concluded that the employer, i.e. the University, engaged in unequal treatment and, for this reason, initiated an administrative proceedings against the University.

C.2 Prohibition of discrimination

The Anti-Discrimination Act specifies the details of the right to equal treatment in selected areas of life, including employment.[18] Direct discrimination under Section 2 (3) of the Anti-Discrimination Act means an act or failure to take action, where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the protected grounds of discrimination, including age.

Suspected discrimination can be confirmed or disproved using a three-step discrimination test. The first step consists in establishing whether or not unfavourable treatment, i.e. treatment detrimental to the affected person, exists. However, not all kinds of unfavourable treatment constitute unlawful discrimination. Discrimination only consists in an unfavourable treatment motivated by prohibited grounds of discrimination such as age. The second step thus consists in establishing whether protected grounds of discrimination were involved. In other words, whether the affected person was identified by actual or putative grounds of discrimination.[19] The final step of the test consists in establishing whether or not there was a relationship of cause and effect between the unfavourable treatment and the presence of prohibited grounds of discrimination.

C.2.1 Less favourable treatment

According to the Complainant, the unfavourable treatment consisted of a number of actions and culminated by the termination of her employment. Due to the nature of some of the alleged actions, my inquiry was unable to conclusively confirm or disprove them; for this reason, I am focusing solely on the matters of extension of the

employment contract for one year only, requiring proofs of attendance and ordering extraordinary medical examination.

The Complainant asserts that in 2013, her employment contract was only extended for a single year, even though it was common at the Department for contracts to be extended for longer periods. This is well-documented even in the case of the Complainant herself. She only entered into a one-year employment contract with the University in 2001 when she was starting her work there. After that, she received two three-year extensions and one five-year extension. Based on the findings of the labour inspectorate, employment contracts with the Department's employees were usually fixed for three years, occasionally even five years. The unusually short extension of employment was justified by then head of the Department and the dean of the Faculty, Ms C. D., Ph.D., by the falling number of students. The Complainant was informed of the one-year extension on 21 May 2013. Subsequently, the then dean announced a selection procedure for two assistant professor jobs at the Department with commencement dates from October 2013 and March 2014, respectively.[20]

The Complainant further alleged that her employer requested that she provide documents concerning her absence at the workplace. According to the Rector's statement, the Complainant was asked to provide documents justifying her absences at work due to their high frequency and irregularities in her attendance sheet. The Rector noted that the Complainant was attending therapy, which in his opinion, however, could not be classified as "personal reasons" under which the employer is obliged to grant the employee time off work.[21] The Complainant also stated the fact she was visiting various libraries as the reason why she was not registered in the central University library.

The employer is entitled to check the employee's presence at the workplace[22] and request documents to prove the reasons for absence if the employee asks for time off work due to serious personal impediments to work in the sense of Section 199 (1) of the Labour Code. The employer is also obliged to observe the principle of equal treatment of all employees pursuant to Section 16 (1) of the Labour Code, therefore if the employer only checks attendance of selected employees instead of all employees, this may be regarded as workplace bullying. In this case, the labour inspectorate found that the employer did not require proofs of absence from all employees and was not even using a pass system. Attendance records were written and the employees made records independently. Documents for non-attendance were not usually required.[23]Moreover, coming to work late was tolerated in case of the Department's employees who were teaching afternoon courses. For these reasons, the request to document the reasons for absence is unusual in terms of the employer's usual practice.

The last of the Complainant's allegations I address in more detail concerns the ordering of extraordinary medical examination. In February 2014, the Complainant, alone among the Department's employees, was ordered to undergo an extraordinary medical examination by the University's occupational health doctor. The labour inspectorate found no objective reasons for this step. The Complainant's work was classified under category one jobs, which under current knowledge probably do not carry any health risks.[24]The labour inspectorate also found that at the time the

extraordinary examination was ordered, there were other employees who missed work due to health checks and treatment. Nevertheless, only the Complainant was ordered to undergo extraordinary medical examination. The labour inspectorate considered this to be a frivolous exercise of a right. The Rector justified the procedure by repeated statements by the Complainant that her medical condition was not good. He documented this assertion by her resignation from a project due to health reasons and attached a copy of the Complainant's letter. The attached resignation letter is dated to December 2012, while the Complainant was ordered to undergo the extraordinary medical examination in February 2014. The two events thus clearly lack any temporal connection. Therefore, I consider this Rector's assertion unsubstantiated and regard the ordering of the extraordinary medical examination as a suspicious step.[25]

C.2.2 Protected ground of discrimination

The Complainant stated she felt treated unfavourably due to her age. Based on her comments, she was not the only employee over 50 at the Department who was subjected to less favourable treatment. In 2013, the Complainant was 57 years old. Persons over 50 years of age can generally be considered as a vulnerable group in terms of employability.[26] For this reason, I believe the Complainant was identified by a prohibited ground of discrimination, i.e. age.

C.2.3 Cause and effect

The final step of the discrimination test is to prove a relationship of cause and effect between the less favourable treatment and the protected ground of discrimination. In part C. 2. 1 – Less favourable treatment, I addressed the selected three types of unfavourable treatment to which the Complainant was subjected. The actions in question seem legal and legitimate on the surface. However, if bullying by the employer is claimed, it is necessary to inquire into the legitimacy of the employer's actions, as bullying usually consists of using the employer's lawful rights against the employee. Indeed, the prohibition of discrimination is not directed against breaching a law (such as the Labour Code), but focuses on actions taken against persons identified by some of the prohibited grounds of discrimination. In other words, the employer is allowed to decide with whom and for how long it will enter into an employment contract, however, the employer must not use any of the prohibited grounds of discrimination such as age.

In the event the affected person can be identified by one of the prohibited ground of discrimination and the employer's conduct is unusual, albeit legal, this constitutes suspicious conduct in terms of prohibition of discrimination. Taking into account the provisions of Section 133a of the Code of Civil Procedure[27], stipulating the institute of shared burden of proof in some discrimination disputes, the employer is the one who must dispel the suspicion.[28]

The Rector stated with respect to the one-year extension of the Complainant's contract that this resulted from the need to reduce the Department's staff due to the falling number of students and, consequently, the lesser need for teachers. Such justification seems legitimate as it is solely up to the employer to decide how many employees it needs to carry out its activities. However, such justification in itself does

not reduce the suspicion that a specific employee was discriminated against. The need to reduce the staff in itself is not sufficient to dispel the suspicion of age discrimination. In selecting the specific employees to be let go, the employer must not use one of the protected criteria under the Anti-Discrimination Act.

Moreover, I dispute whether this need was real as at the time when the number of students was allegedly falling,[29] a new selection procedure for two assistant professor jobs was announced. The Rector did document the reduction of the Department's staff, but only provided data from 2014 onward, i.e. from the time when the Complainant had ceased to be an employee of the University. Moreover, the fall in the number of students or the corresponding need to reduce the staff were to occur in May 2013, when the Complainant received the one-year extension. Therefore, I agree with the labour inspectorate and consider the asserted need to reduce the staff as solely purpose-driven, since it contrasts with the announced selection procedure. The Rector did not substantiate his assertion with verifiable facts and only provided data for a different time period. I therefore believe that the employer failed to prove its assertion beyond any reasonable doubt and still consider the one-year extension of employment contract as suspicious conduct.

The attendance records were kept in a lax fashion and the usual practice was not to require proof concerning the reasons for absence. Therefore, the requirement to deliver within two days the doctor's certificates of treatment for the past four months is very unusual.[30] However, the Rector explained this unusual treatment by the frequency of absence and the ascertained irregularities. I consider his justification rational and legitimate. Nevertheless, it would have to be proven in court where the employer would be required to provide evidence for its assertions, as well as that it would have done the same in similar cases.

The employer is also entitled to request that an employee undergo an extraordinary medical examination. Pursuant to Section 103 (1)(a) of the Labour Code, it is obliged to prevent a situation where the employee would be performing work for which he or she is not medically fit. If there is a suspicion that a specific employee is not medically fit to perform a certain job, then it is completely legitimate for the employer to request that the employee undergo a medical examination. Nevertheless, I believe the employer did not document its assertions beyond reasonable doubt as it only documented it by the Complainant's time-unrelated letter of resignation from a project. For these reasons, I consider the given assertion as purpose-driven.

Given the above circumstances, I believe that the employer failed to refute the suspected discrimination beyond reasonable doubt. However, the final assessment of this matter belongs to the court.

C.3 Sharing the burden of proof

The institute of shared burden of proof is used in lawsuits against age discrimination in the area of employment. Pursuant to Section 133a of the Code of Civil Procedure, if the plaintiff proves that he or she was treated unusually and simultaneously claims that the reason for the unusual treatment consisted in one of the protected grounds, it is up to the defendant to prove legitimate reasons for the less favourable treatment.[31]

The labour inspection proved that the University treated the Complainant in an unusual manner. The labour inspection revealed that unfavourable environment was created at the workplace by the former Head of Department Mr. D. D., Ph.D., culminating in a split of the departmental team into two quarrelling groups. The three aforementioned conducts can serve as an example of that. The Complainant also claims that she was unfavourable treated because of her age. I thus believe that in any potential court proceedings, the Complainant would meet the plaintiff's requirements to invoke sharing of the burden of proof pursuant to Section 133a of the Code of Civil Procedure.

C.4 Unfavourable treatment of other employees

The labour inspectorate's findings demonstrate that other employees were also subjected to unfavourable treatment. However, not all these persons were over 50 years of age. This fact in itself does not exclude the possibility that the Complainant was discriminated against.[32] The Complainant stated that the primary reason behind her being treated unfavourably was her age. Her younger colleagues were allegedly only affected due to their attitude to unfavourable treatment of their older colleagues. However, proving these assertions would be a subject of potential court proceedings.

D – Conclusions

The Complainant approached the Public Defender of Rights with a claim that she was bullied by her former employer. Given the fact the Public Defender of Rights provides methodological assistance to victims of discrimination, my inquiry only focused on the matter of possible discrimination by the employer. Due to the limited ways of obtaining evidence, I concentrated on three selected actions, i.e. the one-year only extension of employment contract, request for proof of absence and ordering of extraordinary medical examination.

All three actions proved to be unusual at the relevant workplace. The Complainant also claimed she was treated unfavourable due to her age. This gave rise to the suspicion that the University discriminated against the Complainant.

For this reason, I asked the Rector to explain the University's actions *vis-à-vis* the complainant. I regard the explanation based on the falling number of students as unreliable, as the then dean immediately opened a new selection procedure for two assistant professor jobs at the Department. The request that the complainant documents the reasons for her absence was justified by the Rector by the Complainant's frequent absence at work and the revealed irregularities in the attendance sheet. I would regard this justification as legitimate if these assertions were proven. The Rector justified the ordering of an extraordinary medical examination by the Complainant's comments concerning her medical condition and the resignation from a project due to health reasons. Given the fact that the Complainant's resignation was not temporally related to the ordering of the extraordinary medical examination, I regard this explanation as purpose-driven.

Taking into account the institute of shared burden of proof that would be applied in potential court proceedings, it would be up to the Complainant to document all the alleged unusual actions and claim that they were taken due to her age. The defendant, i.e. the University, would then have to refute these suspicions, i.e. assert and prove non-discriminatory reasons that justified its unusual treatment of the Complainant. The labour inspection proved that the Complainant was treated in an unusual manner. Within my inquiry, the Complainant also alleged that this unfavourable treatment was motivated by her age. In my opinion, the collected evidence is sufficient to justify sharing of the burden of proof. However, the final assessment of this matter belongs to the court.

I am sending this inquiry report to Mr G. H., the Rector of the University, and request that he responds within 30 days of its delivery.

I am also sending this inquiry report to the Complainant.

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights

[1] Verbal humiliation of older employees, i.e. the Complainant and Ing. Hana Ševčíková, Ph.D., in front of the Department's other employees, e.g. during staff meetings.

[2] Aside from the Complainant, this also concerned E. F.

[3] This allegedly concerned Mr K. L., Ph.D., who was 69 years old at that time.

[4] M. N., Ph.D.

[5] O. P.

[6] Cf. Section 21b of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

[7] 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. I am addressing the aforementioned issues in more detail below.

[8] See Section 1 (5) and Section 21b (a) of the Public Defender of Rights Act.

[9] Section 1 (1) of the Public Defender of Rights Act.

[10] The Complainant repeatedly asked the District Labour Inspectorate to not carry out the inspection. In each case she was reacting to a change in the circumstances at the workplace.

[11] The Consumer Protection Act or the Labour Code can be mentioned as an example. However, this also includes all procedural rules (especially the Code of

Civil Procedure, Code of Criminal Procedure, and Code of Administrative Procedure) which stipulate the equality of parties to the proceedings.

[12] In this connection, it is appropriate to mention the difference that exists between equal treatment, i.e. provision of the same benefits and burdens, and treatment of equals, i.e. provision of the same level of attention. The first category includes the prohibition of discrimination, while the other category concerns procedural rules governing the equal position of parties to the proceedings.

[13] Act No. 262/2006 Coll., the Labour Code, as amended.

[14] KVASNICOVÁ, Jana, ŠAMÁNEK, Jiří et al. Antidiskriminační zákon (Anti-Discrimination Act). Commentary. Praha: Wolters Kluwer ČR, a.s., 2015, p. 26-27. ISBN 978-80-7478-897-6 The Anti-Discrimination Act confers protection only against the most deplorable grounds of discrimination, which in themselves lead to violation of human dignity. This is why it includes an exhaustive list of protected (i.e. prohibited) grounds of discrimination. See Section 2 (3) of the Anti-Discrimination Act.

[15] For more details, see CHROMÝ, Jakub. Násilí na pracovišti. Charakteristika, rizikové faktory, specifické formy a právní souvislosti (Violence at the workplace. Characteristics, risk factors, specific forms and legal context). Prague: Wolters Kluwer, 2014, p. 18. ISBN 978-80-7478-552-8.

[16] More on the concept of positive and negative liberty: BERLIN, Isaiah. Four Essays on Liberty. Prague: Prostor, 1999, p. 219. ISBN 80-7260-004-4.

[17] Breach of Section 16 of the Labour Code constitutes an administrative offence pursuant to Section 24 of Act No. 251/2005 Coll., on labour inspection, as amended. Pursuant Section 24 (2)(a) of the Labour Inspection Act, a fine up to CZK 1,000,000 may be imposed for this offence.

[18] Section 1 (1)(c) of the Anti-Discrimination Act.

[19] Section 2 (5) of the Anti-Discrimination Act.

[20] The advertisement was published in the Lidové noviny daily on 20 June 2013.

[21] Cf. provisions of par. (1) of the Annex to the Government Regulation No. 590/2006 Coll., stipulating the scope and extent of other important personal impediments to work. This Regulation implements the Section 199 of the Labour Code.

[22] Pursuant to Section 2 (2) of the Labour Code, the employee is obliged to perform his or her work at the employer's workplace or, as the case may be, at a different place if this is agreed.

[23] In the monitored period, proofs of absence were also required from some other employees, but it still was not a usual practice. According to the Rector, five employees were requested to provide proofs, even though there were 19 employees

at the Department at the time. I am addressing the issue of treatment of other employees of the Department in more detail below.

[24] Section 3 (1)(a) of Decree No. 432/2003 Coll., laying down the conditions for classification of works in categories, limit values of indicators of biological exposure tests, conditions for sampling biological material for performance of biological exposure tests and requisites for reporting work with asbestos and biological agents, as amended.

[25] I would also like to mention that the task of the occupational health doctor is to assess the employee's fitness to perform a specific job, not to provide general health care to the employee. The reason for the extraordinary medical examination thus cannot lie in a general health problem; it must be related to problems that could affect the ability to perform the job in question. Given the lack of evidence, I am unable to thoroughly assess this matter.

[26] Cf. e.g. HORÁK, Martin. Role úřadu práce v oblasti pomoci a zaměstnávání osob 50+ (Labour Office's role in the area of employment assistance to persons over 50). In: Stárnutí populace jako výzva (Ageing Population as a Challenge). p. 58. Alternativa 50+, Prague, 2014, ISBN 978-80-905711-0-5.
HASMANOVÁ MARHÁNKOVÁ Jaroslava. Postavení osob 50+: Fakta a statistiky (Position of Persons over 50: Facts and Statistics). In: Postavení lidí po padesátce a reakce v oblasti veřejných politik v ČR (Position of persons over 50 and the Czech public policy responses), p. 15-22. Alternativa 50+, Prague, 2014, ISBN 978-80-905711-1-2.

[27] Act No. 99/1963 Coll., the Code of Civil Procedure, as amended.

[28] I am addressing the issue of sharing the burden of proof in more detail below.

[29] However, the Rector did not provide evidence for this assertion. He only indicated the Department's staffing from 30 September 2014 onward.

[30] Based on the labour inspection results, on 28 April 2014 the Complainant was requested to submit, by 30 April 2014, the proofs of medical treatment for January to April 2014.

[31] This conclusion was made by the Constitutional Court in its judgement of 26 April 2006, File No. Pl. ÚS 37/04 and reiterated in its judgement of 7 May 2013, File No. II. ÚS 4854/12. It was further elaborated on in the judgement of 30 April 2009, File No. II. ÚS 1609/08, in which the Court also addressed the issue of statistics in cases of suspected discrimination at work on the grounds of age.

[32] Concerning the issue of too broad reference group, cf. e.g. the judgement of the Constitutional Court of 30 April 2009, File No. II. ÚS 1609/08, in which it rejected arguments based on the average age of all the employees.