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Decision-making of Czech courts in discrimination disputes 2015–2019

A survey conducted by the Public Defender of Rights in 2020

Contents

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 and 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.

Glossary of useful terms

Anti-discrimination action (anti-discrimination lawsuit) – an action (lawsuit) by virtue of which the plaintiff asserts his or her rights under the Anti-Discrimination Act. The plaintiff can claim refrainment from discrimination, remedying the consequences of discrimination, reasonable satisfaction and financial compensation for intangible damage.

Incitement to discrimination – persuading, convincing or inciting another person to discriminate against a third party.

Indirect discrimination – conduct or an omission where a person is put in a disadvantageous position on the basis of an apparently neutral provision, criterion or practice. Within the meaning of the Anti-Discrimination Act, such conduct occurs on the same grounds as direct discrimination. Provision, criterion or practice is not considered indirect discrimination if it is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.

Indirect special discrimination – refusing or omitting to adopt reasonable accommodations in order for a disabled person to have access to employment, work or a functional or other advancement in employment, job counselling, other professional training, or to be able to use services available to the public.

Harassment – a form of discrimination consisting in an unwelcome and unsolicited behaviour associated with grounds of discrimination diminishing a person's dignity and creating a threatening, hostile, humiliating, degrading or offensive environment (e.g. making disability jokes or depicting women or ethnic minorities at the workplace in an offensive manner). A behaviour that may be justifiably seen as a condition for making certain decisions (e.g. when a prospective female employee is asked about how many children she plans to have) also constitutes harassment.

Instruction to discriminate – the abuse of a subordinate position of another person to discriminate against a third party.

Victimisation (also retaliation) – an unfavourable treatment, punishment or placing at a disadvantage in consequence of exercise of rights under the Anti-Discrimination Act.

Direct discrimination – an act or a failure to act, where one person is treated less favourably than another is, has been or would be treated in a comparable situation, based on any of the grounds of discrimination.

Sexual harassment – a form of discriminatory conduct of a sexual nature; see the term "harassment".

Survey Report 2015 – the Defender's survey report from 2015 mapping the obstacles faced by victims of discrimination in accessing justice.[1]

1 The report is available at: https://www.ochrance.cz/fileadmin/user_upload/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf.

Relevant legislation

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. This is a general law that prohibits discrimination in the areas it defines (e.g. work and employment and access to goods and services) and stipulates the underlying definitions of discrimination and the associated terminology.

Charter of Fundamental Rights and Freedoms – Constitutional Act No. 2/1993 Coll., resolution of the Presidium of the Czech National Council on promulgating the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, as amended.

Gender Directive – Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Code of Civil Procedure – Act No. 99/1963 Coll., the Code of Civil Procedure, as amended.

Civil Code – Act No. 89/2012 Coll., the Civil Code, as amended.

Former Labour Code Act No. 65/1965 Coll., the Labour Code, as amended.

Framework Directive – Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Race Equality Directive – Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Former Civil Code – Act No. 40/1964 Coll., the Civil Code.

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

Legal Profession Act – Act No. 85/1996 Coll., on the legal profession, as amended.

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

Security Corps Service Relationship Act – Act No. 361/2003 Coll., on the service relationship of the members of security corps, as amended.

Courts and Judges Act – Act No. 6/2002 Coll., on courts, judges, lay judges and State administration of the judiciary and on amendment to some other laws (Courts and Judges Act), as amended.

Court Fees Act – Act No. 549/1991 Coll., on court fees, as amended.

Civil Service Act – Act No. 234/2014 Coll., on the civil service, as amended

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

Professional Soldiers Act – Act No. 221/1999 Coll., on professional soldiers, as amended.

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

Foreword

Multiple authorities are responsible for the protection from discrimination in the Czech Republic. However, the main role is played by independent courts, which are the only authorities with the power to issue a binding decision. They authoritatively decide whether a particular individual was discriminated against and rule on the claims raised by the plaintiff.

In my role as Public Defender of Rights, I often receive questions concerning judicial protection from discrimination. How many lawsuits were brought? What did the plaintiffs seek? What was their success rate? It is important to know the answers to these questions. In addition to responding questions of general nature, I need the information to perform my duty to promote the right to equal treatment free of discrimination, as part of which I am statutorily obliged to provide methodological assistance to the victims of discrimination. If I am approached by a person claiming discrimination, I have to know whether the courts have already ruled in a similar case and what the outcome was. On that basis, I can evaluate whether it makes sense in the particular case to seek court protection and what the chances of success would be.

The decision to study anti-discrimination case law is not entirely new. This survey report is a follow-up to a report titled “Discrimination in the Czech Republic: Victims of Discrimination and Obstacles in Access to Justice” issued by my predecessor in the office of the Public Defender of Rights in 2015. By design, this report is significantly narrower in scope. Unlike the preceding report, it omits public authorities (inspectorates) and decisions rendered by administrative courts. It focuses solely on decisions made in civil litigation. The narrower scope of questions enables a deeper analysis.

The surveyed period ran from 2015 to 2019. However, this report also includes decisions in cases initiated prior to 2015, but rendered within the aforementioned surveyed period. The main reason for this is that these decisions were not included in the previous report. I have also included in the report decisions made at the beginning of 2020 in proceedings initiated within the surveyed period.

The objective of the survey is to provide a complete picture of the courts’ decision-making in lawsuits concerning claims of unequal treatment. The survey report should primarily stimulate expert discussion on the topic with participation of judges and representatives of the legal profession, as well as the academia. Such a discussion could yield a more substantial review of and deeper insights in matters concerning anti-discrimination law. Assessment of judicial decisions requires a certain degree of restraint. I understand that I do not have the remit to evaluate the decision-making activities of independent courts.

I believe that research activities would benefit from the participation of experts from the academia. It is a general rule that theoretical knowledge should be confronted with the actual practice. I believe that this also applies in the opposite direction: deeper theoretical knowledge should help to sort and interpret data obtained from that practice.

Finally, I would like to emphasise that the collection of data required to compile this survey report would be impossible without the ready co-operation of the courts which provided

the decisions we asked for. Therefore, I wish to extend my thanks to the courts for their support.

Have a pleasant reading.

Summary

1. The source data included **204 court decisions** rendered in proceedings concerning the total of **90 actions**, of which 104 were decisions rendered by district courts, 56 were decisions on appeals rendered by regional courts, 25 were decisions of the Supreme Court rendered in appellate review proceedings, and 19 were decisions of the Constitutional Court.

2. **A half of the plaintiffs claiming unequal treatment were unsuccessful in court.** Of the total of 104 decisions, first-instance courts dismissed 54 of the actions lodged (52%). This is comparable to the 2010–2014 period where first-instance courts dismissed 29 actions within a total of 56 decisions (ca. 52%).

3. Compared to the previous period, there was a **slight increase in the number of cases where the plaintiff was successful** (4 cases) or at least partially successful (12 cases) at first instance: 16 cases from a total of 104 decisions (ca. 15%). In the 2010–2014 period, plaintiffs' lawsuits were successful in first-instance courts in only 6 out of a total of 56 decided cases (ca. 11%).

4. Most lawsuits were brought in the area of **work and employment** (59 actions out of 90 in total, or ca. 60%). Compared to the previous period, the number of cases where plaintiffs identified certain grounds of discrimination (protected characteristics) under the Anti-Discrimination Act also increased (82 actions out of 104 in total, or ca. 79%). **Disability** was the most frequently invoked discrimination ground (24 cases, or ca. 23%). Plaintiffs most often asserted **direct discrimination** (57 cases, or ca. 55%) and sought **financial compensation for intangible damage** (59 cases, or ca. 57%).

5. In a majority of cases, both parties to the court proceedings were represented by an attorney-at-law. Courts most often did not award compensation for the costs of proceeding to either party (104 cases out of a total of 201, or ca. 52%).

6. As a rule, most lawsuits are initiated in Prague. Court districts outside larger cities most often reported no equal treatment lawsuits.

7. As concerns the evidence taken to prove discrimination, the Constitutional Court has made three important contributions to developing a constitutional interpretation of the principle of **shared burden of proof**. Some victims of discrimination in the area of healthcare, housing and education have only a very limited possibility to prove discrimination as the existing laws do not permit sharing of the burden of proof.

8. Potential victims of discrimination find it very difficult to prove discrimination with respect to conduct where individuals (e.g. employers) have a broad discretion and are not required to state reasons for their final decisions. Courts do not consider such conduct suspicious *prima facie*. **Secret recordings** made by private individuals for the purpose of proving discriminatory conduct in civil proceedings have become a generally accepted form of evidence within the surveyed period.

9. The requested **compensation for intangible damage** was awarded or confirmed by courts in 17 cases (of the total of 59 cases where plaintiffs sought such a

compensation). The highest requested compensation during the surveyed period was CZK 10 million (EUR 388,531). In 7 cases, the plaintiff requested a compensation of over CZK 1 million (EUR 38,865) and in 4 cases in the amount of CZK 1 million (EUR 38,865). In the other 47 cases, the compensation sought was at CZK 500 thousand (EUR 19,433) or lower. On average, the plaintiffs sought a compensation in the amount of CZK 594,375 (EUR 23,093).

10. The highest amount actually awarded was CZK 400,000 (EUR 15,546). The lowest amount awarded by a court was CZK 15,000 (split among three plaintiffs). Courts awarded the compensation for intangible damage in the full amount requested by the plaintiffs only in two cases (comprising three decisions). The average amount of compensation awarded by courts was CZK 79,569 (EUR 3,091).

11. In cases where courts awarded compensation for intangible damage, they referred to a violation of the Charter of Fundamental Rights and Freedoms and cited the seriousness of the violation. In cases where courts did not award any compensation, they believed that awarding different forms of relief was sufficient or argued that the defendant's subsequent steps had minimised the infringement of the plaintiffs' dignity.

12. As concerns **consideration given to the opinions of the Public Defender of Rights**, the courts heard 14 cases where the Defender had been involved before. In 9 cases, the outcome of the proceedings regarding the assessment of discrimination was in line with the Defender's conclusions (ca. 64%). The court's opinion was different from that of the Defender in 5 cases (ca. 36%). Taking into account the decisions of courts at various court instances, the first-instance courts had a different opinion than the Defender in 9 out of 17 cases (ca. 53%). They agreed with the Defender in 8 cases (ca. 47%). Appellate courts only agreed with the Defender's opinion in 3 out of 8 cases (ca. 38%), while in 5 cases they arrived at a different conclusion (ca. 62%). Where the proceedings advanced to the Supreme Court, it agreed with the Defender in all the cases (3 appellate review decisions).

13. First-instance courts most often agreed with the Defender's opinions in the area of work and employment. However, this was also the area where the Defender's opinions were most frequently rejected by appellate courts. Conversely, the area of education included the highest proportion of cases where the first-instance courts came to a different conclusion than the Defender.

14. The courts dealt with discrimination in the area of **work and employment** in a total of 59 cases. The most common was discrimination on grounds of age (16 cases, ca. 27%) and sex (15 cases, or ca. 25%). Plaintiffs in labour-law disputes were most frequently female (35 cases, or ca. 59%). The defendants in these cases were mostly public sector organisations and institutions (36 cases, or ca. 61%). In a total of 8 cases, courts granted anti-discrimination actions in the area of work and employment (ca. 14%) and amicable settlement was achieved in 5 cases (ca. 8%). Courts dismissed 27 such actions (ca. 46%). Proceedings were discontinued in 9 cases (ca. 15%). In another 10 cases, the proceedings are still ongoing (ca. 17%).

15. Courts found age discrimination in the case of a (female) judicial officer who claimed wrongful dismissal. They also stood by a university lecturer who defended herself against workplace harassment. An employee of a private company successfully secured her full contractual severance pay which had previously been reduced due to her retirement age. Courts also upheld the lawsuit filed by a woman who claimed sex/gender discrimination because she had been removed from a senior position shortly before commencing her maternity leave.

16. In the area of **healthcare**, courts heard only 5 actions (ca. 6%). Four of them concerned the refusal to accept patients, either because of their disability (2 cases) or their Roma ethnicity (2 cases). One lawsuit where the plaintiff invoked discrimination on grounds of disability was dismissed by the court. Other three cases were settled amicably. In one case, the plaintiff asserted that he had been provided with a worse level of healthcare due to his disability. Proceedings in this case are yet to be concluded through a final decision.

17. Courts decided on 11 cases (ca. 12%) involving discrimination in the area of **education** (a total of 21 decisions). Protection from discrimination in the area of education is most often claimed by minors. In these cases, an action may be filed with a court only with the approval of the guardianship court. However, courts often did not check whether such an approval had been given. Courts did not generally hear the minor plaintiffs' testimony.

18. As concerns access to education, the courts heard 5 cases. Plaintiffs most often invoked discrimination on grounds of their Roma ethnicity (2 cases) and disability (2 cases). In one case, the plaintiff invoked discrimination on grounds of her religious beliefs. Courts found discrimination in a case where primary schools refused to enrol a Roma boy and a pupil with autism.

19. Regarding the education conditions, courts heard a total of 6 cases. Four concerned the funding for a teaching assistant for students with special educational needs.

20. Discrimination in the area of **goods and services** (except for housing and healthcare services) was claimed only in 2 lawsuits (ca. 2%). In both cases, amicable settlement was reached and the court did not address the merits of the case.

21. In the surveyed period, courts decided on 9 cases (ca. 10%) concerning equal access to **housing**. In most cases, people defended themselves against discrimination on grounds of their Roma ethnicity (7 cases); the other cases involved a disability (2 cases). In 5 cases, the courts ruled that discrimination had occurred (ca. 56%); out-of-court settlement was reached in the remaining 2 cases (ca. 22%). One case concerned accommodation at a hotel (ca. 11%), 6 cases involved looking for housing on a private real estate market (ca. 67%) and 2 cases concerned discrimination in access to municipal housing (ca. 22%).

22. Common courts dismissed an action lodged by plaintiffs who had invoked discrimination on grounds of their Roma ethnicity after being refused accommodation at a hotel. However, the Constitutional Court annulled the common courts' decisions and the first-instance court granted the plaintiffs' claims in new proceedings.

23. As concerns search for housing on a private market, the courts concluded that discrimination may occur even if persons are merely testing their rights. This was a case where the plaintiff did not have any actual interest in a flat and was only checking whether she could exercise her rights without obstructions. Courts further found discrimination in the case of a flat owner who refused a person interested in renting the flat due to his Roma ethnicity. Further , courts concluded that the principle of non-discrimination also applied to real estate brokers.

24. Regarding municipal housing, courts found discrimination in a case where a town had refused to rent a flat to a blind applicant, despite the fact he had offered to pay the highest rent. On the other hand, courts dismissed two cases where plaintiffs sought protection against a town's segregationist housing policy.

Recommendations

Recommendations to amend legal regulations[2]

These are recommendations which the Defender has already formulated and is seeking their implementation:[3]

1. **Change Section 10 of the Anti-Discrimination Act so that the current paragraphs 2 and 3 are replaced by paragraph 2 in the wording: "The manner and amount of reasonable satisfaction is governed by provisions of civil law":** At present, the Anti-Discrimination Act grants satisfaction in money to victims of discrimination only if other solutions (refraining from further discrimination, remedying its impacts, apology, etc.) are not sufficient to remedy the discriminatory conduct. This is at variance with EU law and especially case law of the Court of Justice of the European Union, which indicates that, as a rule, financial satisfaction should be awarded to discrimination victims in each case. Practices of Czech courts show that a compensation for intangible damage in money is usually not awarded to victims of discrimination at all, or is disproportionately reduced with reference to applicable laws. As such, it lacks the effects in terms of prevention, satisfaction and sanctions.

2. **Extend the provisions of Section 133a of the Code of Civil Procedure to ensure conformity with the Anti-Discrimination Act:** The current legal regulation of the sharing of burden of proof does not cover all situations where discrimination is prohibited by the Anti-Discrimination Act. Victims of discrimination thus lack equal procedural protection in court. While the burden of proof is always shared in cases of discrimination on grounds of race and ethnicity, with respect to other protected characteristics, it applies only in the area of labour law (with the exception of "sex and gender", where the burden of proof is also shared in the area of access to goods and services). Victims discriminated on the basis of their age or disability thus have a worse procedural standing if they defend themselves against discrimination in access to education, healthcare, but also housing, goods and services. The burden of proof should be shared in all areas and with respect to all the protected characteristics. At the time when this report was published, the Chamber of Deputies of the Parliament of the Czech Republic was discussing a deputies' proposal for an amendment to the Code of Civil Procedure consolidating the rules for sharing the burden of proof.

3. **Reduce the judicial fee for appealing against a court decision relating to anti-discrimination actions so that it is equal to the fee for an application to initiate court proceedings in anti-discrimination cases:** The existence of a fee for lodging an anti-

2 Made within the meaning of Section 22 (1) of the Public Defender of Rights Act.

3 For instance, the legislative recommendation made in 2015 for sharing of the burden of proof or the legislative recommendation made in 2018 concerning reasonable satisfaction and the publishing of court decisions; see the Defender's annual reports available at: https://www.ochrance.cz/zpravy-o-cinnosti/zpravy-pro-poslaneckou-snemovnu/. Similar recommendations were formulated by the Defender also in the 2015 Survey Report.

discrimination action and its amount can, to a significant degree, influence whether the victims of discrimination will defend themselves in civil courts. An effective defence against discrimination must be available to everyone who feels wronged by less favourable treatment, regardless of their property or social status. Based on the Defender's recommendation, the fee for lodging an anti-discrimination action was reduced to CZK 1,000. However, the tariff of court fees is yet to include a reduction of the fee for appealing a decision of the first-instance court in anti-discrimination lawsuits. At present, the fee is CZK 2,000 in general; if the victim seeks a compensation in money exceeding CZK 200,000, the fee is always equal to 1% of the claimed amount. At the time when this report was published, the Chamber of Deputies of the Parliament of the Czech Republic was discussing a Government's bill amending the Court Fees Act which would reduce the fee for an appeal.

4. **Incorporate into the legal order an action in public interest (actio popularis) in cases involving discrimination**: The Anti-Discrimination Act, as amended, does not include the procedural institute known as "action in public interest" *(actio popularis)*, which could be used by organisations advocating the rights of discrimination victims (typically NGOs). It is a legal tool useful in cases where discriminatory conduct has affected the rights of a large number of people or where public interest could be seriously jeopardised. In many European countries, this is an effective tool to combat widespread discriminatory practices. It further eliminates barriers to lodging an action faced by a victim of discrimination (e.g., the fear of retaliation or ignorance of legal regulations). A secondary benefit would be brought by "creating" case law, which would improve legal certainty both for the victims of discrimination and persons who apply different treatment and are not sure whether or not that particular form of discrimination is lawful. Moreover, it should be noted that the discriminating entity would, in case of losing a lawsuit, merely cease its discriminatory conduct or remedy its consequences, but would not face the risk of having to provide financial compensation for intangible damage. At the time when this report was published, the Chamber of Deputies of the Parliament of the Czech Republic was discussing a deputies' proposal for an amendment to the Anti-Discrimination Act that would enable legal persons founded to protect the rights of victims of discrimination to lodge an action in public interest.

5. **Supplement Section 2 of the Anti-Discrimination Act with paragraph 6 of the following wording: "Discrimination also means conduct where a person is treated less favourably due to association with a characteristic protected under paragraph 3":** In practice, discrimination by association may occur if a person is treated less favourably because a person in a close (familial) relationship to the person has a protected characteristic. For example, employees may face harassment because they are parents of a disabled child. While such situations do occur in real life, the Anti-Discrimination Act does not explicitly cover them (unlike the Court of Justice of the European Union). This state of affairs continues to prevail, despite the Defender's recommendations. It is thus not clear how Czech courts or administrative authorities would deal with cases of discrimination by association. It is especially unclear whether

they would apply the principle of non-discrimination with regard to all the protected characteristics and all the forms of discrimination.

6. **Publish court decisions in a public database:** The Defender has, in the long term, supported the publishing of anonymised court decisions (not only in the area of combating discrimination). Consequently, he also recommends amending the Courts and Judges Act so that the courts are given a duty to publish their decisions in a public database. With regard to anti-discrimination disputes, the database should contain the outcome, the relevant area, the protected characteristic and the form of discrimination involved.

Recommendations on discrimination-related issues[4]

1. **Educate judges, judicial officers and attorneys-at-law:** Even though the Anti-Discrimination Act has been in effect for over a decade, anti-discrimination law is still a rather unexplored area. This is why it is desirable for the Judicial Academy and the Czech Bar Association to continue providing further education in anti-discrimination law, both as part of training in related topics (e.g., labour law, consumer protection and personal rights) and independently.

2. **Check how the new legal counselling provided free of charge works in practice:** Similarly as in the case of reducing judicial fees, the ability of a victim of discrimination to secure legal advice free of charge leads to a reduction in predictable costs on the part of the plaintiff. The victims of alleged discrimination are thus less reluctant to pursue their rights, despite being aware of potential additional costs in case they lose the lawsuit. In 2018, the Legal Profession Act was amended and new rules for providing legal advice free of charge were introduced. Therefore, the Defender recommends to the Ministry of Justice to check how the new system has worked in practice so far.

3. **Supplement and improve the accuracy of the records of judicial decisions kept by the Ministry of Justice**: The records of anti-discrimination court disputes kept by the Ministry of Justice are neither accurate nor complete. This is true despite the fact that such records can serve as a valuable source of information on the number of anti-discrimination lawsuits, as well as on their outcomes. It would thus be ideal if – until anonymised court decisions are available in a public database (see the previous recommendation) – courts provided the Ministry with anonymised decisions in addition to the file numbers and the areas concerned. The Ministry of Justice could then exclude the decisions unrelated to discrimination, but also keep records of the outcomes of disputes and the prevalence of protected characteristics and forms of discrimination involved. With regard to the low number of anti-discrimination lawsuits, the administrative burden associated with this measure should be acceptable.

4 Within the meaning of Section 21b (c) of the Public Defender of Rights Act.

Methodology

The objective of this survey was to describe and analyse the decision-making of Czech common courts in the period from 2015 to 2019 in cases where the plaintiffs claimed unequal treatment.

The survey methodology relied on quantitative content analysis, which is a research method used for a systematic and inter-subjectively verifiable description of contents.[5]

The survey was conducted **in two phases**. First, it was necessary to collect the necessary data, which were then sorted and analysed.

The set of court decisions included in the survey should be as complete as possible. However, the Czech Republic lacks a functional database for publishing all court decisions and the individual courts' records do not allow simple selection of decisions on actions involving claims based on unequal treatment. Several methods were thus used to collect anonymised copies of decisions in proceedings where the plaintiffs claimed unequal treatment.

Even prior to the start of this survey, the Public Defender of Rights had obtained a total of 75 decisions over the course of the Defender's activities. These were usually provided by complainants who, prior to lodging their action, approached the Defender asking for methodological assistance.

These decisions nevertheless comprised only a part of the potential survey set. The Defender thus asked all the district courts in the Czech Republic to send copies of decisions rendered by them and decisions rendered in the same case by higher-instance courts in appellate proceedings, including the judgements of the Constitutional Court, if applicable (see Annex 2 for the Defender's letter sent to the courts).

The Public Defender of Rights subsequently requested records of all court decisions kept by the Ministry of Justice within the infoData – Statistics and Reporting application. Based on these records, additional requests for some decisions were sent to the district courts. The Public Defender of Rights obtained a total of 131 decisions from the district courts.

The final data source was the Constitutional Court's Nalus public database, which was used to search for cases related to the Anti-Discrimination Act.

Based on the information obtained from the above sources, it was possible to prepare a survey set of court decisions (see Annex 1) including a total of 201 decisions in 90 separate cases, as follows:

5 SCHERER, Helmut. 2004. Úvod do metody obsahové analýzy *(Introduction into Content Analysis)*. In: SCHULZ, Winfried, ed. Analýza obsahu mediálních

sdělení *(Media Messages Content Analysis)*. Ed. Prague: Charles University in Prague, Karolinum, 2004, pp. 29–50.

- 104 district courts' decisions rendered in the first instance in a total of 90 sets of proceedings;[6]
- 56 regional courts' decisions on appeals rendered in a total of 39 sets of proceedings;
- 25 decisions of the Supreme Court on an application appellate review;
- 19 decisions of the Constitutional Court.

The survey set includes decisions on actions through which:

1. the plaintiff enforced claims under Section 10 of the Anti-Discrimination Act, i.e., refrainment from discrimination, remedying the consequences of discrimination, reasonable satisfaction or a pecuniary compensation for intangible damage;
2. the plaintiff enforced claims analogous to claims provided in Section 10 of the Anti-Discrimination Act, but based on special legal regulations, e.g., from Section 77 (9) of the Security Corps Service Relationship Act and Section 2 (5) of the Professional Soldiers Act;
3. the plaintiff enforced a claim which was, by its nature, special with regard to claims provided in Section 10 of the Anti-Discrimination Act, e.g., a decision on an action to declare employment termination invalid where the plaintiff invoked discriminatory conduct in the termination;
4. the plaintiff enforced another claim (following from the Labour Code, for instance) and referred to discrimination on the grounds provided in Section 2 (3) of the Anti-Discrimination Act, e.g., where the plaintiff sought compensation for damage in relation to discrimination or his/her salary claims (Section 109 *et seq.* of the Labour Code), etc.

The collected data had to be sorted. For statistical purposes, the following data were recorded:

- the form of discrimination;
- the area where discrimination had allegedly occurred;
- the protected characteristic (ground of discrimination).

These notions were interpreted pursuant to the Anti-Discrimination Act, where the Defender kept track both of what the plaintiff had claimed and what the court had found. Besides these data, the Defender also kept track of the payment of the costs of the proceedings, the parties' representation and the length of the proceedings.

For the purposes of the analytical part, it seemed most prudent to sort the data based according to the areas covered by the Anti-Discrimination Act.[7] Areas where no identifiable decisions were rendered were excluded. These were the areas of access to entrepreneurial activities, membership in trade union organisations and professional chambers, and

6 This category also included one decision rendered by a regional court in the first instance.

7 See Section 1 (1) of the Anti-Discrimination Act for more details.

provision of social benefits. The area of social security was also disregarded as only a single action was lodged there. The individual chapters of this report thus analyse case law in the areas of work and employment, healthcare, education, goods and services, and housing.

It was then necessary to identify cross-cutting topics of sufficient importance to warrant a separate analysis. The following three such topics were selected – the sharing of burden of proof, compensation for intangible damage, and courts' regard for the Defender's legal opinion.

1. Statistics

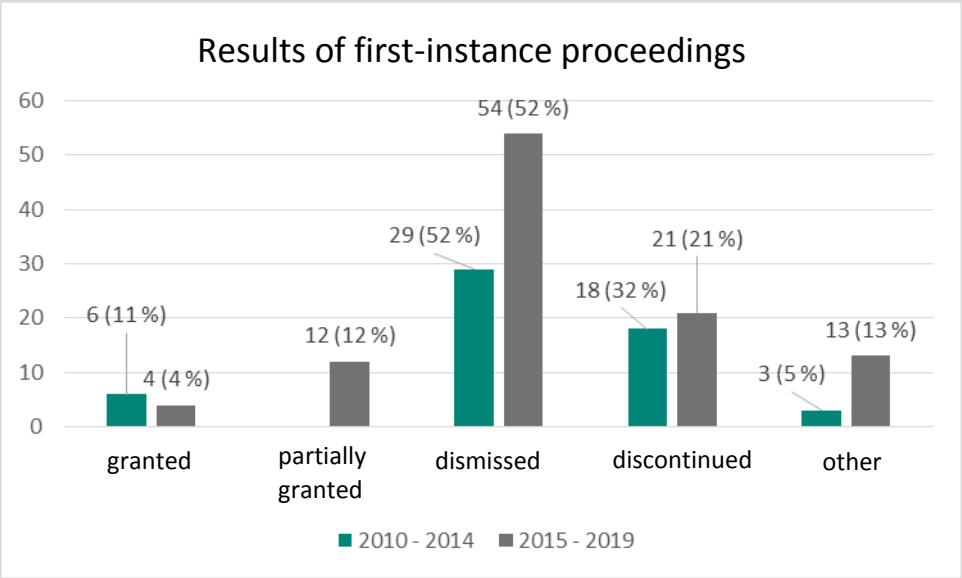
The survey set made it possible to collect statistical data revealing several important facts. Because this survey follows on from a previous one conducted in 2015, the results from the 2015–2019 period were compared to the available results from the 2010–2014 period. While there were 56 actions lodged in the 2010–2014 period, this number grew to 90 lawsuits brought in the 2015–2019 period. This represents a significant growth.

1.1 Outcomes of court proceedings

Statistical data show that most plaintiffs claiming unequal treatment were unsuccessful in court. In the 2015–2019 period, an action claiming unequal treatment was most often dismissed in the first instance (54 actions, or ca. 52%) or the proceedings were discontinued for various reasons (21 actions, or ca. 21%), e.g., because of a failure to pay the judicial fee or because the action was withdrawn. In the 2010–2014 period, first-instance courts dismissed 29 out of a total of 56 actions (ca. 52%).

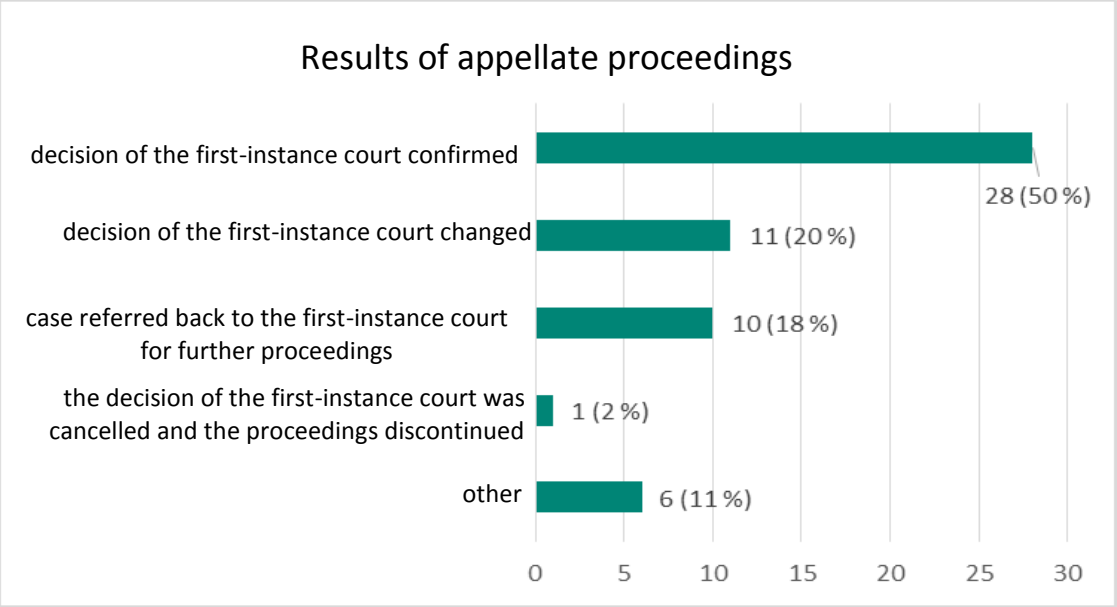
On the other hand, the number of cases where the plaintiff was successful or at least partially successful in court slightly increased in the 2015–2019 period. The action was granted in 4 cases (ca. 4%) and partially granted in 12 cases (ca. 12%). This amounted to 16 cases in total (ca. 16%). In 7 cases, the proceedings concluded with court-approved amicable settlement (ca. 7%). In the 2010–2014 period, lawsuits were successful in only 6 out of a total of 56 cases (ca. 11%).

Chart 1 – Results of first-instance proceedings (N = 56/104)



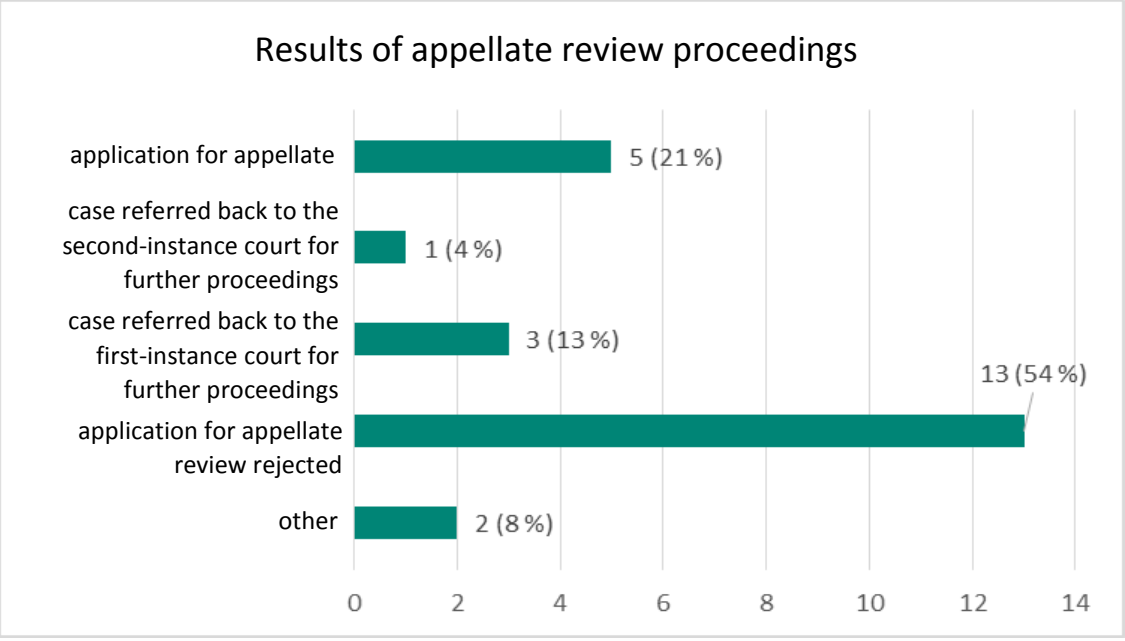
Where the plaintiff had appealed, the appellate court most often confirmed the first-instance court's decision (28 cases). A comparison with the 2010–2014 period is unavailable as the results of appellate proceedings were not tracked.

Chart 2 – Results of appellate proceedings in the 2015–2019 period (N = 56)



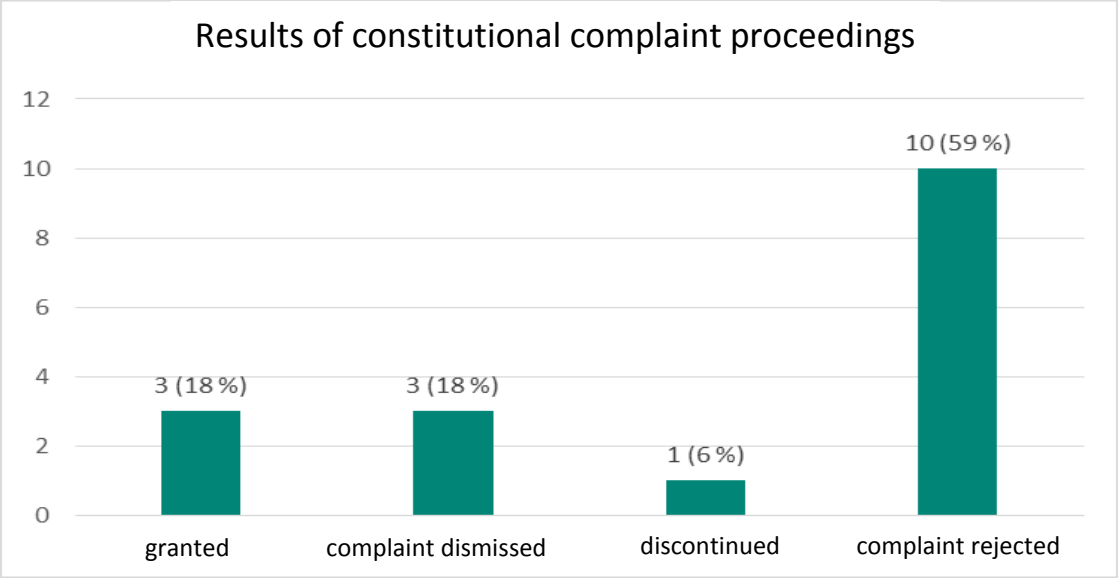
Where the plaintiff filed an application for appellate review as an extraordinary remedy, the Supreme Court most often rejected (refused to hear) the application for appellate review (13 cases) or dismissed it (5 cases). A comparison with the 2010–2014 period is unavailable as the results of appellate review proceedings were not tracked.

Chart 3 – Results of appellate review proceedings in the 2015–2019 period (N = 24)



Where the plaintiff filed a constitutional complaint, the Constitutional Court most often rejected (refused to hear) it (10 cases). A comparison with the 2010–2014 period is unavailable as the results constitutional complaint proceedings were not tracked.

Chart 4 – Results of constitutional complaint proceedings in the 2015–2019 period (N = 17)



1.2 Length of proceedings

Proceedings at first instance took 17 months on average. The longest proceedings took 107 months (nearly 9 years)[8], while the shortest only a month. The average length of appellate proceedings was 4 months. The longest appellate proceedings took 20 months; in one case, the proceedings were shorter than a month. On average, proceedings on applications for appellate review in the Supreme Court took 8 months. The longest appellate review proceedings took 27 months, the shortest only 2 months. The average length of proceedings before the Constitutional Court was 13 months, ranging from 1 to 29 months.

Table 1 – Length of proceedings

Instance	Average length in months	Minimum length in months	Maximum length in months
First instance	17	1	107
Appeal	4	0	20
Appellate review	8	2	27
Constitutional complaint	13	1	29

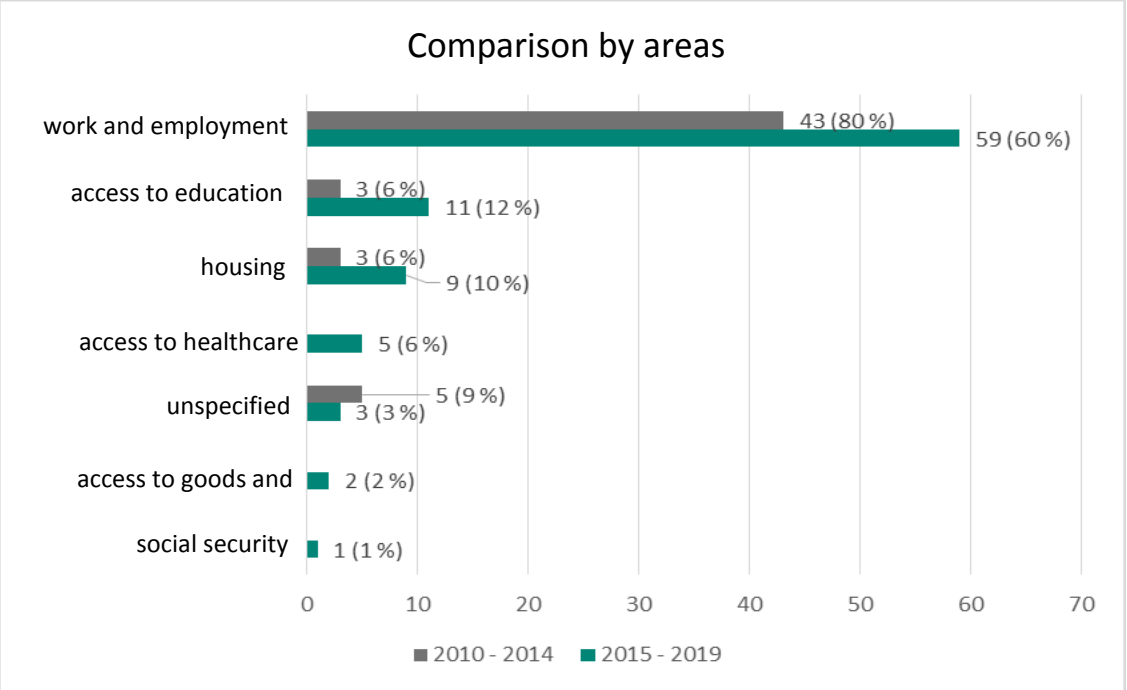
8 The aggregate duration of two rounds of proceedings at first instance. The first took 13 months, the second 94 months.

1.3 Comparison by areas

Over the entire term of effect of the Anti-Discrimination Act, most lawsuits were brought in the area of work and employment. In the 2015–2019 period, this was true of 59 actions of a total of 90 (ca. 60%), while in the 2010–2014 period, these were 43 actions out of a total of 54 (ca. 80%). However, the results also show an increasing share of lawsuits in other areas.

In the 2015–2019 period, the second most numerous area was access to education (11 actions of a total of 90, or ca. 12%), while the area of access to housing was third (9 actions of a total of 90, or ca. 10%).

Chart 5 – Shares of the individual areas (N = 54/90)



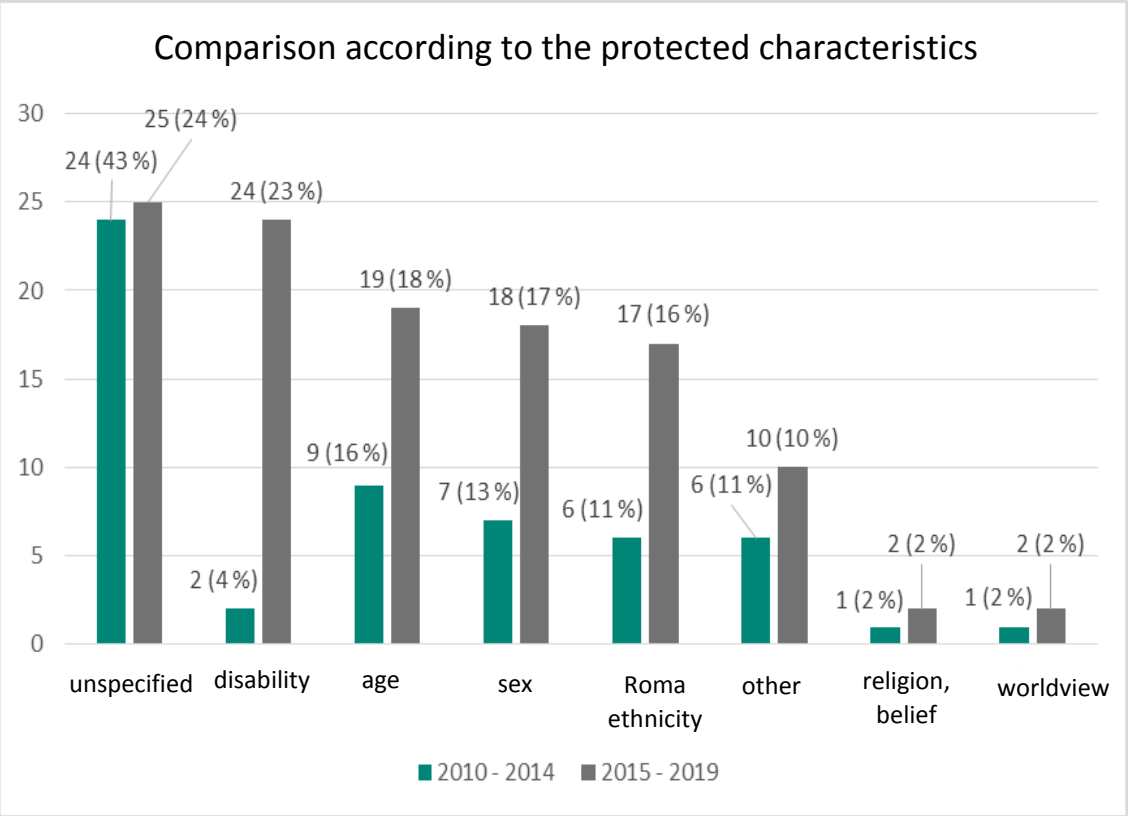
1.4 Comparison according to the protected characteristics

The comparison shows **a rise in the number of actions where plaintiffs identified the grounds of discrimination (protected characteristics) according to the Anti-Discrimination Act**. While in the 2010–2014 period, this was true of 26 actions of a total of 56 (ca. 46%), in the 2015–2019 period, the number grew to 82 actions out of a total of 90 (ca. 91%). However, there are still many cases where plaintiffs generally refer to unequal treatment without identifying any specific grounds.

In the 2015–2019 period, **disability was the most frequently invoked discrimination ground** (24 actions, or ca. 23%). The grounds that followed were age (19 actions, ca. 18%), sex (18 actions, ca. 17%, incl. pregnancy in 2 cases and parenthood in another 2 cases), and Roma ethnicity (17 actions, ca. 16%). This differs from the 2010–2014 period, when the most frequently cited grounds under the Anti-Discrimination Act were age (9 actions, ca. 16%),

sex (7 actions, ca. 13%), followed by the Roma ethnicity (6 actions, ca. 11%). There were only 2 actions claiming discrimination on grounds of disability (ca. 4%). As concerns protected characteristics not listed in the Anti-Discrimination Act, plaintiffs most often referred to a medical condition not constituting disability.

Chart 6 – Shares of the grounds of discrimination (N = 56/104)[9]



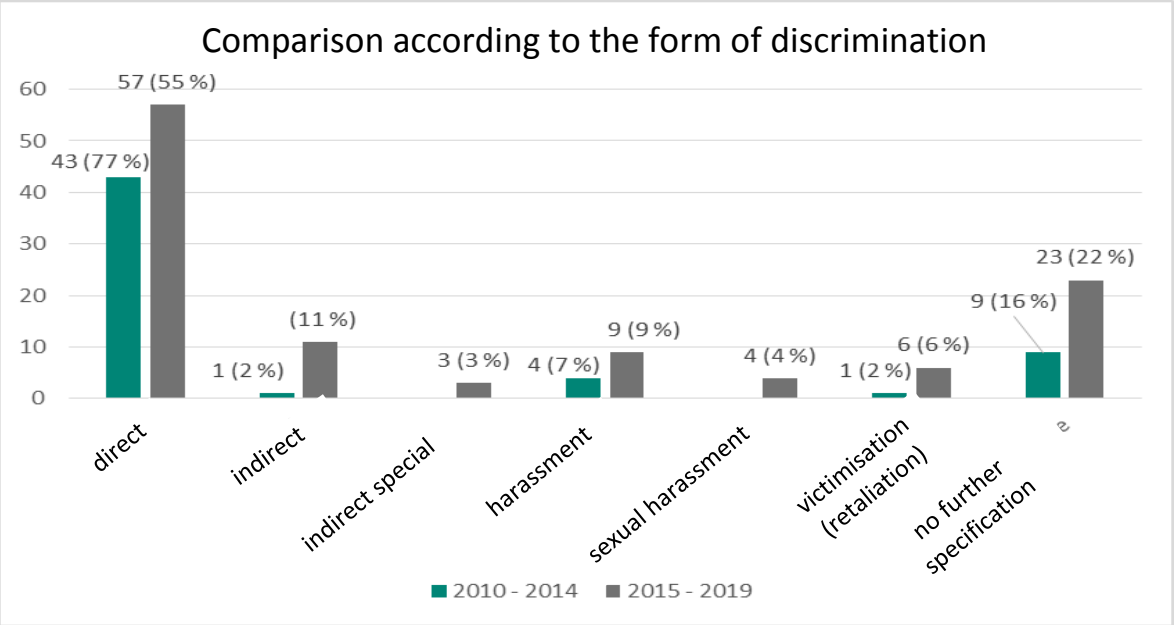
1.5 Comparison according to the form of discrimination

It appears that over the entire term of effect of the Anti-Discrimination Act, direct discrimination has been the most frequently invoked form of discrimination.

The 2015–2019 period saw the appearance of first claims of indirect special discrimination and sexual harassment. The Public Defender of Rights is not aware of any lawsuits where the plaintiff would refer to an instruction to discriminate or incitement to discrimination.

9 In the 2015–2019 period, the sum of the individual discrimination grounds is higher than the total number of lawsuits, since in some cases the plaintiffs claimed multiple discrimination, i.e., discrimination based on several protected characteristics simultaneously.

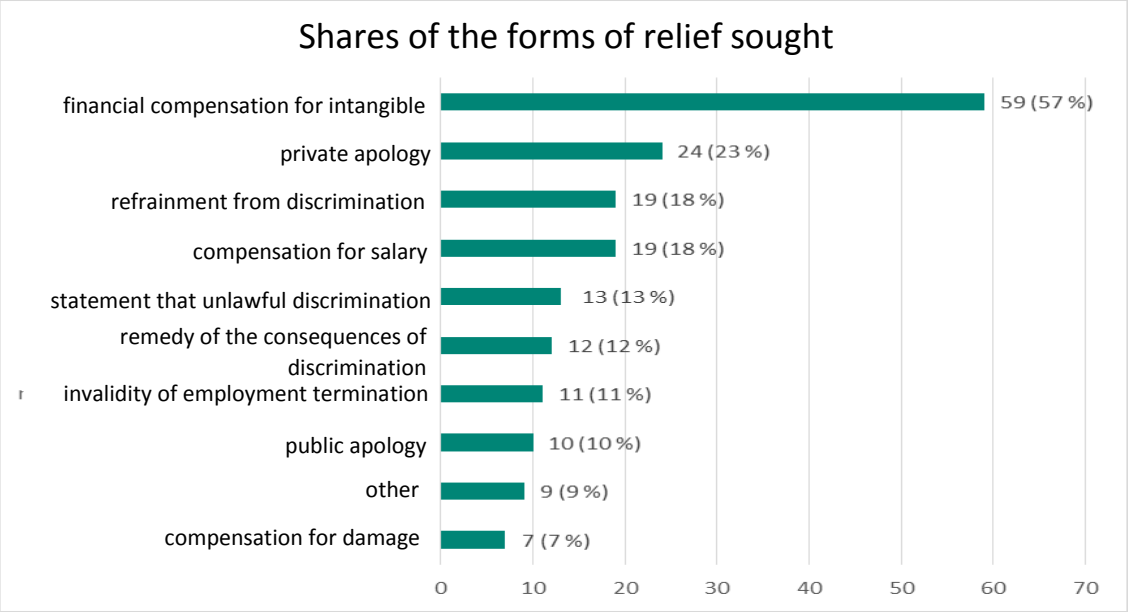
Chart 7 – Shares of the forms of discrimination (N = 56/104)[10]



1.6 Comparison according to relief sought

Plaintiffs most often sought financial compensation for intangible damage (59 cases, ca. 57%) and private apology (24 cases, ca. 23%). A comparison with the 2010–2014 period is unavailable as the forms of relief sought were not tracked.

Chart 8 – Relief sought by the plaintiffs in the 2015–2019 period (N = 104)



10 The sum of the individual forms of discrimination is higher than the total number of actions because in some cases the plaintiffs claimed multiple forms of discrimination.

1.7 Representation of the parties

The results show that the parties to the court proceedings were mostly represented by an attorney-at-law. On the part of the defendants, the second most common case was that they were not represented by anyone. This probably owes to the fact that the defendants were often organisations that employed legal professionals. Therefore, they did not require an attorney-at-law. A comparison with the 2010–2014 period is unavailable as the representation of the parties to proceedings was not tracked.

Chart 9 – Representation of the plaintiff (N = 90)

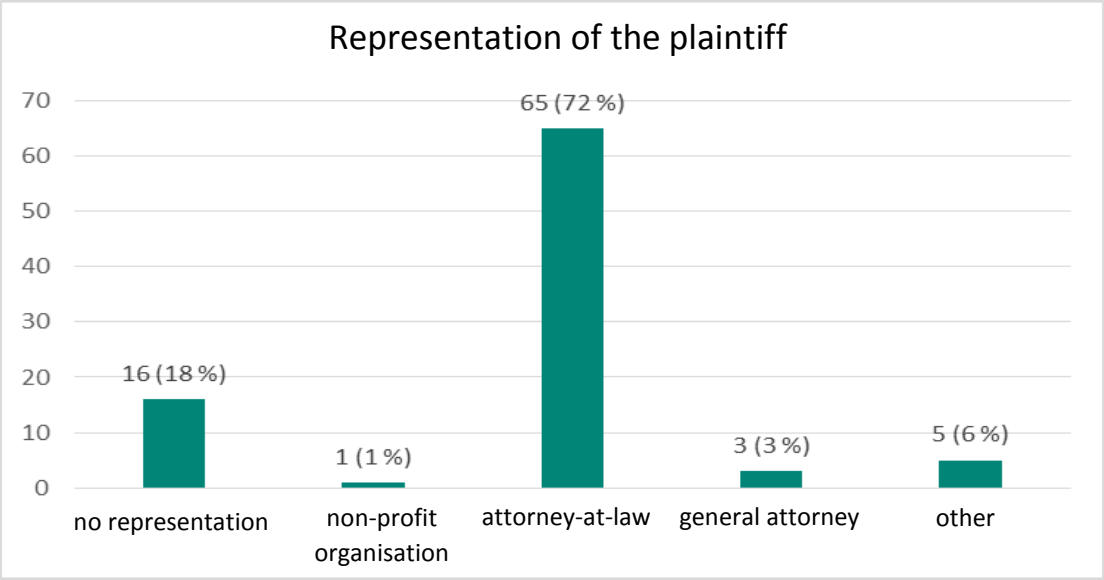
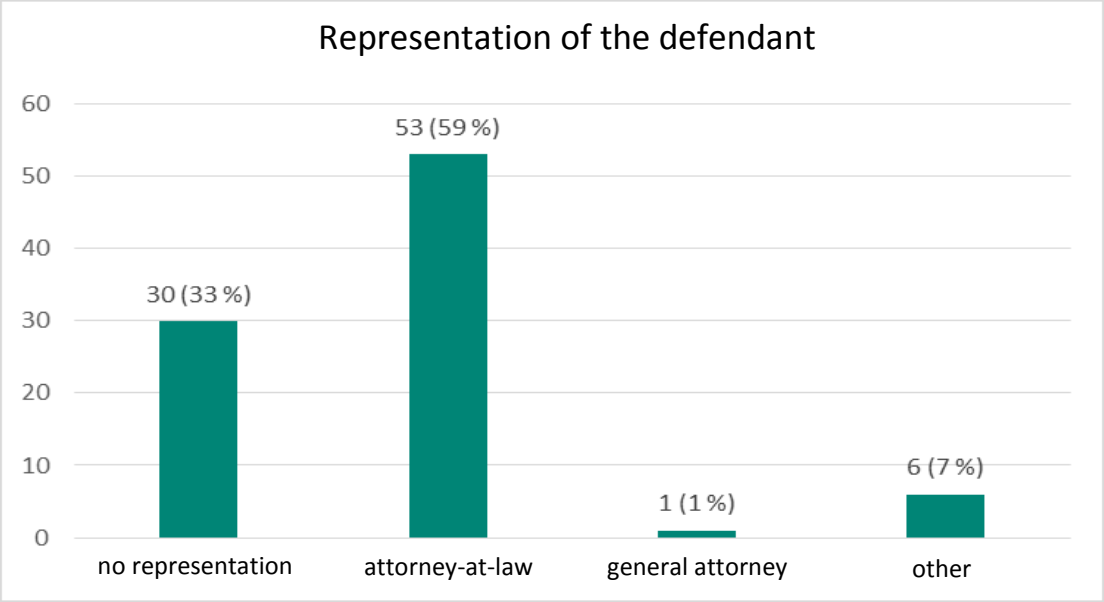


Chart 10 – Representation of the defendant (N = 90)

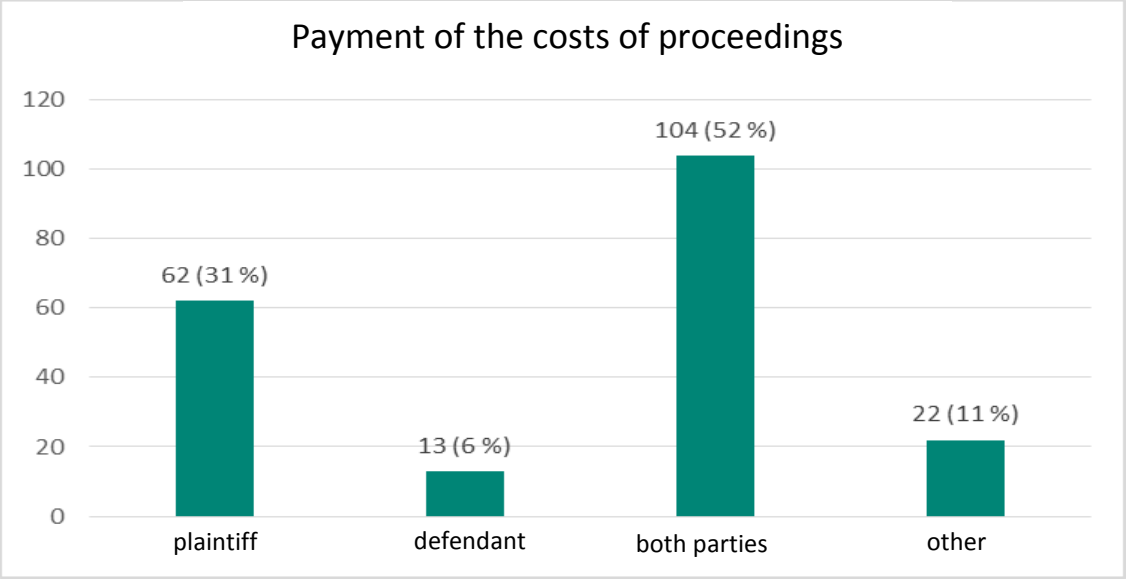


1.8 Payment of the costs of proceedings

Pursuant to the Code of Civil Procedure, the court shall grant the party that was fully successful in the dispute the reimbursement of costs required for purposeful enforcement or defence of a right against the party that was unsuccessful in the dispute. If a party is only partially successful in the dispute, the court may proportionally divide the reimbursement or decide that none of the parties is entitled to reimbursement of costs.[11]

The results show that courts most often did not award compensation for the costs of proceeding to either party (104 cases, or ca. 52%). Courts ordered the plaintiff to pay the costs of the proceedings to the other party in 61 cases (ca. 31%), while the opposite happened only in 13 cases (ca. 6%).

Chart 11 – Payment of the costs of the proceedings (N = 201)



The highest amount of costs paid by the plaintiff to the other party was CZK 601,128 (EUR 23,356); the lowest amount was CZK 300 (EUR 12). The average amount of costs paid by the plaintiff was CZK 64,997 (EUR 2,525).

The highest amount of costs paid by the defendant to the other party was CZK 142,202 (EUR 5,525); the lowest amount was CZK 10,890 (EUR 423). The average amount of costs paid by the defendant to the other party was CZK 42,676 (EUR 1,658).

The highest amount of costs paid by the plaintiff to the other party in the 2000–2014 period was CZK 142,877 (EUR 5,551). A comparison with other data is unavailable since they were not tracked in the previous period.

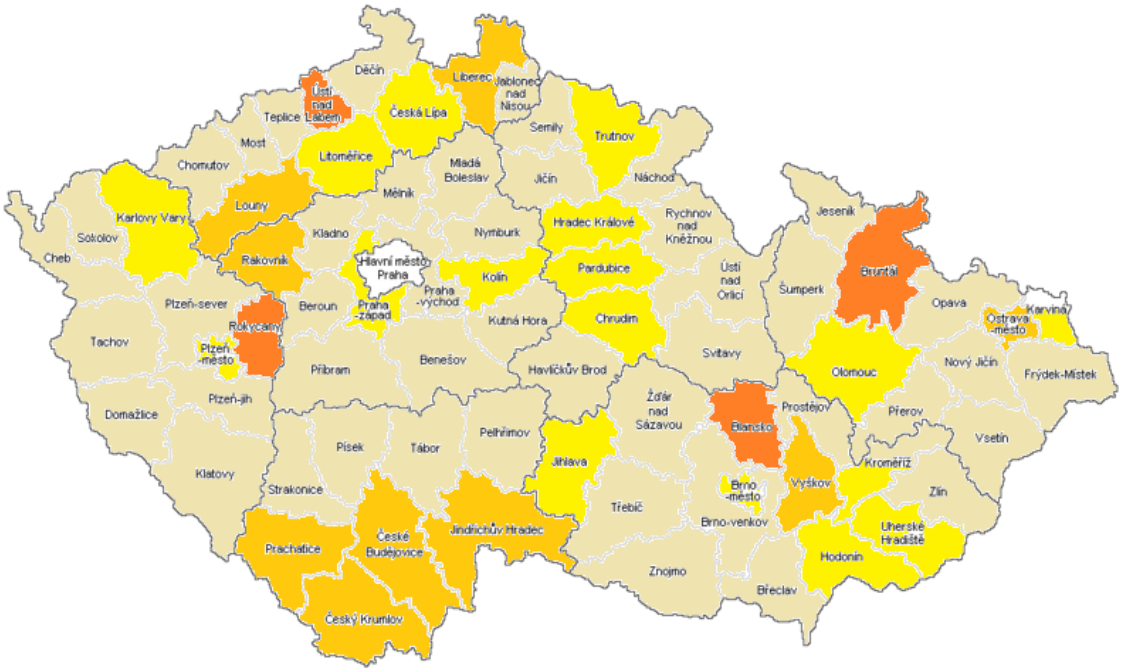
11 Section 142 (1) and (2) of the Code of Civil Procedure.

1.9 Incidence of lawsuits according to territorial districts

The survey also included a comparison of the incidence of actions claiming unequal treatment among individual districts of the Czech Republic. The following numbers are not absolute, but calculated per population of the individual districts. In Figures 1 and 2, a lower number of inhabitants per lawsuit means a higher incidence.

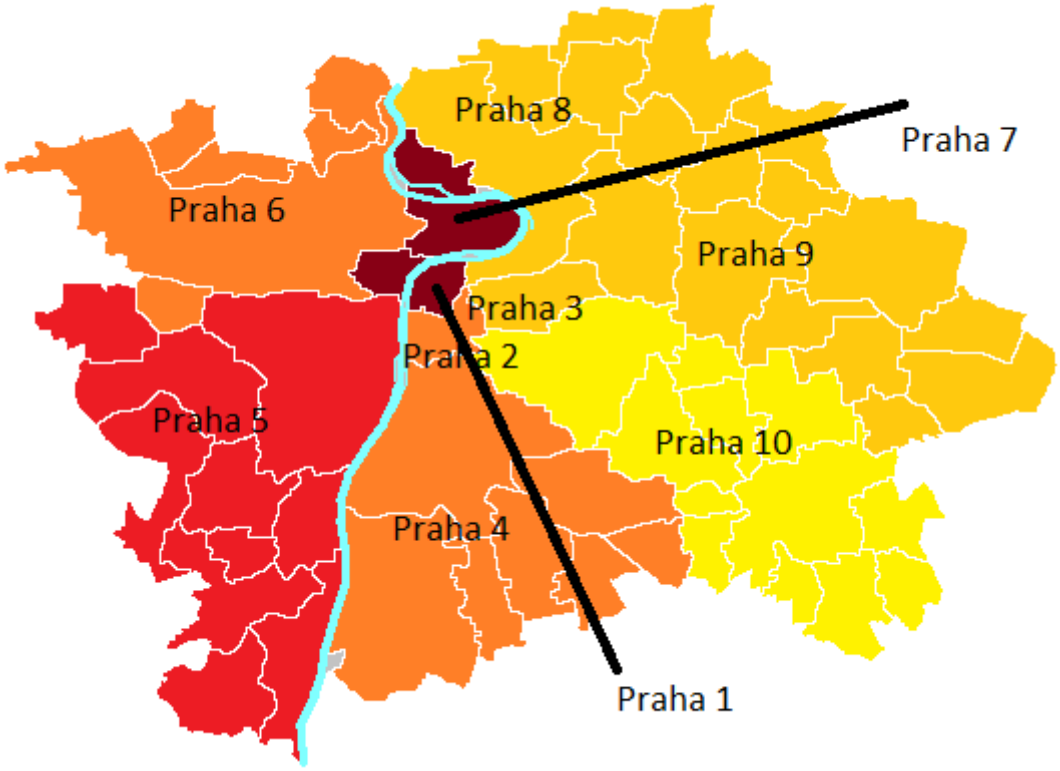
As a rule, most lawsuits are initiated in Prague. The capital city has the largest concentration of people in the country. However, since the number of lawsuits is calculated per capita, the higher concentration of people in itself does not explain a higher incidence of anti-discrimination lawsuits. The results further show that most court districts outside larger cities report no equal treatment lawsuits.

Figure 1: Incidence of lawsuits in districts excluding Prague[12]

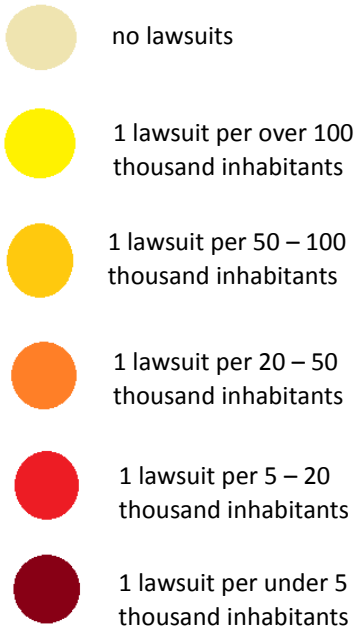


12 The District Court in Český Krumlov conducted 3 sets of proceedings involving the same parties and an identical subject. The only difference was that the plaintiff's claims covered different time periods. In order to avoid distortion of the results, these three sets of proceedings are counted as a single case.

Figure 2: Incidence of lawsuits in Prague city wards



Legend for Figures 1 and 2



2. Cross-cutting topics

Three cross-cutting topics are important enough to warrant a separate analysis:

- proving discrimination;
- compensation for intangible damage;
- courts' regard for the Defender's legal opinion.

Proving that discrimination occurred is of crucial importance in terms of protecting the victims; the Public Defender of Rights is thus interested in how the courts approached situations where legal regulations did not confer the same level of protection on all vulnerable groups. Compensation for intangible damage was selected as a topic because it is the form of relief that is claimed most often. The importance of the topic of the courts' regard for the Defender's legal opinion lies in the fact that the Defender assesses a specific case and then recommends whether a complainant should go to court. Many complainants heed the Defender's recommendations and the Defender's opinion then serves as evidence in court proceedings. Therefore, it is important to understand how the courts approach the Defender's opinions.

2.1 Proving discrimination

Proving discrimination in civil court proceedings is often the most difficult matter, even though it might be the most interesting one in terms of legal practice. This chapter presents new findings following from court decisions rendered in the 2015–2019 period and simultaneously identifies problematic aspects that could motivate representatives of various legal professions to reflect more deeply on the ways discrimination is being proven before Czech common courts.

The Defender found that within the period under scrutiny, the Constitutional Court made three important contributions to developing constitutional interpretation of the principle of shared burden of proof. Some victims of discrimination in the area of healthcare, housing and education have only a very limited possibility to prove discrimination as the existing laws do not permit sharing of the burden of proof. The broader or a more open list of protected characteristics (grounds of discrimination) included in special legal regulations (e.g., the Labour Code) leads to a lack of clarity as to proving unequal treatment in court. It turns out that potential victims of discrimination have only a limited possibility to prove discrimination with respect to a conduct where individuals (e.g. employers) have a broad discretion and are not required to state reasons for their final decisions to anyone. Courts do not consider such conduct suspicious *prima facie*. In the case of actions claiming unequal pay, the courts applied shared burden of proof in each case where the plaintiff produced tentative data on the pay of the comparators (i.e., persons with whom the plaintiffs were comparing themselves, but who did not share the plaintiffs' protected characteristics). It would be desirable if there was an expert discussion on sharing of the burden of proof in cases of sexual harassment, or if the Supreme Court or the Constitutional Court gave their

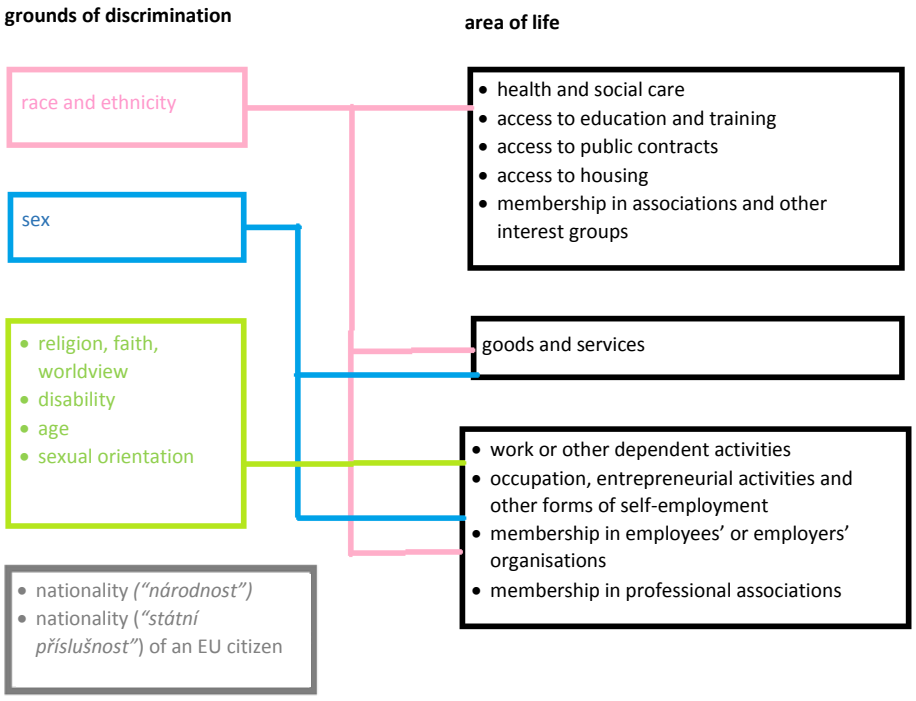
verdict on this matter. Secret recordings made by private individuals for the purpose of proving discriminatory conduct in civil proceedings have become a generally accepted form of evidence during the surveyed period.

Section 133a of the Code of Civil Procedure, as amended

Sharing of the burden of proof pursuant to Section 133a of the Code of Civil Procedure is an important tool for proving a certain fact. The current legal regulation is problematic as it does not confer the same guarantees in court on all plaintiffs claiming discrimination. Simply put, the procedural regulation does not correspond to the substantive rules concerning protection from discrimination. The Anti-Discrimination Act prohibits discrimination on all grounds listed in Section 2 (3) of the Anti-Discrimination Act in all the areas listed in Section 1 (1)(a) to (j), whereas Section 133a of the Code of Civil Procedure links shared burden of proof to a combination of a specific area of life and a specific protected characteristic.

If the existence of discrimination is claimed on one of the grounds listed in Section 2 (3) of the Anti-Discrimination Act (excluding the nationality of an EU citizen) in the area of employment or another dependent activity (including access thereto), vocation, entrepreneurial activity or another form of self-employment (including access thereto), the burden of proof may be shared in all such cases. In the area of access to goods and services, the burden of proof is shared only provided that discrimination is invoked on grounds of race, ethnicity and sex. If discrimination is invoked in another area (housing, healthcare, education), the burden of proof is shared only if discrimination is claimed on grounds of race and ethnic origin. The list of protected characteristics in Section 133a of the Code of Civil Procedure completely omits two grounds: nationality (*"národnost"* and *"státní* příslušnost" in Czech) of an EU citizen.

Figure 3: Shared burden of proof



The above shows that a number of potential victims of discrimination are protected from discrimination in terms of substantive law, but when they bring an anti-discrimination lawsuit, their procedural standing is different based on the grounds of discrimination invoked. This asymmetry should be rectified by an amendment to the Code of Civil Procedure. Practical arguments for the amendment are listed in this chapter.[13] Before that, however, a comment is provided on a key piece of case law of the Constitutional Court in the area of proving discrimination follows.

Development of case law of the Constitutional Court in terms of taking evidence in discrimination disputes

In 2015, the Constitutional Court rendered three important decisions correcting the decision-making of common courts in the area of anti-discrimination lawsuits and developed its (hitherto scarce) case law regarding sharing of the burden of proof.[14] The Constitutional Court's judgements indicate that if a common court fails to apply the provisions of Section 133a of the Code of Civil Procedure in a constitutional manner,[15] it violates the right of the parties to court protection conferred by Article 36 (1) of the Charter of Fundamental Rights and Freedoms.

The first case heard by the Constitutional Court in the period under scrutiny concerned direct discrimination on grounds of Roma ethnicity in the area of provision of accommodation services.[16] In the second case, the Constitutional Court provided its statement on proving indirect discrimination on grounds of Roma ethnicity in the area of education.[17] The final case involved direct discrimination and victimisation (retaliation) on grounds of sex and gender in the area of labour law.[18] As all these cases are described in detail later (for more, see chapters 7 – Housing, 5 – Education, and 3 – Work and Employment) , attention is paid specifically to sharing of the burden of proof in the Constitutional Court's conception.

Both cases of direct discrimination (while very different in terms of facts) have in common that the courts (in the opinion of the Constitutional Court) considered the conduct of the defendant, or the explanation of the defendant's motivation asserted in the process of taking evidence, free of any suspicion of discrimination. Even though the plaintiff had demonstrated *prima facie* discriminatory conduct, the common courts uncritically accepted the explanation provided by the defendant or the inspection bodies involved. These,

13 See the subchapter titled "Proving discrimination in areas where the burden of proof is shared only partially (education, housing, healthcare)".

14 The following decisions are of crucial importance, in particular: judgement of the Constitutional Court of 26 April 2006, File No. Pl. ÚS 37/04 (published under No. 419/2006 Coll., N 92/41 SbNU 173); judgement of the Constitutional Court of 30 April 2009, File No. II. ÚS 1609/08.

15 Judgement of the Constitutional Court of 26 April 2006, File No. Pl. ÚS 37/04 (published under No. 419/2006 Coll., N 92/41 SbNU 173), paragraphs 73–75.

16 Judgement of the Constitutional Court of 22 September 2015, File No. III. ÚS 1213/13.

17 Judgement of the Constitutional Court of 12 August 2015, File No. III. ÚS 1136/13 (N 143/78 SbNU 209).

18 Judgement of the Constitutional Court of 8 October 2015, File No. III. ÚS 880/15.

however, did not dispel the suspicion that discrimination had occurred. It was only the Constitutional Court that pointed out that the defendant, to whom the burden of proof had shifted, had not refuted the suspicion of discrimination by providing sufficient evidence to the contrary. Therefore, the Constitutional Court believed that doubts should have been to the detriment of the defendant, not the plaintiff.

In the case of the Roma people who had been refused accommodation at a hotel, the Constitutional Court pointed out that the key piece of evidence submitted by the defendant (the operator of the hotel)[19] could have been obtained *ex post* in order to refute the alleged discriminatory conduct. The Constitutional Court drew attention to the fact that the piece of evidence had been produced by a company from the same group as the defendant, who had later even assumed its rights and obligations. Common courts also accepted the defendant's assertion that it had not discriminated against the plaintiffs because it had not explicitly cited their Roma ethnicity as a reason not to accommodate them. The Constitutional Court pointed out that an open admission of discriminatory intent to the victim cannot be expected: "The notion that such intent would be explicitly communicated to the affected individual is illusory... Discriminatory conduct often happens under a certain pretence that could, in itself, stand as a justification for different treatment."[20] The case returned to common courts for further proceedings in which the plaintiffs eventually succeeded.

A case involving termination of employment of an educator in a children's home presented the Constitutional Court with an opportunity to describe the moment when the burden of proof shifts to the defendant in situations where, for instance, an employer is choosing between multiple persons (in hiring, promoting or terminating employment) and treats the person identified by a protected characteristic (in this case sex/gender) less favourably. Until that point, the "door" to the possibility of shifting the burden of proof was too widely open for plaintiffs on account of previous case law of the Supreme Court.[21] In its judgement, the Constitutional Court newly mentions the doctrine of "reasonable likelihood" (or "balance of probabilities") commonly applied by British courts.[22] The Constitutional Court noted that not all situations where two employees (e.g., a man and a woman) are treated unequally by

19 A booking for accommodation on the same day when the plaintiffs were to be checked in. The booking was quite large (all rooms in the hotel), which allegedly prevented the plaintiffs from checking in. No evidence was produced to describe the circumstances of the event that was supposedly to take place at the hotel and fill its entire accommodation capacity. The event was apparently later cancelled and the accommodation capacity was thus not actually used.

20 Judgement of the Constitutional Court of 22 September 2015, III. ÚS 1213/13, paragraph 33.

21 "According to the Supreme Court, the burden of proof probably shifts automatically without further considerations simply on the basis that unequal treatment has occurred. This will include situations where a man is promoted instead of a woman, a non-Roma candidate is hired instead of a Roma person, etc." Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. *Antidiskriminační zákon. Komentář (The Anti-Discrimination Act: Commentary)*. 2nd edition. Prague: C. H. Beck 2016, p. 447.

22 A detailed test is given in the decision of the Court of Appeal, Civil Division, in case Igen Ltd. (Formely Leeds Careers Guidance) and Others v. Wong [2005] 3 All E. R. 812 [2005] I. C. R. 931. Analysed in more detail in Farkas, L., O´Farell, O. Reversing the burden of proof: Practical Dilemmas at the European and National Level. European Network of Legal Experts in the Non-discrimination field. European Commission: Luxembourg, 2015, p. 35. Available at: https://op.europa.eu/en/publication-detail/-/publication/a763ee82-b93c-4df9-ab8c-626a660c9da8/language-en.

an employer necessarily constitute unlawful discrimination. The plaintiff must provide the court with other circumstances (evidence) to support a reasonable suspicion that the employer's conduct in the given case was motivated by a discriminatory intent.[23] Other judgements of common courts (including the Supreme Court) rendered after the aforementioned judgement do not indicate that this approach was actually adopted during the surveyed period.[24] In a specific case, however, the legal opinion of the Constitutional Court led to more detailed evidence taken by the first-instance court to clarify the circumstances that had led the defendant to dismiss the plaintiff, thus dispelling the suspicion of discrimination on grounds of her gender.[25]

As concerns actions claiming indirect discrimination, the Constitutional Court noted that the distribution of the burden of proof is similar as in cases of direct discrimination. The plaintiff must first allege and prove that (1) a *prima facie* neutral criterion has a significantly greater impact on a certain protected group; and that (2) (s)he is a member of the protected group. This can give rise to the assumption of the existence of indirect discrimination affecting all the members of the protected group. This also leads to shifting the burden of allegation and proof to the defendant. The defendant must then refute any of the above-mentioned plaintiff's allegations. Alternatively, the defendant must allege and prove that the existing practice pursues a legitimate objective and the measures to achieve this objective are appropriate, necessary and proportionate. While this legal opinion did not affect the plaintiff's case, it provided a guideline to common courts how to proceed in cases involving indirect discrimination (which had been rare in the Czech Republic) and how to interpret statistical data.[26]

Proving discrimination in areas where the burden of proof is shared only partially (education, housing, healthcare)

The expert community and the Defender have long pointed to the fact that the provision on shared burden of proof has a limited scope. It cannot be applied in cases where the plaintiff claims, e.g., age discrimination in the areas of housing or healthcare.[27] The removal of said asymmetry should be achieved by an amendment to the Anti-Discrimination Act drafted in

23 "The decision itself whereby the employer decides which one of the employees will be dismissed (a man or a woman) cannot be regarded as discriminatory without further considerations; such a fact in itself does not justify shifting of the burden of proof to the defendant. Other circumstances (evidence) must be produced to support a reasonable (supported by compelling reasons) suspicion that the employer's conduct in the given case was motivated by an intention to discriminate. If the condition of different treatment has been met, the burden of proof will have to be shifted provided that the evidence presented by the plaintiff indicates at least reasonable likelihood of the existence of discrimination." Paragraph 27, judgement of the Constitutional Court of 8 October 2015, File No. III. ÚS 880/15.

24 See below.

25 Judgement of the District Court in Uherské Hradiště of 11 November 2016, Ref. No. 4 C 57/2012-412; judgement of the Regional Court in Brno of 16 May 2017, Ref. No. 60 Co 58/2017-476.

26 For more details on proving discrimination using empirical data, see Šamánek, J. et. al. *Antidiskriminační právo v judikatuře a praxi (Anti-Discrimination in Case Law and Practice)*. Prague: C. H. Beck, 2017. ISBN 978-80-7400-658-6. p. 203–240.

27 For details, see Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. Antidiskriminační zákon. Komentář. (*The Anti-Discrimination Act: Commentary*) 1st edition. Prague: C. H. Beck 2010, pp. 449–450.

2019 by a group of deputies.[28] However, at the time of when this report was published, the Chamber of Deputies had yet to discuss it in the first reading.

The content analysis of court decisions thus focuses on **proving discrimination in the areas of education, housing and healthcare** in court, where plaintiffs who are senior citizens or are disabled **have a worse standing in terms of evidence** compared to ethnic minorities. The Defender was interested in how the plaintiffs had **managed to prove the defendants' discriminatory motives** in the individual cases. It was found that the plaintiffs had succeeded in two proceedings. The reasons for their success were basically two-fold: either there was a piece of direct evidence that the defendant acted based on a discriminatory intent (the motive was thus not in doubt), or the courts applied the provisions of Section 133a of the Code of Civil Procedure, despite the fact that the law does not explicitly anticipate this.

The first situation (the discriminatory intent was clear from the defendant's actions) was illustrated by a case of a man who had been denied the option to rent a flat even though he had submitted the highest offer. The town as the landlord rejected his application with the justification that the flat was not suitable for the applicant as he was blind and might request construction modifications to the flat in future. The applicant succeeded in court.[29] Nevertheless, situations where the defendant openly admits an intention to discriminate are rather rare.

The other situation (application of the principle of shared burden of proof outside the scope of Section 133a of the Code of Civil Procedure) was encountered in lawsuits brought on behalf of disabled children in the area of education. The disputes concerned non-admission of a disabled child to a catchment school[30] and expelling a child with an autism spectrum disorder from an after-school group.[31] The plaintiff was successful in the first case;[32] the

28 Bill sponsored by a group of deputies: Monika Červíčková, Helena Válková, Radka Maxová, Roman Onderka, Ivan Jáč, Eva Fialová, Jiří Mašek, Karla Šlechtová, František Kopřiva, Olga Richterová, Věra Procházková and Ondřej Veselý, amending 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; document of the chamber No. 424/0, 8th electoral term, delivered to deputies on: 13 March 2019 .

Available at: https://www.psp.cz/sqw/historie.sqw?o=8&t=424.

29 Judgement of the District Court in Jindřichův Hradec of 24 January 2017, Ref. No. 6 C 216/2015-221; judgement of the Regional Court in České Budějovice of 22 June 2017, Ref. No. 8 Co 960/2017-263.

30 Judgement of the District Court in Vyškov of 18 March 2016, File No. 10 C 250/2014, pp. 6–7: "In the case at hand, the plaintiff indicated facts suggesting that the defendant could have committed direct discrimination on grounds of the plaintiff's disability ... It was thus up to the defendant to prove that the principle of equal treatment was not violated because of said disability."

31 Judgement of the Municipal Court in Brno of 25 April 2019, File No. 35 C 207/2016, paragraph 65: "Since the plaintiffs failed to allege in court any facts indicating the existence of direct or indirect discrimination on the part of the defendant, the defendant was not advised by the court in the sense of Section 133a of the Code of Civil Procedure that it would become obliged to prove that the principle of equal treatment had not been violated."

32 In light of the facts of the case, the application of Section 133a of the Code of Civil Procedure did not seem desirable. The catchment school informally told the plaintiff's mother of its true motivation (concerns about the integration of a disabled child and reactions of the other parents). The official application for a transfer to the school was rejected by the headteacher on grounds of insufficient staff and full capacity.

other action was dismissed by the court. This category also included a unique (in the Czech legal landscape) case of exclusion of a female student from out-of-school activities due to her religious beliefs.[33] The court applied the principle of shared burden of proof even though the law does not anticipate this and dismissed the lawsuit.[34]

However, it is more common that a court dismisses the lawsuit because **the plaintiff fails (unsurprisingly) to demonstrate the defendant's discriminatory intent.** The case of an HIV-positive patient who was refused dental care by a healthcare provider can serve as an example. Both the district and the appellate courts agreed that the application of Section 133a of the Code of Civil Procedure was not possible *de lege lata*. In order for the plaintiff to succeed, she would have had to prove that she had been refused on account of her disability, which she could not. The courts considered it proven that the plaintiff had not actually been refused healthcare and dismissed the action.[35]

The above demonstrates that if plaintiffs claim discrimination on specific grounds[36] in the area of provision of **goods** and **services, housing, healthcare or education** but they lack direct evidence to demonstrate the other party's discriminatory intent (i.e., documentary evidence, audio or video recording[37]), the court will most likely dismiss the action on account of their failure to bear the burden of proof.

Proving discrimination in cases involving grounds not included in Section 133a of the Code of Civil Procedure (especially in the area of labour law)

In the surveyed period, the courts heard 25 cases where plaintiffs invoked other grounds of unequal treatment/discrimination than those currently included in Section 133a of the Code of Civil Procedure. These disputes have been divided into four categories for convenience. These are cases where the plaintiff:

- claimed unequal treatment or discrimination on a ground which is not included in Section 133a of the Code of Civil Procedure, but in another generally binding regulation;
- asserted a ground not included in any legal regulation;
- did not indicate any specific grounds of discrimination and claimed a violation of the general principle of equal treatment, or frivolous exercise of a right; or
- claimed any combination of the above categories.

Cases illustrating the first category of disputes are represented by actions against termination of employment due to redundancy affecting members of trade union

33 The plaintiff and her parents were members of Jehovah's Witnesses.

34 Judgement of the District Court for Prague 7 of 4 September 2015, File No. 5 C 228/2013, pp. 11–13.

35 Judgement of the District Court in Plzeň-City of 1 August 2018, File No. 13 C 47/2018; judgement of the Regional Court in Plzeň of 5 December 2018, File No. 18 Co 240/2018.

36 Specifically: disability, age, sexual orientation, religion, belief and worldview.

37 More on this specific topic below.

organisations.[38] The second category is represented by a case of an unsuccessful candidate for deanship.[39] The third category included a case of a customs officer who sued his employer because he had not been assigned a service dog,[40] and generally all cases concerning workplace bullying resulting in termination of employment.[41] The final category of disputes includes a case of a sales director who sued the employer for discrimination on grounds of nationality, as well as for a violation of the principle of equal treatment.[42]

Even a brief summary of the cases reveals that they mostly appeared in the area of labour law, as in the 2012-2017 period, the Labour Code and the Employment Act prohibited "any discrimination" in labour-law relationships, but lacked **their own list of protected characteristics**.[43] Additionally, the Labour Code included (and still includes) a general obligation of the employer to ensure equal treatment of all employees in relation to their working conditions, remuneration for work and provision of other pecuniary performances and performances of a pecuniary value, vocational training and the opportunity to achieve functional or other advance in employment.[44]

The doctrine was not uniform as concerns the application of Section 10 of the Anti-Discrimination Act. One part allowed that persons affected by a violation of the ban on "any" discrimination could enforce their claims under the aforementioned provision of the Anti-Discrimination Act.[45] The other part believed that an action for the protection of personal

38 Judgement of the District Court for Prague 5 of 30 April 2014, Ref. No. 11 C 2/2011-434; judgement of the Municipal Court in Prague of 3 December 2014, Ref. No. 23 Co 423/2014-481; resolution of the Supreme Court in Brno of 6 August 2015, File No. 21 Cdo 2386/2015; judgement of the District Court in Hodonín of 24 September 2018, Ref. No. 10 C 347/2017-476.

39 Judgement of the District Court in České Budějovice of 31 May 2016, Ref. No. 21 C 43/2013-243; judgement of the Regional Court in České Budějovice of 6 April 2017, Ref. No. 19 Co 1805/2016-342.

40 Judgement of the District Court in Karlovy Vary of 8 November 2016, Ref. No. 12 C 149/2015-357; judgement of the Regional Court in Plzeň of 4 May 2017, Ref. No. 10 Co 581/2016-408; resolution of the Supreme Court of 6 September 2017, Ref. No. 21 Cdo 3653/2017-441.

41 Judgement of the Regional Court in Hradec Králové of 28 August 2015, Ref. No. 16C 1/2014-81; judgement of the Regional Court in Hradec Králové of 28 April 2016, Ref. No. 19Co 412/2015-106; judgement of the District Court in Česká Lípa of 21 November 2018, Ref. No. 11 C 20/2017-151; judgement of the Regional Court in Ústí nad Labem, Liberec branch, of 5 June 2019, Ref. No. 36 Co 48/2019-178.

42 Judgement of the District Court in Bruntál of 11 December 2015, Ref. No. 11C 120/2011-501; judgement of the Regional Court in Ostrava of 22 February 2017, Ref. No. 16 Co 128/2016-555; resolution of the Supreme Court of 21 August 2017, Ref. No. 21 Cdo 3111/2017-599; resolution of the Constitutional Court of 16 July 2019, File No. I. ÚS 3387/17.

43 Section 16 (2) of the Labour Code and Section 4 (2) of the Employment Act. In 2017, the provisions of both these laws were amended through Act No. 206/2017 Coll., amending Act No. 435/2004 Coll., on employment, as amended, and other related laws. Both provisions were supplemented with a list of prohibited grounds of discrimination included in the Anti-Discrimination Act, but also other protected characteristics mentioned by the International Labour Organisation (property, membership in a trade union organisation, etc.). While the list of grounds of discrimination in the Labour Code is non-exhaustive, the list included in the Employment Act is exhaustive. The vast majority of labour-law disputes mentioned in this report were conducted under the previous legal regulation effective until 28 July 2017.

44 Section 16 (1) of the Labour Code.

45 Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. *Antidiskriminační zákon. Komentář (The Anti-Discrimination Act: Commentary)*. 2nd edition. Prague: C. H. Beck, 2016, pp. 162–163, 376–377.

rights should be lodged.[46] From the decisions analysed, it appears the courts did not pay much attention to such theoretical debates (barring rare exceptions[47]) and discussed the claims made by the plaintiffs.

However, the Defender found a problem in the area of proving discrimination. **The lawmaker is yet to reflect the broad protection from unequal treatment** and discrimination based on reasons other than those listed in the Code of Civil Procedure (or for reasons not linked to a protected characteristic) **in the provisions of the Code of Civil Procedure concerning evidence-taking.** The burden of proof should not, based on the applicable legal regulation, be shared in these cases. For this reason, in these types of proceedings[48] the plaintiff beards the duty to prove allegations in the same manner as in any other contentious civil proceedings.

It is clear from the analysed cases from the 2015–2019 period that courts **do not always carefully distinguish between the categories of disputes (see the classification above).** This is also documented by a case where the first-instance court did not distinguish between claims under Section 16 (1) and (2) of the Labour Code.[49] For this reason, the appellate court cancelled the district court's judgement as it concluded that the plaintiff's claim should not have been considered a claim for protection from discrimination, but rather as a claim based on a violation of the principle of equal treatment pursuant to Section 16 (1) of the Labour Code. The appellate court pointed out that Section 133a of the Code of Civil Procedure would not apply in this case and the procedural activity of the plaintiff should be higher in this regard.[50]

Other two courts **chose a different approach as regards the application of Section 133a of the Code of Civil Procedure.** The burden of proof was shared, for example, in a case of a sales director allegedly discriminated against by his employer who did not assign him a company car. The plaintiff asserted that this happened because of his nationality (*"národnost"*), since German managers had received a company car.[51] However, **nationality** is not included in the list of protected characteristics under Section 133a of the Code of Civil

46 Kvasnicová, J., Šamánek, J. *et al. Antidiskriminační zákon. Komentář (The Anti-Discrimination Act: Commentary)*. 1st edition. Prague: Wolters Kluwer, a. s., p. 117; Bělina, M., Drápal, L. *et al*. Zákoník práce. Komentář *(The Labour Code: Commentary).* 2nd edition. Prague: C. H. Beck 2015, p. 93.

47 Judgement of the District Court for Prague 4 of 16 September 2019, Ref. No. 48 C 118/2013-545, p. 19.

48 Regardless of the fact whether the dispute was conducted prior to the amendment of the Labour Code and the Employment Act.

49 Judgement of the Regional Court in Hradec Králové of 28 August 2015, Ref. No. 16C 1/2014-81. In this case, the employee sought court protection from workplace bullying. The bullying supposedly consisted in assigning inferior tasks (at variance with her employment contract), denial of extraordinary bonuses, non-payment of a contribution towards a vehicle, and non-assignment of annual leave on dates she requested.

50 Judgement of the Regional Court in Hradec Králové of 28 April 2016, Ref. No. 19 Co 412/2015-106.

51 Judgement of the District Court in Bruntál of 11 December 2015, Ref. No. 11 C 120/2011-501. Quote: "The plaintiff indicated that he had been discriminated against on grounds of his nationality (*'národnost'*) in the assignment of a company car in the years 2003 and 2006 ("... the management of XXX, the parent company, made it crystal clear that a German was closer to its heart than a Slav"). In this part of the action, therefore, the defendant would theoretically be required to prove that the principle of equal treatment was not violated."

Procedure. In yet another case a member of the customs administration sued his employer because the latter had taken away his service dog and had not assigned another one.[52] The court's reasoning refers to Section 133a of the Code of Civil Procedure, including related case law of the Supreme Court and applies it to the case at hand.[53]

As concerns claims based on violation of Section 16 (1) of the Labour Code, **courts have yet to reach a consensus** as to whether a plaintiff should allege and provide evidence regarding the way the defendant treats other persons in a comparable position. The court did not request information on the treatment of other employees in the case of a hospital employee who claimed unequal treatment allegedly consisting of receiving reprimands for failure to meet her working duties, being given impossible tasks and the reduction of her work hours.[54] The court shifted the burden of proof and asked the defendant to explain the alleged conduct.[55] Another court chose a different approach in the case of an academic worker who claimed a violation of the principle of equal treatment on the part of the head of her department. The court insisted that the plaintiff specify persons who had been treated more favourably by the defendant in situations indicated in the plaintiff's action.[56] A different court proceeded similarly regarding an lawsuit brought by a grammar school teacher who claimed a violation of the principle of equal treatment by her employer consisting in checking her work, being given reprimands and being recalled from organising a field trip. The court rejected the suit precisely because the plaintiff had failed to bear the burden of allegation and proof.[57]

Scope of evidence-taking in some specific situations

In several cases, the courts had to address conduct on the part of defendants which is legally permitted, i.e., the law allows the conduct and, simultaneously, does not require any formal

52 The plaintiff alleged that the reason the dog was taken from him had been complaints by his neighbour about the dog's night-time barking. The defendant claimed and proved that the reason was the dog's low utility at that particular customs office and the need to transfer the dog to a unit in the Pardubice Region to replace a deceased service dog. Furthermore, the plaintiff saw discrimination in the fact he had not been assigned a new dog. He alleged that the reason for this were his complaints against the removal of the previous dog. The defendant insisted that a new dog could not have been assigned due to objective (financial) reasons.

53 Judgement of the District Court in Karlovy Vary of 8 November 2016, Ref. No. 12 C 149/2015-357; pp. 12–13: "The legal opinion quoted in the decisions above is, in the court's view, applicable to these proceedings. The plaintiff had to allege and prove specific conduct on the part of the defendant that would, in its consequence, constitute unequal treatment of the plaintiff in comparison to other members of the service."

54 Judgement of the District Court in Česká Lípa of 21 November 2018, Ref. No. 11 C 20/2017-151; p. 3, paragraph 5.

55 This procedure was confirmed by the appellate court. See the judgement of the Regional Court in Ústí nad Labem, Liberec branch, of 5 June 2019, Ref. No. 36 Co 48/2019-178, p. 12, paragraph 17.

56 Judgement of the District Court in České Budějovice of 31 May 2016, Ref. No. 21 C 43/2013-243.

57 Judgement of the District Court for Prague 5 of 8 October 2018, Ref. No. 20 C 319/2011-600. Quote: "The court repeatedly advised the plaintiff (especially during the hearings on 14 February 2017 and 11 September 2017) of her duty to make allegations and prove unequal treatment on the part of the defendant, i.e. a different treatment of her by the employer in comparison to other employees in a similar position. Here in particular, despite being repeatedly advised, the plaintiff failed to comply, regardless of her repetitive, extensively redundant and borderline conspiratorial statements. She completely failed to bear her burden to clearly and specifically allege how and when she had been treated differently compared to specific persons in a similar situation, even though she mentioned – but always in general terms – a number of areas of potentially discriminatory actions."

or official justification for said conduct. This typically concerns situations where an employer (often in the public sector) has a discretion as to whether to take certain steps. In specific cases, this may include a managerial decision whether to organise a selection procedure, extend a fixed-term contract, how to evaluate candidates in a recruitment selection procedure, or whether to remove a senior employee from office. These specific situations saw claims of discrimination on grounds of age or gender. Courts approached these situations differently.

In this regard, it should be generally noted that discrimination can occur in situations where an individual has a **broad discretion** and is not required to state reasons for his or her decisions to anyone. These are moments where decision-making may be clouded by a prejudice or a stereotype which will cause harm to an individual. All cases used to **demonstrate the potential risk of narrowing the scope of review of the defendant's conduct in discrimination lawsuits** took place in the public sector (education and the civil service). Courts found discrimination in only one such case.

The first case concerned the area of regional education. In response to an amendment to the Schools Act reducing school management's term of office, a city opened a selection procedure for a headteacher in a kindergarten. The plaintiff (headteacher in the kindergarten who was close to retirement) claimed age discrimination. She noted that a selection procedure had been organised only for her school, while the other nine kindergarten headteachers had received an automatic extension of their contract. She believed that his constituted less favourable treatment. The court did not support her claim. While it agreed that the founding authority had not proceeded correctly (the selection procedure should have involved more school facilities given the transitory provisions of the amended Schools Act), **the founder's conduct was not discriminatory**. The plaintiff's term in office terminated by operation of law and the founding authority merely fulfilled its statutory duty. In the final part of the judgement, the court noted that the founder **could not have acted** in a discriminatory manner merely by announcing a selection procedure, since the **founder's right to do this follows directly from the law**.[58]

In the second case (from the area of higher education), the plaintiff did not retain her position of senior lecturer in a selection procedure at a medical faculty. In court, she alleged that the selection procedure had been organised only for her position, not the positions of her other two (male) colleagues. She alleged that the reason behind the different treatment were her conflicts with the head of the clinic whose sexual advances she had spurned in the past. The courts dismissed her action arguing that **the higher education institution had the right to announce the selection procedure**.[59]

58 Judgement of the District Court in Rakovník of 22 February 2017, Ref. No. 6 C 59/2016-85, p. 7: "The defendant would have acted in a discriminatory manner if it had, without justification, specified certain age limit as a condition for participating in the selection procedure, or if it had prevented the plaintiff from applying on account of her retirement age."

59 Judgement of the Supreme Court of 16 January 2015, File No. 21 Cdo 1165/2013. Quote: "Therefore, it is clear that the announcement of a selection procedure is at the sole discretion of the higher education institution and that

In proceedings on discrimination on grounds of age and disability supposedly committed by the Labour Office of the Czech Republic by not accepting a candidate for civil service, one of the main pleas concerned the **lack of transparency** allegedly associated with the evaluation of the interview part of the selection procedure. The plaintiff believed that the scoring of applicants in interviews with the selection committee and the selection criteria themselves were subjective and unreviewable. The courts merely noted that an interview **was envisaged by the Public Service Act and, according to evidence, all the applicants for the job were asked the same questions** and the selection committee then scored them.[60] They did not address a number of the plaintiff's pleas at all. These were objections that the minutes of a meeting of the selection committee did not make it clear how many points were awarded for the individual questions, how the applicants answered them and how many points they scored; the number of points awarded for the documents (i.e., work experience) was also unclear.[61]

The final case concerned removal of a plaintiff from a senior position prior to commencing maternity leave. The first-instance court had significant difficulties in dealing with a plea of discrimination related to a legal act pursuant to Section 73 of the Labour Code which **did not require official justification** to become valid. The true motivation of the defendant was thus unknown (or disputable, rather) and the first-instance court failed to collect and assort the necessary contextual information. For example, the court inquired whether the defendant had committed such conduct earlier in the case of other female employees. When it failed to obtain such information, it held that against the plaintiff. It requested, at variance with Section 133a of the Code of Civil Procedure, that the plaintiff prove the reason behind her removal (i.e., the declared intent to return to work immediately after the end of maternity leave and not to go on parental leave).[62] After the appellate court twice cancelled the judgements of the first-instance court and assigned the case to another chamber, the final judgement was rendered and confirmed that the defendant had discriminated against the plaintiff.[63]

Application of Section 133a of the Code of Civil Procedure in cases of unequal pay

People suing their employers for discrimination in remuneration usually face an uphill battle to prove their allegations. It is often very difficult to submit sufficient evidence in court that

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an employee's opinion on the purposefulness of such a selection procedure – as confirmed by the appellate court – has no legal relevance."

60 Judgement of the District Court in Bruntál of 20 June 2018, Ref. No. 11 C 7/2016-153; judgement of the Regional Court in Ostrava of 4 December 2018, Ref. No. 16 Co 178/2018-176.

61 In the final part of its reasoning, the appellate court noted what it would have classified as discriminatory: "In this connection, the appellate court cannot omit the fact that the plaintiff already conducted a discrimination lawsuit before the District Court in Olomouc; in that case, the appellate court granted the plaintiff's appeal against a decision in a case where she claimed CZK 66,000. However, the facts of the case in those proceedings were different as it was demonstrated that the plaintiff had been discriminated against in comparison to the other candidates, since she had been excluded from the second round (an interview) despite her certificates that she met all the conditions included in her written application."

62 Resolution of the Municipal Court in Prague of 20 June 2018, Ref. No. 23 Co 128/2018-246.

63 Judgement of the District Court for Prague 1 of 15 March 2019, Ref. No. 23 C 146/2014-264.

they were treated less favourably in remuneration compared to another employee who carries out the same work or work of the same value for the same employer. Data on the salaries of "comparators", as these persons are known, are usually not accessible and represent an obstacle in the exercise of employees' rights.[64] For this reason, this survey report **focuses in more detail on how plaintiffs managed to meet their procedural obligations**[65] in the area of remuneration.[66]

In all cases analysed below, the lawsuits were brought by women. Two invoked discrimination on grounds of sex, another two invoked on grounds of worldview and one on grounds of older age. Only one of the plaintiffs was successful.

In a highly publicised case of remuneration for head physicians at a private hospital, the plaintiff provided the court with **tentative information** on the pay of her male colleagues.[67] She noted in her action that she had **learnt about the differences in pay from rumours** when certain colleagues were leaving the hospital and selection procedures were taking place. These facts were sufficient for the first-instance court to ask the defendant to provide information on salaries and reasons for the differences found. The plaintiff withdrew a part of her claim for level pay after she learnt how much exactly her male colleagues had earned in the relevant period. Even though the appellate court cancelled the first decision in the case and returned the case for further proceedings, it confirmed that the first-instance court had correctly applied Section 133a of the Code of Civil Procedure.[68]

In another case, the plaintiff (a loan analyst at a bank's call centre) sued her former employer for pay discrimination on grounds of age. In the action, she pointed out that a **younger colleague** who had been hired for the same position at approximately the same time had received higher pay and bonuses.[69] She also alleged that her direct superiors had **bullied her**. These circumstances were, according to the available information, sufficient for the court to request explanation from the defendant as to the manner in which it remunerated its employees and why the plaintiff had received lower remuneration than her younger colleagues. The court concluded that the reason was the plaintiff's lack of language skills

64 For more on the culture of non-transparency in pay (in both public and private sectors) see Křížková, A., Marková Volejníčková, R., Vohlídalová, M. *Genderové nerovnosti v odměňování: problém nás všech (Gender Inequality in Remuneration: Everyone's Problem.)*. Prague: Sociologický ústav AV ČR, v. v. i., 2018. ISBN 978-80-7330-341-9. Available at: https://www.soc.cas.cz/sites/default/files/publikace/krizkova_markovavolejnickova_vohlidalova-genderove_nerovnosti_v_odmenovani-problem_nas_vsech.pdf.

65 Submit evidence of inequalities in pay that create a reasonable suspicion that discrimination on grounds listed in Section 2 (3) of the Anti-Discrimination Act has taken place.

66 It cannot be omitted that plaintiffs also have an obligation to allege and prove that they carry out the same or comparable work as persons in comparable positions (their colleagues). Meeting this obligation was not a problem in the analysed decisions.

67 The plaintiff indicated that the head of the maternity ward earned a salary of ca. CZK 80,000–90,000 (EUR 3,108–3,497), and the head of the surgery ward earned ca. CZK 100,000 (EUR 3,885).

68 Resolution of the Regional Court in Brno of 17 September 2014, Ref. No. 49 Co 319/2013-217, p. 7.

69 The judgement does not make it clear whether the plaintiff indicated detailed information on the colleague's pay, or how she obtained the information.

and professional experience, as well as a drop in performance. As regards the comparison of her remuneration with the colleague mentioned in the action as a "comparator", the court took evidence demonstrating that the colleague spoke English and had better performance compared to the plaintiff. Hence, the court dismissed the action.[70] The plaintiff's appeal against the decision is still pending.

In another case, the plaintiff provided the court with rather **precise information on the difference in pay.** She worked as "shift leader" and alleged that her male colleagues working the same job had a CZK 5,000 (EUR 194) higher monthly salary with the variable performance bonus higher by CZK 2,000 (EUR 78). Based on this information, the court asked the employer to explain its salary policy and the differences in remuneration. It subsequently dismissed the action as unfounded.[71]

The aforementioned cases demonstrate that in the surveyed period, lawsuits were brought by plaintiffs who had at least **tentative data on remuneration** of their male or younger colleagues doing the same or equal-value work. This shows that demonstrating less favourable treatment was likely not a major problem. However, it should be noted that the analysed decisions do not make it clear how the information on pay was obtained and how much the courts insisted on evidence for the allegations made.

In the remaining two cases, the courts dealt with unequal pay in the State's organisational components (the Fire Rescue Service[72] and the Road and Motorway Directorate[73]). In both cases, the plaintiffs alleged that pay discrimination had occurred due to their **worldview**.[74] The courts did not accept their allegations. Neither of the plaintiffs cited any other special ground listed in Section 133a of the Code of Civil Procedure at the courts' request. In the case involving the Road and Motorway Directorate, the appellate court explicitly noted that the burden of proof could not be shared in said case. Nevertheless, it approved of the manner of evidence-taking carried out by the first-instance court, which consequently corresponded to the aforementioned principle.[75] In essence, the first-instance court inquired whether the defendant had remunerated the plaintiff differently in comparison with the other employees and, if so, why.[76] In the second case concerning the Fire Rescue

70 Judgement of the District Court for Prague 5 of 16 April 2019, Ref. No. 4 C 204/2016-313.

71 Judgement of the District Court in Plzeň-City of 25 May 2015, Ref. No. 21 C 607/2014-84.

72 Judgement of the District Court in Ústí nad Labem of 30 March 2017, Ref. No. 19 C 1102/2009-954; judgement of the Regional Court in Ústí nad Labem of 6 February 2019, Ref. No. 12 Co 346/2017-1073.

73 Judgement of the District Court for Prague 4 of 14 July 2016, Ref. No. 48 C 118/2013-263; judgement of the Municipal Court in Prague of 14 November 2017, Ref. No. 30 Co 145/2017-378; judgement of the Supreme Court of 28 November 2018, Ref. No. 21 Cdo 2262/2018-437.

74 In the first case, the plaintiff believed worldview was involved given that she personally considered the communist regime to be criminal and there were persons in the management of her employer who had been members of the Communist Party of Czechoslovakia prior to 1989. In the second case, the plaintiff saw the involvement of her worldview in the fact that she had justifiably criticised her employer, expressed different opinions and believed in professional performance of her tasks.

75 Judgement of the Municipal Court in Prague of 14 November 2017, Ref. No. 30 Co 145/2017-378, p. 8.

76 Cf. judgement of the District Court for Prague 4 of 14 July 2016, Ref. No. 48 C 118/2013-263, pp. 9, 11.

Service, the court concluded that the basis for unequal remuneration lay in personal grudges between the plaintiff and the defendant's representatives. During evidence-taking, the court also asked the defendant for a reasonable justification why it had treated the plaintiff less favourably in the area of discretionary bonuses and benefits.[77]

Both these cases document a single fact. While courts did not see any causal link between the alleged ground of discrimination and the difference in remuneration objectively ascertained through evidence, **they proceeded in the spirit of Section 133a of the Code of Civil Procedure**.

Application of Section 133a in cases of (sexual) harassment

Cases of harassment and sexual harassment differ from cases of direct discrimination. In the cases of direct discrimination, there is usually no doubt that a certain action took place (an employer rejected a candidate for employment, a physician refused to treat a disabled person, a municipality did not assign a flat to a Roma family, etc.), but there is uncertainty as to whether this happened because of a protected characteristic (sex, disability, ethnicity etc.). By contrast, in cases of (sexual) harassment, the court has to take evidence to ascertain whether a certain action that meets the elements of (sexual) harassment **even occurred at all**.[78] If the plaintiff proves the existence of a hostile, degrading, humiliating or offensive conduct[79] (e.g., through witness testimonies, audio or video recordings, text messages on a mobile phone or medical reports), there is a question what exactly should be proven by the defendant. The fundamental procedural rule remains that the defendant cannot be required to prove a negative (i.e., prove that it did not "harass").[80]

It is important to note in this context that this is not a purely theoretical problem. The Court of Justice of the European Union requires that the burden of proof also be shared in cases of harassment.[81] The Supreme Court insists, even in cases of sexual harassment, on carrying out a "two-stage test" where the plaintiff first has to prove that a certain conduct indeed occurred. If that is demonstrated, a rebuttable presumption applies that one of the statutory protected characteristics motivated the wrongful conduct. The defendant thus has

77 Judgement of the District Court in Ústí nad Labem of 30 March 2017, Ref. No. 19 C 1102/2009-954, p. 125.

78 Cf. Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. *Antidiskriminační zákon. Komentář (The Anti-Discrimination Act: Commentary)*. 1st edition. Prague: C. H. Beck 2010, pp. 452–453.

79 Or proves a sexual nature of the conduct in the case of sexual harassment.

80 Few applicable solutions are mentioned in literature. In a labour-law dispute, for instance, the defendant should prove that "its decisions are based on the plaintiff's performance, which should exclude other reasons or cast doubt on witness testimonies supporting the plaintiff's allegations." Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. *Antidiskriminační zákon*. *Komentář (The Anti-Discrimination Act: Commentary)*. 1st edition. Prague: C. H. Beck 2010, pp. 453–454. Alternatively, the defendant should provide the court with explanation "that the victim's reaction was disproportionate to what happened, the situation was misconstrued etc." (Kvasnicová, Jana. Distribution of the burden of proof in discrimination disputes. In: Benák, J., Vikarská, Z., Janovec, M. COFOLA 2018: Část IV. Právo na přístup k soudu *(Part IV: Right to Access to Court)* [online]. Brno: Masarykova univerzita, 2018, p. 274. ISBN 978-80-210-9146-7. Available at: https://www.law.muni.cz/dokumenty/45653).

81 Judgement of the CJ EU of 17 July 2008 in case C-303/06, *S. Coleman v Attridge Law and Steve Law*, paragraphs 61 and 62.

to prove that the principle of equal treatment was not violated.[82] However, this test was originally formulated by the Supreme Court in a judgement that concerned direct discrimination on grounds of sex (non-hiring of a female candidate for the position of chief financial officer).[83]

The complications in sharing of the burden of proof in cases of (sexual) harassment were already pointed out by the previous Public Defender of Rights. She noted that incorrect application of Section 133a of the Code of Civil Procedure "could lead to two extreme situations. Either it becomes completely impossible for the victim to prove that harassment occurred (barring exceptional situations where a witness is present or where the victim is able to obtain an audiotape, for example), or – in the opposite extreme – the defendant gets into a situation where sexual harassment cannot be refuted (violating the constitutional interpretation according to which the defendant must not be compelled to prove a negative)."[84]

An analysis of several cases from the 2015–2019 period showed that courts still face difficulties in dealing with this complicated issue. This affects the length of proceedings and compels the parties to resort to appeals.

One such case involved a bank employee who sued her employer for discrimination on grounds of sex. The first-instance court concluded that the defendant had managed to refute the plaintiff's allegations and dismissed the action.[85] Only the court of appeal clearly identified that the plaintiff claimed three different kinds of unlawful conduct (discrimination in remuneration and in professional advancement, and sexual harassment[86]). The appellate court succinctly summarised the facts the plaintiff had stated with respect to the individual kinds of conduct on the part of the defendant and rebuked the first-instance court for a failure to accept some pieces of evidence adduced by the plaintiff (e.g., examine witnesses). The appellate court subsequently issued instructions for the first-instance court concerning further procedure, but surprisingly failed to **distinguish between the individual types of discrimination invoked**. Even with respect to the plea of sexual harassment allegedly committed by the plaintiff's direct superior,[87] the appellate court instructed the first-

82 Judgement of the Supreme Court of 29 May 2013, File No. 21 Cdo 867/2011.

83 Judgement of the Supreme Court of the Czech Republic of 11 November 2009, Ref. No. 21 Cdo 246/2008-311.

84 Final report on a survey conducted by the Public Defender of Rights. Discrimination in the Czech Republic: Victims of Discrimination and Obstacles in Access to Justice [online]. Brno: Office of the Public Defender of Rights, 2015, pp. 105–106 [retrieved on: 7 April 2020].

Available at: https://www.ochrance.cz/fileadmin/user_upload/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf.

85 Judgement of the District Court for Prague 1 of 22 February 2016, 17 C 24/2012, p. 8: "The court is of the opinion that while the plaintiff complied with her obligation to make allegations through supplementary statements as she had been advised, the defendant refuted said allegations concerning discrimination on grounds of unequal treatment and sex."

86 Sexual harassment was allegedly related to bullying, slander, unfavourable evaluation and reprimands by the direct superior.

87 The judgement of the first-instance court (page 4) clearly indicates what the plaintiff considered sexual harassment: "The plaintiff received a proposition with sexual undertones from Mr. R., which she did not accept. The plaintiff believes that she was treated unequally due to discrimination on grounds of her sex (gender), as well as

instance court as if it were to deal with suspected direct discrimination.[88] However, such an approach could lead to absurd conclusions in practice.[89] The aforementioned proceedings have not concluded yet with a final decision, despite being already initiated in 2012.

In the case of sexual harassment at a public administration workplace, the first-instance court interpreted Section 133a of the Code of Civil Procedure **very broadly for the benefit of the plaintiff**. According to the court, the plaintiff only had to allege sexual harassment supposedly committed by her superior. It was then up to the defendant (the employer) to refute her statements of fact.[90] The defendant objected that all conduct of sexual nature (sending e-mails and multimedia messages with pornographic content at the workplace) was consensual. The plaintiff and her direct superior engaged in an intimate relationship, hence the conduct could not have constituted harassment. Therefore, the action was dismissed. The appellate court, however, satisfied the plaintiff's appeal because it saw the case in a less clear-cut way. It admitted that both parties to the proceedings had laid out believable versions of the events and conflicts at the workplace. As part of evidence-taking, it took account of the timeline of the relationship (the plaintiff and her superior had terminated their intimate relationship after some time), the responsibilities of senior employees, as well as the employer's attitude to the workplace conflict. The court eventually satisfied the sexual harassment action.[91] However, the proceedings took seven years.

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personal vendetta on the part of Mr. R. because she had spurned his sexual advances. The alleged sexual advances consisted, among other things, in conduct where Mr. R. repeatedly urged the plaintiff to come to him for a weekend and to visit him in a rented flat, used insinuations with sexual undertones and attempted to initiate physical contact. When the plaintiff spurned these advances, this resulted in obvious bullying by Mr. R. and unequal treatment."

88 Resolution of the Municipal Court in Prague of 11 April 2017, Ref. No. 30 Co 278/2016-284, p. 4: "After taking the necessary evidence, the first-instance court is to make a decision as to whether or not the alleged specific unequal treatment was proven by the plaintiff. Should the first-instance court conclude that unequal treatment of the plaintiff as compared to men was demonstrated, then it shall take evidence already marked by the defendant to prove that the reason (motive) for unequal treatment did not consist in the plaintiff's gender, but in other things (not in statutory grounds of discrimination). If the plaintiff fails to prove she was treated in an unequal (unfavourable) manner, this will be a reason to dismiss the action."

89 For instance inquiring whether the plaintiff's direct superior also invited male colleagues to a cottage or a rented flat.

90 Judgement of the District Court in Rakovník of 29 January 2014, Ref. No. 9 C 132/2009-954, p. 23: "According to legal regulations, in the event of sexual discrimination, i.e. also sexual harassment, the employee benefits from the reversal of the burden of proof, where it is assumed that the alleged conduct violating the employee's personal rights did occur. Sexual harassment means any kind of untoward verbal or other conduct of sexual nature aiming to violate another person's dignity. The burden of proof regarding this statement of fact was borne by the defendant."

91 Judgement of the Regional Court in Prague of 17 March 2015, Ref. No. 23 Co 229/2014-1079, p. 5: "Given the personal character of the relationship between the plaintiff and Mr. F.F., it is difficult to establish with certainty which one of them was primarily responsible for the aforementioned deterioration of their relationship at the end of 2008 and the start of 2009, as well as for the subsequent escalation. In general terms, the plaintiff's version, i.e. that Mr. F.F. did not take her rejection well and began taking revenge on her with the aim of creating pressure to force her to leave their shared workplace, seems plausible; on the other hand, there is the equally plausible version that it was the plaintiff who did not come to terms with the change in circumstances where she stopped being the favourite of Mr. F.F., who had shifted his romantic attention to her colleague, Ms. L.P., and the plaintiff then started outwardly manifesting her feelings, creating a tense atmosphere at the workplace. According to the appellate court, regardless of which version or combination thereof (which seems most plausible) is true, Mr. F.F. clearly bears greater responsibility for the situation and its consequences as he, as the senior employee, should have been well aware of

The case of discrimination against a secondary school teacher with a visual impairment stands out from the above cases. It is the only case of harassment due to disability. In other cases (8 in total), the plaintiffs alleged sex/gender as the reason for discrimination. The main difference, however, lies in the unusual procedure of the first-instance court. The court decided to **split the burden of proof between the plaintiff and the defendant**.[92] In its resolution, it identified eight acts which it considered to have been proven by the plaintiff. It noted that the burden of alleging and proving that the principle of equal treatment had not been violated with respect to these eight acts was borne by the defendant. Another three acts[93] alleged by the plaintiff were not considered proven by the court and, therefore, the court advised the plaintiff of the failure to bear the burden of proof within the meaning of Section 118a (3) of the Code of Civil Procedure. In this regard, this was a unique decision in a harassment case as the distribution of the burden of allegation and the burden of proof was explained to the parties by means of a procedural decision.[94]

Recordings as evidence of less favourable treatment of a plaintiff

Proving different or less favourable treatment, despite the redistribution of the burden of allegation and proof, continues to be an **important obligation of the plaintiff** (the potential victim of discrimination). However, discrimination often takes place in the absence of direct witnesses or documentary evidence. For this reason, some discrimination disputes feature audio and video recordings of the defendant's unlawful conduct. In these cases, the defendants were unaware that their (discriminatory) conduct was being recorded and pleaded unlawfulness of such recordings with reference to the protection of personal rights and personal expressions.

Case law on the admissibility of recordings secretly obtained by private individuals for the purposes of evidence taken in civil court proceedings went through an evolution.[95] It settled on the opinion that the relevant opposing interests (protection of privacy and protection of rights of the weaker party) had to be balanced and each case had to be evaluated individually. As a rule, the use of such recordings is admissible if this is necessary for the protection of the rights of a significantly weaker party in civil proceedings who is at risk of a major harm unless the facts can be proven by other means.[96]

Having regard to the above, it is not surprising that the courts accepted a secret recording as evidence of discriminatory conduct in three cases during the surveyed period. There were cases of **Roma people who were rejected when trying to rent a flat.** In two cases, the action

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the risks involved in initiating (or attempting to initiate) an intimate relationship with a colleague, especially one in a subordinate position."

92 Judgement of the District Court in České Budějovice of 11 July 2018, Ref. No. 23C 276/2017-272.

93 This was a statement of the headteacher (the plaintiff's superior) during a selection procedure that she would get rid of the plaintiff, as well as threats following a failure to undergo an extraordinary occupational health examination.

94 Judgement of the District Court in České Budějovice of 25 February 2019, Ref. No. 23 C 276/2017-492.

95 ŠAMÁNEK, Jiří *et al. Antidiskriminační právo v judikatuře a praxi (Anti-Discrimination in Case Law and Practice).* Prague: C. H. Beck, 2017. ISBN 978-80-7400-658-6, p. 107.

96 Judgement of the Constitutional Court of 9 December 2014, File No. II. ÚS 1774/14 (N 221/75 SbNU 485).

was lodged against the real estate brokers,[97] and in the remaining case, against the owner of the real estate.[98] A recording of a conversation capturing the rejection of Roma consumers because of their ethnicity was a key piece of evidence in court to prove less favourable treatment.

A combination of audio and video recording was produced as evidence also in the case of refusal of a Roma couple by a dentist. The recording was taken during "**situation testing**".[99] However, the court did not issue its ruling on the recording since the parties eventually reached an amicable settlement.[100]

There was only one case where the court dealt in a discrimination dispute with a recording that was made **with the knowledge of the person being recorded** (direct superior of the plaintiff). For this reason, it did not have to examine the matter of admissibility of this piece of evidence and could proceed to inquiring whether the recording demonstrated discriminatory conduct on the part of the employer, who had dismissed the plaintiff for redundancy. The plaintiff alleged that his higher age was the true reason for the dismissal. The court concluded that the employer's conduct was not discriminatory. However, the court noted that its statements were insensitive.[101]

2.2 Compensation for intangible damage

Of the total of 90 discrimination lawsuits, plaintiffs requested financial compensation for intangible damage in a total of 59 cases (ca. 66%). **The requested compensation for intangible damage was awarded or confirmed by courts in 12 cases** (17 cases, or ca. 13 %). However, in two of these cases, the awarded compensation for intangible damage was later cancelled by a court of higher instance.

The highest compensation sought during the period under scrutiny was **CZK 10 million** (EUR 388,531) claimed for discrimination allegedly committed by a non-governmental organisation advocating the rights of imprisoned persons. The proceedings were discontinued due to a failure to pay the judicial fee.[102] Another plaintiff sought CZK 6.5 million (EUR 252,623) as compensation for not being hired because of his Roma ethnicity

97 Judgement of the District Court in Litoměřice of 14 August 2015, File No. 14 C 46/2013; judgement of the Regional Court in Ostrava of 12 May 2015, Ref. No. 23 C 20/2014-91; judgement of the Superior Court in Olomouc of 7 January 2016, File No. 1 Co 124/2015; resolution of the Supreme Court of 23 November 2016, File No. 30 Cdo 2712/2016.

98 Judgement of the District Court in Ostrava of 4 March 2015, File No. 24 C 329/2013-55; judgement of the Regional Court in Ostrava of 13 November 2015, Ref. No. 71 Co 164/2015-113; resolution of the Supreme Court of 16 November 2016, File No. 30 Cdo 1671/2016.

99 Situation testing and its results in the case were described in more details by the Public Defender of Rights. See the Report of the Public Defender of Rights of 23 May 2012, File No. 67/2012/DIS.

Available at: https://eso.ochrance.cz/Nalezene/Edit/1472.

100 Resolution of the Municipal Court in Brno of 3 February 2016, File No. 112 C 289/2014 and 33 C 316/2014.

101 Judgement of the District Court in Prachatice of 27 May 2015, File No. 6 C 27/2015-52.

102 Resolution of the District Court for Prague 5 of 12 March 2019, File No. 13 C 134/2018.

and sexual orientation.[103] In a further 4 cases (comprising 7 decisions), the amount of compensation for intangible damage sought exceeded CZK 1 million (EUR 38,865)[104], and in other 3 cases (4 decisions) the amount sought was equal to CZK 1 million (EUR 38,865).[105] In a significant majority of the cases, the discrimination concerned the area of work and employment. In other examined cases, the compensation for intangible damage sought was CZK 500,000 (EUR 19,433) or lower.

The highest amount actually awarded was CZK 400,000 (EUR 15,546) in the case of discrimination in a service relationship.[106] This was not an instance of discrimination in the sense of the Anti-Discrimination Act, but unequal treatment within a service relationship without specification of a protected characteristic.[107] The plaintiff sought CZK 2,520,457 (EUR 97,958) as compensation for intangible damage in relation to remuneration. The lowest amount awarded by a court equalled CZK 15,000 (split among three plaintiffs) in the case of refusal by a hotel to accommodate the plaintiffs due to their Roma ethnicity[108]; the amount of compensation sought was CZK 75,000. The judgement is not final because an appeal has been filed in the case.

Courts awarded compensation for intangible damage in the full amount requested by the plaintiffs in only two cases (comprising three decisions). Both cases' subject matter concerned discrimination on grounds of Roma ethnicity in relation to housing and, in both cases, the claimed amount equalled CZK 60,000 (EUR 2,332).[109]

In most discrimination cases in which the plaintiffs successfully sought compensation for intangible damage, they alleged **direct discrimination** (10 out of 12 cases). Direct

103 Judgement of the District Court for Prague 5 of 3 December 2013, Ref. No. 24 C 148/2012-176.

104 This was a case of bullying and discrimination in a service relationship (judgement of the District Court in Ústí nad Labem of 30 March 2017, File No. 19 C 1102/2009; judgement of the Regional Court in Ústí nad Labem of 6 February 2019, File No. 12 Co 346/2017); a case of discrimination in employment on grounds of sex (judgement of the District Court for Prague 1 of 22 February 2016, File No. 17 C 24/2012); a case of equal treatment in remuneration (judgement of the District Court in Bruntál of 11 December 2015, File No. 11 C 120/2011; the follow-up judgement of the Regional Court in Ostrava of 22 February 2017, File No. 16 Co 128/2016; and resolution of the Supreme Court of 21 October 2017, File No. 21 Cdo 3111/2017); and a case of discrimination in access to education during imprisonment (judgement of the District Court for Prague 4 of 2 February 2015, File No. 7 C 81/2012).

105 This was a case of discrimination in a selection procedure (judgement of the District Court for Prague 7 of 15 December 2017, File No. 26 C 25/2006; and the follow-up judgement of the Municipal Court in Prague of 24 October 2018, File No. 54 Co 286/2018); a case of denial of healthcare and post-mortal protection of a victim of discrimination (judgement of the District Court for Prague 5 of 5 October 2015, File No. 28 C 17/2014); and a case of not being hired on grounds of ethnicity (judgement of the District Court for Prague 6 of 6 October 2015, File No. 27 C 73/2018).

106 Judgement of the Regional Court in Ústí nad Labem of 6 February 2019, File No. 12 Co 346/2017. The first-instance court hearing the case awarded to the plaintiff a compensation for intangible damage in the amount of CZK 200,000 (judgement of the District Court in Ústí nad Labem of 30 March 2017, File No. 19 C 1102/2009). The case has not been closed yet since the defendant (Fire Rescue Service) filed an application for appellate review with the Supreme Court.

107 The plaintiff alleged discrimination on grounds of worldview, but the court rejected it.

108 Judgement of the Regional Court in Ústí nad Labem of 16 January 2019, File No. 34 C 25/2006.

109 Th first case was the judgement of the Regional Court in Ostrava of 12 May 2015, File No. 23 C 20/2014. The second was the judgement of the Regional Court in Ostrava of 13 November 2015, File No. 71 Co 164/2015; and the follow-up resolution of the Supreme Court of 16 November 2016, File No. 30 Cdo 1671/2016.

discrimination was the most frequently appearing form of discrimination also in cases where courts partially granted the action but did not award compensation for intangible damage.

One case also saw compensation for intangible damage being awarded for a different form of discrimination: **sexual harassment** consisting in sending pornographic content at the workplace.[110] In still another case, harassment was established concurrently with direct discrimination in a lawsuit brought by an employee of a higher education institution.[111] In a different case where harassment was alleged (teacher bullied due to her disability), the first-instance court granted the action, but the appellate court concluded that discrimination had not taken place, changed the judgement and did not award compensation for intangible damage.[112]

The areas of life where plaintiffs most often succeeded in winning financial compensation for intangible damage were **work and employment** (9 decisions in 6 cases[113]) and **housing** (5 decisions in 4 cases). There was also one successful action in the area of access to healthcare and one successful case in the area of education.

Table 2 – Decisions of courts concerning compensation for intangible damage based on the area of discrimination (N = 106)

Area of discrimination	**Number of court proceedings with a request for financial compensation for intangible damage**	**Number of cases with a financial compensation for intangible damage awarded**	**Success rate in %**
Work and employment	62	9	15%
Access to and provision of healthcare	4	1	25%
Access to and provision of education	19	1	1%
Access to goods and services	3	0	0%
Housing	16	5	31%

110 Judgement of the District Court in Rakovník of 29 January 2014, Ref. No. 9 C 132/2009-954; judgement of the Regional Court in Prague of 17 March 2015, Ref. No. 23 Co 229/2014-1079; resolution of the District Court in Rakovník of 23 September 2015, Ref. No. 9 C 132/2009-1132; and resolution of the Regional Court in Prague of 30 December 2015, Ref. No. 23 Co 393/2015-1148.

111 Judgement of the District Court in Ostrava of 8 March 2018, File No. 85 C 60/2016.

112 Judgement of the District Court in České Budějovice of 25 February 2019, Ref. No. 23 C 276/2017-492; and judgement of the Regional Court in České Budějovice of 25 February 2020, Ref. No. 19 Co 889/2019-717.

113 In two cases, however, the compensation was subsequently cancelled based on a decision of a higher-instance court.

Unspecified	2	0	0%
Total	**106**	**17**	**16%**

Work and employment was the most frequent area of discrimination in cases where the court found discrimination but did not award compensation for intangible damage.

The most frequent grounds of discrimination alleged in cases where compensation for intangible damage was successfully claimed were the **Roma ethnicity** (5 decisions in 4 cases concerning access to housing and healthcare) and **disability** (4 decisions in 3 cases).[114] No specific grounds under the Anti-Discrimination Act were alleged in another 4 cases where courts awarded financial compensation for intangible damage. In one case (two decisions), the court awarded compensation for intangible damage to a plaintiff who invoked discrimination on grounds of worldview (her political beliefs), even though the courts did not agree with this ground of discrimination and classified the case as general discrimination. Compensation for intangible damage is relatively less commonly awarded in age discrimination cases (one case), even though this was the second most frequently invoked ground of discrimination in the surveyed period; in the 2010–2014 period, it even was the most common one.[115]

Table 3 – Decisions of courts concerning compensation for intangible damage according to grounds of discrimination (N = 110)[116]

Ground of discrimination	**Number of court proceedings with a request for financial compensation for intangible damage**	**Number of cases with a financial compensation for intangible damage awarded**	**Success rate**
Race, ethnicity – Roma	21	5	24%
Race, ethnicity – other	0	0	0%
Nationality *(národnost)*	0	0	0%
Sex	19	1	5%
Sexual orientation	1	0	0%
Age	13	1	8%
Disability	20	4	20%
Religion, belief	6	0	0%

114 In one case concerning work and employment, the first-instance court awarded compensation for intangible damage, but the appellate court changed the decision (judgement of the District Court in České Budějovice of 25 February 2019, Ref. No. 23 C 276/2017-492; and judgement of the Regional Court in České Budějovice of 25 February 2020, Ref. No. 19 Co 889/2019-717).

115 Research Report 2015, p. 132.

116 In some proceedings, plaintiffs alleged multiple grounds of discrimination simultaneously; such proceedings are counted more than once in the table.

Worldview	2	2*	100%*
Nationality/citizenship *(státní příslušnost)*	0	0	0%
Other	7	0	0%
Unspecified	21	4	19%

*Both decisions concern the aforementioned case where the court awarded compensation for intangible damage due to discrimination in a service relationship, but did not agree with the plaintiff that the discrimination had occurred on the basis of her worldview.[117]

Discrimination on grounds of sex/gender repeatedly appears among decisions where the courts did not award compensation for intangible damage, even though they agreed that discriminatory conduct had taken place.

Arguments in cases where compensation was awarded in full amount

Full compensation for intangible damage **was awarded by courts in two cases** concerning discrimination on grounds of Roma ethnicity in access to housing.

In the first case, the plaintiff invoked discrimination consisting in being prevented from renting a flat due to his Roma ethnicity.[118] In its arguments, the court emphasised the defendant's (a real estate agency) violation of the Charter of Fundamental Rights and Freedoms according to which being a member of a national or ethnic minority could not be held against individuals. It further noted the right of citizens who are members of ethnic minorities to their universal personal development.[119] For this reason, the court concluded that a financial compensation for intangible damage was in order aside from the moral satisfaction in the form of an apology. It awarded to the plaintiff the requested amount of CZK 60,000 (EUR 2,332); given the one-off character of the violation, it did not see a reason to increase the compensation.

The second case involved a Roma plaintiff who tried to rent a flat. The first-instance court dismissed her action,[120] but the appellate court granted the plaintiff's appeal and awarded a compensation in the requested amount.[121] As reasons for the amount of the compensation, the court cited chiefly the importance of the right that had been violated.[122]

117 Judgement of the District Court in Ústí nad Labem of 30 March 2017, File No. 19 C 1102/2009; and judgement of the Regional Court in Ústí nad Labem of 6 February 2019, File No. 12 Co 346/2017.

118 Judgement of the Regional Court in Ostrava of 12 May 2015, File No. 23 C 20/2014.

119 Article 24 and Article 25 (1) of the Charter of Fundamental Rights and Freedoms.

120 Judgement of the District Court in Ostrava of 4 March 2015, File No. 24 C 329/2013.

121 Judgement of the Regional Court in Ostrava of 13 November 2015, File No. 71 Co 164/2015.

122 Judgement of the Regional Court in Ostrava of 13 November 2015, File No. 71 Co 164/2015, p. 7: "When considering the amount of intangible damage, the appellate court evaluated especially the importance of the infringed right to equal access to housing, which generally affects the very fundamentals of a natural person's livelihood. The appellate court considers the compensation for intangible damage in the amount of CZK 60,000 to be

The defendant's application for appellate review was subsequently rejected by the Supreme Court.[123]

Arguments in cases where compensation was awarded in a partial amount

Decisions in which courts awarded compensation for intangible damage in a lower amount than requested by the plaintiffs are another surveyed category. In these cases, the typical argument was that pursuant to Section 10 (3) of the Anti-Discrimination Act, the **amount of compensation for intangible damage** is at the **court's discretion, with due regard being paid to the severity of damage and the circumstances under which the right was violated**. Examples include the case of a student refused by a catchment school because of autism[124] and the case of bullying of an academic worker at a higher education institution. In the second case, the plaintiff requested compensation for intangible damage in the amount of CZK 100,000 (EUR 3,887), but the court only awarded CZK 50,000 (EUR 1,943). The court argued as follows: The court took into consideration that discriminatory conduct had been carried out for a longer period of time (over a year) and comprised multiple acts; however, the plaintiff was not the only one exposed to such conduct (see the decision of the State Labour Inspectorate of 29 June 2016, Ref. No. 4882/1.30/16). Vulgar language (referring to female employees as "silly hens", calling the plaintiff a "stupid cow"; the court does not wish to downplay inappropriate behaviour, but there are far worse profanities in the Czech language) and discriminatory conduct consisting in an unjustified order to leave the defendant's premises were not found to be completely substantiated. Therefore, by virtue of paragraph III of the operative part of the judgement, the court ordered the defendant to pay to the plaintiff the amount of CZK 50,000 as compensation for intangible damage."[125] The case of harassment of a visually impaired teacher should also be mentioned.[126] In this case, the district court argued that the compensation should have a deterrent effect, which was not otherwise typical of courts' arguments in discrimination disputes. In the end, however, the appellate court concluded that discrimination had not occurred and the plaintiff was not entitled to any compensation for intangible damage.[127]

The argument that **a longer time has passed since the alleged facts and a moral satisfaction would not thus be sufficient** also sometimes appear as justification for awarding at least partial compensation for intangible damage. This deliberation was used by courts in two

proportionate as it corresponds to the amounts of intangible damage awarded by courts in similar proceedings and reflects the basic plaintiff's claim in relation to the importance of the right that was violated."

123 Resolution of the Supreme Court of 16 November 2016, File No. 30 Cdo 1671/2016.

124 Judgement of the District Court in Vyškov of 18 March 2016, File No. 10 C 250/2014.

125 Judgement of the District Court in Ostrava of 8 March 2018, File No. 85 C 60/2016, p. 2.

126 Judgement of the District Court in České Budějovice of 25 February 2019, File No. 23 C 276/2017, pp. 28–29: "Case law of the ECJ also emphasises the preventive and repressive functions of anti-discrimination measures. A financial compensation for intangible damage is in order here as the plaintiff remains to be employed by the defendant and the compensation should thus deter the defendant from repeated discriminatory conduct. Other measures could be insufficient to provide the plaintiff with a real and effective protection. Reasonable satisfaction then fulfils the purpose of a certain benefit for a successful plaintiff who was not afraid to face the necessary difficulties and expend costs associated with a lawsuit."

127 Judgement of the Regional Court in České Budějovice of 25 February 2020, Ref. No. 19 Co 889/2019-717.

examined cases – discrimination in a service relationship[128] and refusal to accommodate Roma people at a hotel.[129]

In one case, the court increased the compensation awarded by the first-instance court from CZK 200,000 (EUR 7,773) to CZK 400,000 (EUR 15,546).[130] **It stressed the importance of ensuring satisfaction** and the purpose of the compensation provided, i.e., effective remedy and mitigation of adverse impacts of the violation of rights.

Arguments in cases where compensation was not awarded

There are also decisions where the court did not award the requested compensation for intangible damage, and granted only the relief sought under Section 10 (1) of the Anti-Discrimination Act (refrainment from discrimination, remedy to the consequences of discrimination, and reasonable satisfaction). **The reason for rejecting compensation for intangible damage usually was that the court believed some other relief was sufficient[131] or that the defendant's later steps sufficiently mitigated the violation of the plaintiffs' dignity** (e.g., in one case a student was eventually enrolled in the school[132]). The first case has not been decided through a final decision yet.

A rather distinct reason to reject compensation for intangible damage was presented in the case of situation testing in a real estate agency.[133] The court concluded that the plaintiff's dignity could not have been significantly violated as assumed by the Anti-Discrimination Act since the relevant situation testing had been conducted by the plaintiff as part of her working tasks and she had not been really interested in the flat.

Other considerations

According to Section 10 (2) of the Anti-Discrimination Act, financial compensation for intangible damage is possible **if remedy in the form of refrainment from discrimination, remedying the consequences of discrimination and reasonable satisfaction (typically in**

128 Judgement of the District Court in Ústí nad Labem of 30 March 2017, File No. 19 C 1102/2009.

129 Judgement of the Regional Court in Ústí nad Labem of 16 January 2019, File No. 34 C 25/2006.

130 Judgement of the Regional Court in Ústí nad Labem of 6 February 2019, File No. 12 Co 346/2017.

131 See e.g. judgement of the District Court for Prague 7 of 15 December 2017, File No. 26 C 25/2006, p. 20: "The plaintiff's request for financial satisfaction for the intangible damage she incurred is not justified since apology in a national daily newspaper, i.e., a moral satisfaction, is perfectly sufficient in this case, and likely also more effective than any satisfaction in money."

The facts of the case occurred prior to the effect of the Anti-Discrimination Act, and the court thus proceeded in accordance with Section 13 of the former Civil Code (however, the relevant provision is analogous to Section 10 of the Anti-Discrimination Act).

The conclusions of the first-instance court were later confirmed by the appellate court (judgement of the Municipal Court in Prague of 24 October 2018, File No. 54 Co 286/2018); however, the Supreme Court partially granted the plaintiff's action and returned the case, including the matter of compensation for intangible damage, to the court of first instance (judgement of the Supreme Court of 21 January 2020, Ref. No. 21 Cdo 2770/2019-795). The proceedings are still pending.

132 Judgement of the District Court in Ostrava of 1 March 2017, File No. 26 C 42/2016.

133 Judgement of the District Court in Litoměřice of 14 August 2015, File No. 14 C 46/2013.

the form of a private or public apology) are insufficient.[134] A reason for awarding financial compensation for intangible damage may be especially the fact that a person's reputation, dignity or respect in society have been seriously harmed as a result of discrimination.

The literal interpretation of the provision may suggest that a claim for compensation for intangible damage is subsidiary and a compensation cannot be requested in cases where satisfaction of claims under Section 10 (1) of the Anti-Discrimination Act is sufficient. Legal doctrine has significant reservations regarding that conclusion:

1. From the perspective of potential success, it would theoretically be better to sue for compensation for intangible damage (reasonable satisfaction in money) pursuant to the Civil Code, because in that case the compensation for intangible damage would not be of subsidiary nature. Plaintiffs affected by discrimination on grounds and in the areas of life protected by the Anti-Discrimination Act would thus find themselves in a less favourable position as compared to plaintiffs claiming discrimination in ordinary civil-law relationships.[135]

2. This interpretation is at variance with EU directives providing that penalties for discrimination have to be effective, proportionate and dissuasive.[136] A penalty only has a dissuasive effect if it is sufficiently severe, not just symbolic or insignificant.[137]

This contradiction can be surmounted only by interpreting Section 10 (2) of the Anti-Discrimination Act in conformity with the accepted legal doctrine; **compensation for intangible damage must be considered an equal claim (relief) that may be awarded to a victim of discrimination in all cases** (similarly as under Section 2957 of the Civil Code). Similar procedure was chosen by courts in the case of discrimination on grounds of disability in the provision of public housing.[138] The courts accepted financial compensation as one of the forms of reasonable satisfaction under Section 10 (1) of the Anti-Discrimination Act.

It is further necessary to add that **not all cases in which the courts dealt with compensation for intangible damage in relation to discrimination were adjudicated under the Anti-**

134 Section 10 (2) of the Anti-Discrimination Act reads as follows: "Where remedy pursuant to paragraph 1 above seems insufficient, in particular because the discrimination significantly harmed the person's reputation, dignity or respect in society, the person shall also be entitled to financial compensation for intangible damage."

135 BOUČKOVÁ, Pavla; HAVELKOVÁ, Barbara; KOLDINSKÁ, Kristina; KÜHN, Zdeněk; KÜHNOVÁ, Eva; WHELANOVÁ, Markéta. *Antidiskriminační zákon (Anti-Discrimination Act)*. 2nd edition. Prague: C. H. Beck, 2016, p. 373 *et seq.*: "Such interpretation would render Section 10 (2) of the Anti-Discrimination Act inapplicable to the full extent of the civil-law relationships regulated by the Civil Code. This would leave Section 10 (2) of the Anti-Discrimination Act applicable only to civil claims outside the areas regulated by the Civil Code, especially in the area of labour law and service relationships. Simultaneously, this brings the problem that was described above – that plaintiffs claiming financial compensation under Sections 2956 and 2957 would be in a more favourable position than plaintiffs in labour-law relationships raising claims under Section 10 (2) of the Anti-Discrimination Act."

136 Article 15 of the Race Equality Directive; similarly in Article 17 of the Framework Directive and Article 8d of the Gender Directive.

137 For more details, see e.g. HAVELKOVÁ, Barbara. *Gender equality in law: uncovering the legacies of Czech state socialism*. Oxford: Hart Publishing, 2017. Human rights law in perspective. ISBN 978-1-50990-586-7, p. 232 *et seq*.

138 Judgement of the District Court in Jindřichův Hradec of 24 January 2017, File No. 6 C 216/2015; and the follow up judgement of the Regional Court in České Budějovice of 22 June 2017, File No. 8 Co 960/2017.

Discrimination Act. The first reason is that the subject matter of a part of the cases under scrutiny took place prior to the effect of the Act. Such decisions were not based on Section 10 of the Anti-Discrimination Act, but rather on Section 13 of the previous Civil Code, or Section 7 (4) to (6) of the previous Labour Code. This is illustrated by the highest amount awarded, i.e., CZK 400,000 (EUR 15,546) in the case of discrimination in a service relationship.[139] The second reason lies in the fact (especially in terms of labour-law disputes[140]) that the plaintiff invoked discrimination in general, without reference to any form and grounds under the Anti-Discrimination Act.

2.3 Courts' regard for the Defender's legal opinions

If the plaintiff submits to the court an output of the Public Defender of Rights' activities, this raises two questions. Firstly, **what importance is assigned to the Defender's outputs by the courts.** This is examined in the first part of this chapter. The second question is **to what extent the courts agree with the Defender's conclusions in their decision-making about discrimination**. It is important for the Defender to know the answers in order to provide methodological help to victims of discrimination. If the Defender as the national equality body concludes that discrimination occurred in a specific case and the complainant initiates a lawsuit, the complainant will legitimately expect that the court will reach the same conclusion. This is examined in the second part of this chapter. The chapter focuses on decisions where the courts examined *in rem* whether discrimination had occurred.

The Public Defender of Rights is aware of a total of **14 actions** filed in cases the Defender had examined before. It is important to start by pointing out that independent courts are not bound by the Defender's opinions.

In the analysed cases, the courts approached the Defender's conclusions as follows:

- they fully or partially accepted the Defender's conclusions and referred to them;
- they fully or partially accepted the Defender's conclusions, but did not refer to them;
- they did not accept the Defender's conclusions.

See below for a more detailed description of how the courts work with the Defender's conclusions. An analysis of the importance of the Defender's conclusions for the courts follows.

What importance is assigned to the Defender's outputs by the courts?

The Defender's opinions were commented on by the **Constitutional Court** in one case concerning a children's home educator's dismissal. While the Defender did not find discrimination against the plaintiff on grounds of gender when providing methodological

139 Judgement of the District Court in Ústí nad Labem of 30 March 2017, File No. 19 C 1102/2009; and judgement of the Regional Court in Ústí nad Labem of 6 February 2019, File No. 12 Co 346/2017.

140 Where this is made possible by the broad conception of the principle of equal treatment and non-discrimination pursuant to Section 16 of the Labour Code.

assistance, the Defender's report drew attention to errors made by the responsible district labour inspectorate (hereinafter the "DLI").[141] When taking evidence, common courts referred to the conclusions of the DLI which had not found any problems. The plaintiff submitted the Defender's report concerning the DLI's incorrect procedure to the appellate court, as well as the Supreme Court. Neither of the two courts took the Defender's opinion into consideration. The Constitutional Court later noted that "the plaintiff must not be disadvantaged by shortcomings in the performance of the responsibilities of inspection bodies (incl. the Labour Inspectorate), especially if such shortcomings were explicitly pointed out by the Public Defender of Rights. At this point, the Constitutional Court notes for the sake of completeness that the assessment by the Public Defender of Rights is not important in terms of the Court's conclusions; what is important is the fact that the Defender's opinions were ignored in the appellate proceedings, which encumbered the proceedings by a qualified defect hindering protection from discrimination."[142] The Constitutional Court likely wanted to say that the court should have taken the Defender's opinions into consideration as a factor casting doubt on the probative value of the DLI's conclusions.

In a different case, the **first-instance court** expressed its opinion on the question of whether the Defender's written assessment constituted documentary evidence. The Defender stated the opinion that it did.[143] However, the District Court in České Budějovice came to the opposite conclusion: "Pursuant to Section 125 of the Code of Civil Procedure, all means that can be used to ascertain the facts of the case can serve as evidence. The statement of the Public Defender of Rights does not clarify the facts of the case in any way; in essence, it only brings a legal and factual assessment of the allegations and documents submitted by the plaintiff. Therefore, it cannot be used as evidence." Nevertheless, the following part of the court's reasoning is important: "However, it cannot be disregarded that the [Public Defender of Rights] is a person endowed with significant informal authority in the given area, her opinions constitute legal opinions and her assessment of evidence submitted by the parties can be taken into consideration by the court. The court has thus considered her statement and, given her indisputable expertise in the subject-matter of this case, adopted some of her interpretations in the area of discrimination and labour-law relationships. Nevertheless, the court definitely did not base its conclusions concerning the facts of the case on the Defender's statement, nor did it uncritically adopt the Defender's assessments of evidence."[144]

No far-reaching conclusions can be made based on two court decisions. Nevertheless, a conclusion is possible that the courts have assigned a certain degree of importance to the Defender's conclusions for their assessment of a case.

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141 Deputy Defender's report of 16 September 2013, 5798/2013/VOP. Available at: https://eso.ochrance.cz/Nalezene/Edit/738.

142 Judgement of the Constitutional Court of 8 October 2015, File No. III. ÚS 880/15, paragraph 38.

143 Defender's notice of 28 August 2017, File No. 3381/2017/VOP. Available at: https://eso.ochrance.cz/Nalezene/Edit/6168.

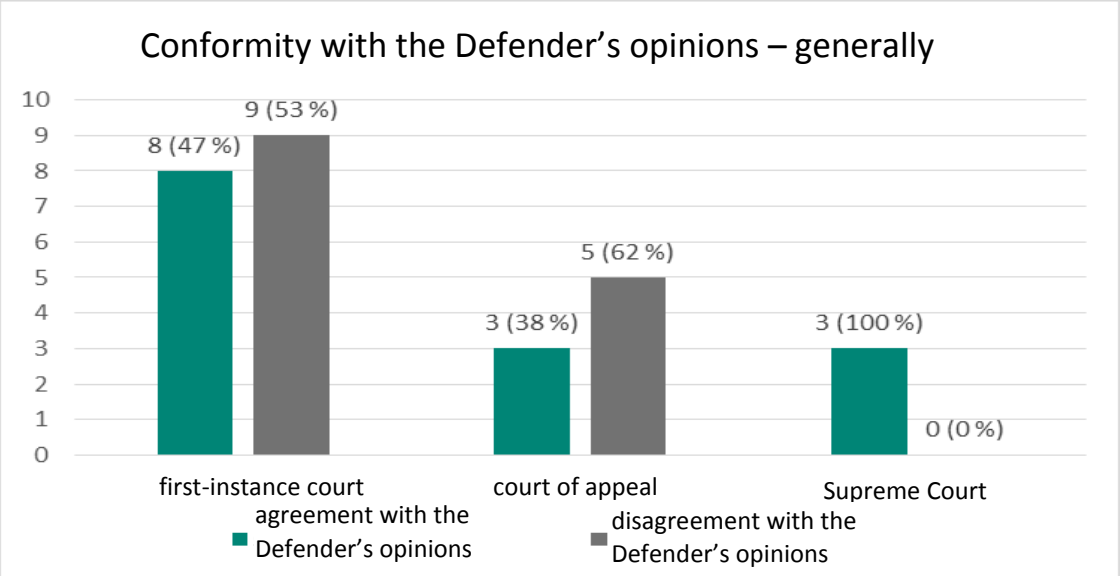
144 Judgement of the District Court in České Budějovice of 25 February 2019, File No. 23 C 276/2017-492, paragraph 65.

Do courts agree with the Defender's opinions?

As concerns **results of court proceedings**, the common courts reached the same conclusion as the Defender in 9 cases out of the total of 14 (ca. 64 %). The court's opinion was different from that of the Defender in 5 cases (ca. 36%). From this perspective, the proceedings with conclusions in line with the Defender's opinions were the majority.

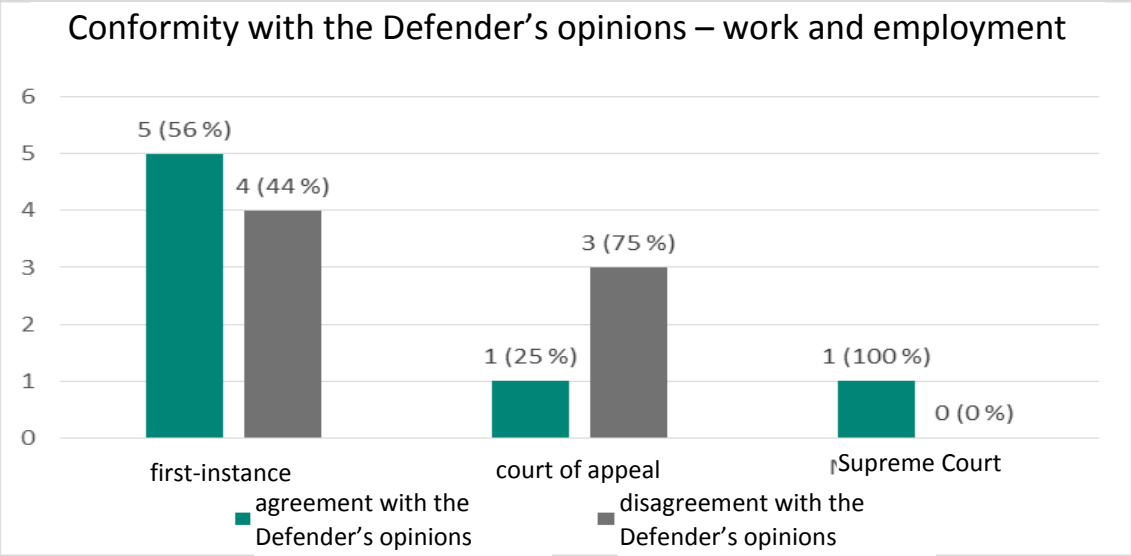
However, when looking at **how the courts decided in their individual instances**, the picture is somewhat different. First-instance courts had a different opinion than the Defender in 9 out of 17 cases (ca. 53%). They upheld the Defender's opinion in 8 cases (ca. 47%). Therefore, the statistical data show a balance slightly tipped towards disagreement. The situation is different in decisions of appellate courts. The courts agreed with the Defender in only 3 out of 8 cases (ca. 38%), while in 5 cases they arrived at a different conclusion (ca. 62%). It is interesting that in cases which later went before the **Supreme Court, the court agreed with the Defender in all cases.** There are 3 decisions on applications for appellate review available and, in all three, the Supreme Court reached the same conclusion as the Public Defender of Rights. However, this may be on account of the fact that only a few cases reach the highest instance.

Chart 12 – Number of decisions according to conformity with the Defender's opinions in general (N = 17/8/3)



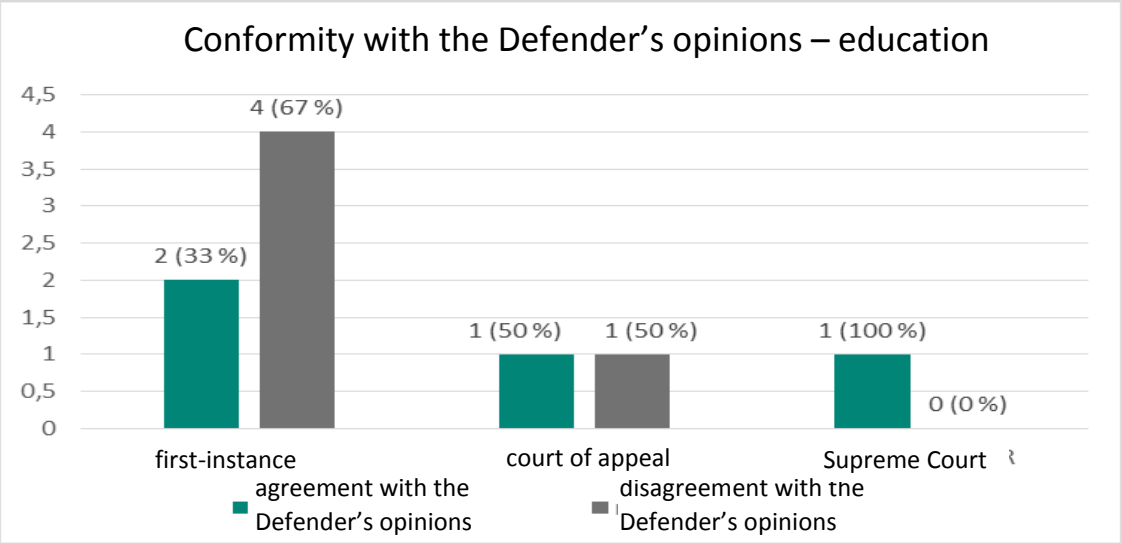
If decisions are classified according to areas regulated by the Anti-Discrimination Act, the results reveal the following. In the area of **work and employment**, first-instance courts agreed with the Defender's opinions in 5 out of 9 cases in total (ca. 56%); their conclusions differed in the other 4 cases (ca. 44%). Therefore, the statistical data show a balance slightly tipped towards agreement. Appellate courts agreed with the Defender's opinions in only 1 out of 4 cases (ca. 25%); in 3 cases they arrived at a different conclusion (ca. 75%). Only one case reached the Supreme Court and the latter agreed with the Defender's opinion.

Chart 13 – Number of decisions according to conformity with the Defender's opinions in the area of work and employment (N = 9/4/1)



The results in the area of **education** differ significantly from the area of work and employment. First-instance courts disagreed with the Defender in only 4 out of 6 cases (ca. 67%); they agreed with the Defender in only 2 cases (ca. 33%). The situation with respect to appellate courts is perfectly balanced: in one case the court agreed with the Defender, in the other it did not. The Supreme Court supported the Defender's conclusions in 1 case.

Chart 14 – Number of decisions according to conformity with the Defender's opinions – education (N = 6/2/1)



The courts heard only a single case in the area of **healthcare**. The first-instance court and the appellate court disagreed with the Defender, but the Supreme Court later supported the Defender's conclusions. A single case was found in the area of **housing**, too. The first-instance as well as the appellate courts agreed with the Defender.

A comparison among the individual areas points towards an interesting fact. First-instance courts most often agree with the Defender's opinions in the area of work and employment. However, this was also the area where the Defender's opinions were most frequently rejected by appellate courts. Conversely, the area of education included the highest proportion of cases where the first-instance courts came to a different conclusion than the Defender.

Courts fully or partially accepted the Defender's conclusions and referred to them

In these cases, the most important decision was the one of the Supreme Court in the matter of **locus standi to lodge an anti-discrimination action**. The Public Defender of Rights expressed the opinion that effective enforcement of non-discrimination requires that the rights under the Anti-Discrimination Act be claimable not only by the direct victims of discrimination, but also by persons close to the victim. This means persons who justifiably perceive the harm incurred by the victim of discrimination as their own.[145] The Supreme Court completely upheld this opinion and quoted directly from the Defender's report.[146]

145 Report of the Public Defender of Rights of 6 November 2015, File No. 61/2015/DIS. Available at: https://eso.ochrance.cz/Nalezene/Edit/3608.

146 Judgement of the Supreme Court of 13 December 2017, File No. 30 Cdo 2260/2017.

However, it must be added that the first-instance court dismissed the action and the appellate court upheld its decision.[147] For more on the case, see Chapter 4 – Healthcare.

The Public Defender of Rights was approached by a primary school student's parents who **co-funded the salary of a teaching assistant**. Their child had special educational needs and a teaching assistant was recommended as a supporting measure. The Defender expressed the opinion that the fact they had to pay constituted discrimination in access to education on grounds of disability.[148] The Municipal Court in Prague agreed with this conclusion and directly quoted from the Defender's report.[149] In the case, the court was hearing an appeal against the decision of the District Court for Prague 5, which had previously dismissed the action and had not addressed the Defender's conclusions in any way.[150] For more details on the case, see Chapter 5.3 – Conditions of education.

In the area of education, the Public Defender of Rights also dealt with the case of **enrolling Roma children in a primary school.** The Defender expressed a legal opinion that if a headteacher of a school declared his intent to regulate the number of Roma children in the school so that it did not exceed an ideal number for integration, i.e. four to five such children per class, the primary school would thus commit direct discrimination.[151] The District Court in Ostrava agreed with the Defender's conclusion and decided that the primary school had discriminated against the children. Its judgement quoted parts of the Defender's report where he had found discrimination.[152] For more details on the case, see Chapter 5.2 – Access to education.

The Public Defender of Rights was approached by a teacher with a visual impairment who **alleged discrimination by her employer in the form of harassment**. The Defender concluded that the complainant might have been a victim of discrimination in the form of harassment on grounds of disability and that the employer had also committed indirect discrimination against her in the form of non-adoption of a reasonable accommodation.[153] The District Court in České Budějovice agreed with the Defender's conclusions only partially. It rejected the conclusion that the employer had failed to adopt reasonable accommodations, but agreed with the Defender that the plaintiff had been harassed.[154] The Regional Court in České Budějovice, which heard the case based on the employer's appeal,

147 Judgement of the District Court for Prague 5 of 5 October 2015, File No. 28 C 17/2014; judgement of the Municipal Court in Prague of 18 May 2016, File No. 39 Co 74/2016.

148 Inquiry report of 25 September2014, File No. 216/2012/DIS. Available at: https://eso.ochrance.cz/Nalezene/Edit/2008.

149 Judgement of the Municipal Court in Prague of 15 March 2018, File No. 29 Co 466/2017, p. 5.

150 Judgement of the District Court for Prague 5 of 18 September 2017, Ref. No. 21 C 69/2015-228.

151 Report of discrimination found of 16 April 2015, Finding 5202/2014/VOP. Available at: https://eso.ochrance.cz/Nalezene/Edit/2812.

152 Judgement of the District Court in Ostrava of 1 March 2017, File No. 26 C 42/2016.

153 Report of the Public Defender of Rights of 28 August 2018, File No. 3381/2017/VOP. Available at: https://eso.ochrance.cz/Nalezene/Edit/6168.

154 Judgement of the District Court in České Budějovice of 25 February 2019, File No. 23 C 276/2017-492.

modified the judgement in that it dismissed the action.[155] For more on the case, see Chapter 3.5 – Harassment.

The Public Defender of Rights was approached by a complainant with a visual impairment with whom a town had **refused to enter into a lease contract for a municipal flat.** The Defender concluded that the town had been guilty of direct discrimination in access to housing pursuant to Section 2 (3) of the Anti-Discrimination Act. It refused to grant a lease to the complainant despite the fact he had complied with all the conditions of the public selection procedure and made the highest offer of rent to the town. The town subsequently entered into a contract with an applicant who ended up second in line with a lower rent offer.[156] The District Court in Jindřichův Hradec partially agreed with the Defender's conclusions. Like the Defender, it found the town's conduct discriminatory and ordered the defendant to make a public apology. However, it refused – at variance with the Defender's conclusions – to order the town to rent a different flat to the plaintiff.[157] The defendant appealed against the decision but the Regional Court in České Budějovice upheld the first-instance decision.[158] For more details on the case, see Chapter 7.3 – Access to municipal housing.

Courts fully or partially accepted the Defender's conclusions, but did not refer to them

These are cases where the courts did not mention the Defender's conclusions in the decision, but reached the same legal assessment as the Defender. **Two decisions of the Supreme Court** are important here. The first decision concerned the wearing of hijab in theoretical classes at a school and the second involved reduced severance pay for employees entitled to a retirement pension.

A Muslim girl wearing a **hijab** tried to enrol in a secondary medical school. However, the school regulations prohibited wearing a headdress during classes. The Public Defender of Rights concluded that a ban on the wearing of headdress, including the Muslim headscarf (hijab), during theoretical classes constituted indirect discrimination on grounds of religion pursuant to Section 3 (1) of the Anti-Discrimination Act. Such a measure could not be justified by the requirement for maintaining good manners.[159] Courts of lower instances dismissed the action.[160] However, the Supreme Court agreed with the Defender's conclusions. According to the court, the prohibition of wearing headdress by Muslim students during theoretical classes at the school was not justified by any legitimate aim. Consequently, the plaintiff had been indirectly discriminated against in access to education

155 Judgement of the Regional Court in České Budějovice of 25 February 2020, Ref. No. 19 Co 889/2019-717.

156 Report of the Public Defender of Rights of 10 March 2015, File No. 169/2013/DIS.

157 Judgement of the District Court in Jindřichův Hradec of 24 January 2017, File No. 6 C 216/2015.

158 Judgement of the Regional Court in České Budějovice of 22 June 2017, File No. 8 Co 960/2017.

159 Report of the Public Defender of Rights of 2 July 2014, File No. 173/2013/DIS. Available at: https://eso.ochrance.cz/Nalezene/Edit/2006.

160 Judgement of the District Court for Prague 10 of 27 January 2017, File No. 17 C 61/2016; judgement of the Municipal Court in Prague of 19 September 2017, File No. 12 Co 130/2017.

within the meaning of Section 3 of the Anti-Discrimination Act.[161] For more details on the case, see Chapter 5.2 – Access to education.

The Public Defender of Rights was also approached by an employee of a heating plant who had been made redundant due to an organisational change. According to the collective bargaining agreement, she was not entitled to a higher **severance pay according to the years of employment** because she was simultaneously entitled to old-age pension. The Public Defender of Rights concluded that where a collective bargaining agreement awarded contractual severance pay only to those employees who had not become eligible for old-age pension and this different treatment lacked an objective ground given by the character of the work performed, this constituted direct discrimination on grounds of age.[162] The Supreme Court agreed with this opinion[163] (the courts of lower instances had originally dismissed the action).[164] For more on the case, see Chapter 3.4 – Equal pay.

In this category, the Public Defender of Rights registered **three decisions of first-instance courts**.

An employer **made redundant judicial officers who were also entitled to retirement pension.** The Defender found that this constituted discrimination on grounds of age. The Anti-Discrimination Act does not allow employers to make employees redundant based on the fact that they received retirement pension, even if this otherwise favoured female employees with minor children.[165] One of the dismissed judicial officers applied for court protection and the District Court in Blansko ruled the notice of termination invalid. It did not directly refer to the Defender's conclusions, but proceeded on the basis of statements provided by certain persons to the Defender.[166] The defendant filed an appeal, but the Municipal Court in Brno confirmed the first-instance court's decision.[167] For more details on the case, see Chapter 3.7 – Termination of employment.

The Public Defender of Rights was approached by a university lecturer who **alleged discrimination by her employer on grounds of her age**. The Defender concluded that unequal treatment (Section 16 (1) of the Labour Code) by the employer did not necessarily have to consist in making unlawful demands; it might also consist in excessive or selective application of otherwise lawful measures. An unusually short prolongation, non-prolongation or termination of employment by an employer who usually offered multi-year fixed-term employment contracts gave rise to a suspicion that unequal treatment had

161 Judgement of the Supreme Court of the Czech Republic of 27 November 2019, Ref. No. 25 Cdo 348/2019-311.

162 Report of the Public Defender of Rights of 9 May 2016, File No. 7077/2015/VOP. Available at: https://eso.ochrance.cz/Nalezene/Edit/4654.

163 Judgement of the Supreme Court of 18 January 2017, File No. 21 Cdo 5763/2015.

164 Judgement of the District Court in České Budějovice of 24 June 2015, Ref. No. 17 C 130/2015-58; judgement of the Regional Court in České Budějovice of 22 September 2015, Ref. No. 19 Co 1656/2015-89.

165 Report of the Public Defender of Rights of 26 January 2016, File No. 8024/2014/VOP. Available at: https://eso.ochrance.cz/Nalezene/Edit/3710.

166 Judgement of the District Court in Blansko of 26 July 2017, Ref. No. 12C 374/2015-196, p. 26.

167 Judgment of the Municipal Court in Brno of 13 March 2019, Ref. No. 49 Co 367/2017-397.

occurred.[168] The complainant lodged an anti-discrimination action and the District Court in Ostrava granted her an apology and financial compensation for intangible damage.[169] For more on the case, see Chapter 3.5 – Harassment.

An employer **removed an employee from a senior position** two days before she was to commence maternity leave. The declared reason was the employer's dissatisfaction with her performance. The Public Defender of Rights concluded that when removing a senior employee from this position, the employer was bound by the duty of non-discrimination and could therefore not remove the employee on the basis of a protected characteristic. The removal of a senior employee from her position due to her maternity or pregnancy amounts to direct discrimination within the meaning of Section 2 (3) of the Anti-Discrimination Act.[170] The complainant sought declaration of invalidity of the removal and financial compensation for intangible damage in court. The District Court for Prague 1 satisfied the action.[171] However, the same court had twice previously dismissed the action and the plaintiff twice filed an appeal. When deciding on the second appeal, the Municipal Court in Prague cancelled the first-instance judgement and assigned the case to another chamber.[172] For more details on the case, see Chapter 3.3 – Professional advancement in employment

Courts did not follow the Defender's conclusions

Court decisions in this category have in common that courts did not expressly address the Defender's conclusions. In some cases, they mentioned the Defender's written assessment in the part summarising the evidence and noted what they had found. On other cases, the courts did not mention the Defender's outputs at all.

A certain exception in this regard are the decisions of the first-instance and appellate courts in the case of hijab wearing at the secondary medical school, as described above. The District Court for Prague 10, which dismissed the action, noted the following in its judgement's reasoning: "The court is not bound by the conclusions of the Public Defender of Rights ... Civil court proceedings are governed by other rules than the Defender's inquiries. In court proceedings, all parties must, *inter alia*, present evidence to prove their allegations (Section 120 (1) of the Code of Civil Procedure); the court then assesses the evidence (each piece individually and all pieces in their mutual relations) based on its own deliberation. The court has a duty to, *inter alia*, take into consideration everything that came to light during the

168 Report of the Public Defender of Rights of 14 December 2015, File No. 134/2013/DIS. Available at: https://eso.ochrance.cz/Nalezene/Edit/3576.

169 Judgement of the District Court in Ostrava of 8 March 2018, Ref. No. 85 C 60/2016-163.

170 Report of the Public Defender of Rights of 25 August 2014, File No. 1594/2014/VOP. Available at: https://eso.ochrance.cz/Nalezene/Edit/2018.

171 Judgement of the District Court for Prague 1 of 15 March 2019, Ref. No. 146/2014-264.

172 Judgement of the District Court for Prague 1 of 29 January 2016, Ref. No. 23 C 146/2014-104; resolution of the Municipal Court in Prague of 12 October 2016, Ref. No. 23 Co 301/2016-150; judgement of the District Court for Prague 1 of 4 December 2017, Ref. No. 23 C 146/2014-202; resolution of the Municipal Court in Prague of 20 June 2018, Ref. No. 23 Co 128/2018-246.

proceedings, including the statements of the parties (Section 132 of the Code of Civil Procedure)."[173] This is true, indeed. Independent courts are naturally not bound by the Defender's conclusions and the possibilities for adducing evidence within civil court proceedings are broader than those available to the Defender in his or her inquiries.

The Municipal Court in Prague as the appellate court, however, went even further and noted the following in the reasoning of its judgement: "The report of the Public Defender of Rights is, due to its inconsistency and in the context of the remaining evidence, unprofessional and clearly biased; it also includes unverified and fabricated factual conclusions. The plaintiff was merely abused to create an anti-discrimination affair."[174] In this place, it should be reiterated that the Supreme Court confirmed the Defender's conclusions.

Most decisions in which courts reached a different legal conclusion than the Defender were mentioned in the previous parts of this survey. These are cases where courts of various instances came to divergent conclusions. However, there are **two decisions which have not been mentioned yet.**

The Public Defender of Rights inquired into the case of a student with disability who was denied participation in an after-school group. The student was receiving supporting measures in the form of a teaching assistant. The Defender concluded that the school could be guilty of direct discrimination on grounds of disability if it failed to enable a student to fully participate in recreational learning in an after-school group on a daily basis to the same extent as children without disabilities. Unfavourable treatment cannot be justified by concerns that the school will not be able to handle the education process merely because of the absence of a learning support assistant in an after-school group.[175] The Municipal Court in Brno dismissed the action. The reason was that the discriminatory conduct had not been proven. In the court's opinion, the plaintiff was in no way excluded from the after-school group, but rather actually attended it.[176] **Therefore, the court did not dissent with the Defender's legal opinion, but her findings of fact.** For more details on the case, see Chapter 5.2 – Access to education.

The Public Defender of Rights was approached by a complainant who had worked for the Police of the Czech Republic. He was discharged from service based on a medical report according to which the plaintiff had lost his medical fitness to perform service in the long term. This was because he had contracted the human immunodeficiency virus (HIV). The Defender concluded that HIV infection (also at its asymptomatic stage) could be considered a disability. The procedure of the employer, the Police of the Czech Republic, was **in accordance with the law and the implementing regulation, but not with regulations of higher legal force.** The District Court for Prague 7 dismissed the action. It did not consider the employer's procedure discriminatory, because the plaintiff's medical condition justified

173 Judgement of the District Court for Prague 10 of 27 January 2017, Ref. No. 17 C 61/2016-172, p. 14.

174 Judgement of the Municipal Court in Prague of 19 September 2017, Ref. No. 12 Co 130/2017-228, p. 4.

175 Report of the Public Defender of Rights of 3 July 2014, File No. 49/2013/DIS. Available at: https://eso.ochrance.cz/Nalezene/Edit/2014.

176 Judgment of the Municipal Court in Brno of 25 April 2019, Ref. No. 35 C 207/2016-279.

termination of his service relationship.[177] The Municipal Court in Prague confirmed the judgement.[178] For more details on the case, see Chapter 3.7 – Termination of employment.

177 Judgement of the District Court for Prague 7 of 16 May 2017, Ref. No. 10 C 239/2013-241.

178 Judgement of the Municipal Court in Prague of 9 November 2017, Ref. No. 20 Co 343/2017-279.

3. Work and employment

Most anti-discrimination lawsuits are generally filed in the area of labour law. The survey confirmed this has not changed in the long term. Out of the total of 90 cases involving a plea of discrimination which were dealt with by Czech courts in civil proceedings in 2015-2019, **59 cases** concerned labour law (ca. 66%).

I believe that this owes especially to the importance of work (a specific job) in the life of every adult. For everyone, including people belonging to various minorities, work is a source of livelihood. But not only that – it also boosts one's confidence and notion of importance, and enables full participation in society.

At the same time, this is an area where trends are closely monitored by the expert community both in the Czech Republic (lawyers, academia, trade unions, labour inspection authorities, non-profit organisations) and abroad (especially bodies of the European Union). This chapter therefore goes into greater detail than chapters dealing with other areas of life covered by the Anti-Discrimination Act.

3.1 Selected general topics

Interesting statistical data on labour-law cases involving a plea of discrimination

Compared to the previous period (2010–2014), the surveyed period saw **a very slight decrease** in the number of new anti-discrimination lawsuits brought in the field of labour law.

Table 4 – Number of new anti-discrimination lawsuits in the area of labour law

	2010–2014	2015–2019
Number of new anti-discrimination lawsuits in the area of labour law	29	26

In the period from 2015 to 2019, courts heard a total of 59 labour-law cases. However, more than one half of these cases were already initiated before 2015 (32). Three of the lawsuits were even brought before 2010, when the Anti-Discrimination Act entered into effect.[179] These were either suits aimed at protection of personal rights under the former Civil Code or disputes under the Labour Code.

Table 5 – Number of cases heard in the area of labour law

	Before 2010	2010–2014	2015–2019

179 The Anti-Discrimination Act entered into effect on 1 September 2009.

Number of cases heard according to the year when the lawsuit was brought	3	29	27

Women significantly predominated as plaintiffs (35) in the labour-law area. They were also more successful as compared to male plaintiffs (17). In the period under scrutiny, the courts granted a total of seven anti-discrimination lawsuits, six of which were brought by women as (former) employees. In a single case, it was not possible to determine the plaintiff's gender. The suit was brought by several persons and these were diligently rendered anonymous by the court in the operative part of its decision. The survey did not identify any case where an anti-discrimination lawsuit would be brought by a transgender or intersex person in the area of labour law.

Table 6 – Cases according to the plaintiff's gender

	Women	**Men**	**Cannot be determined**
Cases according to the plaintiff's gender	35	22	1

Most of the lawsuits (36, ca. 61%) heard by the courts in 2015–2019 were filed against employers in the **public sector**. A total of 24 cases concerned an employment relationship and 5 cases a service relationship under the Security Corps Service Relationship Act. One case related to discrimination in a service relationship under the Civil Service Act, and one under the Professional Soldiers Act. The defendants included, for example, the Fire Rescue Service, the Army of the Czech Republic, the Road and Motorway Directorate, the National Heritage Institute, the Labour Office, a retirement home, a museum, and local and regional governments. A total of 11 (ca. 19%) cases related to discrimination in the area of education (ranging from kindergartens to public higher education institutions).

The total of 23 entities sued in the **private sector** included a bank, utility company, private hospital, farming co-operative, fast-food provider, airline, food chain, branch of a multinational mining company and others.

Table 7 – Employment sector

	Public	**Private**
Employment sector	37	23

During the surveyed period, the courts were most often asked to decide on a plea of discrimination based on one of the grounds directly mentioned in the list in Section 2 (3) of the Anti-Discrimination Act. The most common ground was that of **age**, pleaded in 16 labour-law cases. The second most frequent ground of discrimination dealt with by the courts was **gender**. From the total of 15 court cases, two concerned specifically maternity and four pregnancy. Not a single plea of discrimination was made in the area of labour law on grounds of religion, belief or gender identity. In four cases, the plaintiff claimed the

existence of discrimination on several grounds, but the courts accepted the plea of **"multiple discrimination"** in none of these cases.

In 12 cases, the courts heard an action where the plaintiff referred to **no specific grounds of discrimination.**

Table 8 – Shares of protected characteristics (grounds of discrimination) (N = 59)

Protected characteristic invoked	**Number of lawsuits**	**Share of the total number of lawsuits in the area of work and employment**
Race, ethnicity	3	5%
Nationality *(národnost)*	2	3%
Sex	15	25%
Age	16	27%
Disability	6	10%
Sexual orientation	1	2%
Worldview	3	5%
Membership in a trade union	2	3%
Other protected characteristic	2	3%
No protected characteristic	14	24%
Total[180]	**64**	**108%**

The litigation was closed in 49 cases (ca. 83%) during the period under scrutiny. In 10 cases (ca. 17%), the proceedings are still continuing, and two of these unresolved cases were initiated as early as in 2006[181] and 2009,[182] respectively.

In cases that have already been closed, the **courts accepted the plea of discrimination** on its merits in 8 labour-law cases (ca. 14%). This marks an increase as compared to the previous period (2010–2014), when the courts granted only 4 labour-law actions comprising a plea of discrimination (ca. 9%). The courts continue to grant compensation for intangible damage to the victims of discrimination only very rarely. In the 2010–2014 period, they granted such compensation in a single labour-law case (ca. 2%).[183] In 2015–2019, the courts

180 The number is higher than the total number of court cases found (59). The reason is that several grounds were claimed simultaneously in some of these cases.

181 This case relates to discrimination in a selection procedure for the position of "chief financial officer" in a heating company, heard by the District Court for Prague 7 under File No. 26 C 25/2006. For details, see below.

182 This case concerns a failure to grant bonuses to a finance officer of the Fire Rescue Service, heard by the District Court in Ústí nad Labem under File No. 19 C 1102/2009. For details, see below.

183 This concerned of an unlawful requirement for presenting an extract from the Criminal Records. In proceedings on an action for the protection of personal rights, the court granted the plaintiff compensation for intangible damage in the amount of CZK 51,000 (EUR 2,040). For more details, see judgement of the Municipal Court in Prague of 24 February 2012, Ref. No. 37 Co 2/2011-72.

awarded financial compensation for intangible damage in mere 3 cases (ca. 5%). In two of these cases, the compensation amounted to CZK 50,000 (EUR 1,943), and in the third case, this was a record-breaking amount of CZK 400,000 (EUR 15,541). It should be added that the question of compensation for intangible damage (failure to grant one or its amount) is the subject of one more case.

In further 5 cases, the parties to the proceedings reached amicable settlement (ca. 8%). A total of 5 cases ended by withdrawal of the action (ca. 8%) and 4 resolutions on discontinuation of the proceedings indicate that the parties to the dispute had reached an agreement and settled out of court (ca. 7%).

The total number of lawsuits not granted by the courts on their merits (a plea of discrimination) equals 26.

Table 9 – Outcomes of court proceedings (N = 59)

Outcomes of court proceedings	**Number of lawsuits**	**Share of the total number of lawsuits in the area of work and employment**
Action granted	8	14%
Court settlement	5	8%
Proceedings discontinued (out-of-court settlement)	4	7%
Proceedings discontinued (withdrawal of action without further details)	5	8%
Action dismissed	27	46%
Proceedings pending	10	17%

Jurisdiction of civil courts in cases of discrimination outside employment

In two disputes arising out of the service relationships of a (male) police officer and of a (female) soldier, the Supreme Court clarified in which cases civil and administrative courts, respectively, were competent to hear and decide claims following from violation of the prohibition of discrimination. Up until 2018, this question of law was not unambiguously resolved in situations where the victims of discrimination raised claims under Section 10 of the Anti-Discrimination Act based on labour relationships governed by regulations other than the Labour Code. Typically, this concerns disputes between the State (as the employer) and officers and members of the Fire Rescue Service, the Police, the Prison Service, the Customs Administration, the Army, etc. The Supreme Administrative Court also commented on protection against discrimination in civil service recruitment.

Discrimination in security corps: The Supreme Court ruled on an application for appellate review filed by a dismissed police officer who claimed in civil court that he had been discriminated against on grounds of his disability (HIV infection). The court first recalled that

a lawsuit against a decision adopted by a competent official under Section 181 of the Security Corps Service Relationship Act (typically, a decision on discharge from service on grounds of lost medical fitness, as was the case here) could be brought within **administrative justice**. But then it went on to note that there was an exemption from this general rule, laid down by Section 77 (9) of the Security Corps Service Relationship Act. If a lawsuit is filed on grounds of violation of the rights and obligations following from equal treatment **by conduct other than a decision of the competent official**, the jurisdiction belonged to **civil courts**. The Supreme Court understands the mentioned notion of "other conduct" as meaning explicitly, e.g., harassment and sexual harassment, victimisation (retaliation), refusal or failure to adopt a certain decision or measure that would result in a disadvantage for one officer as compared to others, etc. In its judgement, the Supreme Court describes the duality of protection against discrimination in service relationships (different procedure in the protection against factual discrimination as compared to discrimination entailed in formalised decisions) as an "inconsistency on the part of the legislature rather than its actual intention".[184]

In the above judgement, the Supreme Court followed its previous decision of 2013 which concerned discrimination against a pregnant police officer.[185] In that judgement, too, the court inferred the jurisdiction of administrative courts (the discrimination allegedly occurred as a result of a decision made by a competent official) and discontinued the civil proceedings.[186] The plaintiff eventually received financial compensation for intangible damage from administrative authorities, which respected the opinion expressed by the administrative court.[187]

The above-described legal opinion of the Supreme Court was clearly followed by civil courts in a case brought by another police officer who demanded court protection from discrimination on grounds of his health. This discrimination was allegedly committed by the competent official who decided to remove the plaintiff's bonus for working in shifts. The civil court discontinued the proceedings and referred the case to an administrative authority,[188] and the appellate court approved this procedure.[189] The arguments put forth by the district and regional courts correspond to the opinion of the Supreme Court.

184 Judgement of the Supreme Court of 15 August 2018, File No. 21 Cdo 2550/2018.

185 Judgement of the Supreme Court of 1 September 2013, File No. 30 Cdo 2470/2012.

186 The service allegedly committed discrimination because the head of a district police directorate decided to assign the plaintiff – being a female police officer – to a service position carrying a lower salary, and assigned a (male) colleague to her original post. The plaintiff was convinced that this was due to her pregnancy, rather than the application of the new Service Act.

187 The Municipal Court in Prague issued a binding legal opinion for the Ministry of the Interior (the defendant), and based on this opinion, the Police Presidium eventually paid to the plaintiff compensation for intangible damage caused by discrimination in the amount of CZK 150,000 (EUR5,828). For more details, see judgement of the Municipal Court in Prague of 26 April 2019, Ref. No. 8 Co 8/2014-100.

188 Resolution of the District Court in Ústí nad Labem of 17 October 2018, Ref. No. 33 C 226/2018-73.

189 Resolution of the Regional Court in Ústí nad Labem of 13 December 2018, Ref. No. 11 Co 253/2018-83.

Discrimination against professional soldiers: The legal situation is quite different in the case of professional soldiers. In their case, jurisdiction of civil courts is not based on the form of conduct causing the discrimination, but rather on the **claim** enforced by the plaintiff in court.

Section 145 of the Professional Soldiers Act provides, in paragraphs (a) to (k), an exhaustive list of cases that are to be decided in proceedings related to a service relationship. These include, for example, a claim for compensation for damage (property damage). In cases where discrimination against a soldier has resulted in property damage, the decision on its compensation is to be made by a competent official in administrative proceedings and, where applicable, by an administrative court.

However, the exhaustive list of cases where a decision is to be made by a competent official does not include a claim for reasonable satisfaction or compensation for intangible damage claimed by a soldier on grounds of violation of the right to equal treatment and non-discrimination. Given that the Professional Soldiers Act failed to directly identify the governmental authority competent to hear and decide such claims, the Supreme Court concluded that the **general legal regulation** enshrined in the Anti-Discrimination Act should have been applied instead. This is why these claims should be decided by courts in civil court proceedings.[190]

Discrimination in civil service: As regards pleas of discrimination in **civil service recruitment**, the Supreme Administrative Court concluded that they should be dealt with by civil courts. In the court's opinion, a written notice sent by the service to (unsuccessful) applicants for the admission to service under Section 164 of the Public Service Act cannot be considered an **administrative decision**.[191] Therefore, it is not open to review by administrative courts. The court added that should the service body violate fundamental rights of applicants for a service position by proceeding in a discriminatory manner, the victims were entitled to protection against discrimination under Sections 16 and 17 of the Labour Code.[192] These provisions then refer to the Anti-Discrimination Act.

In the period under scrutiny, civil courts had only one opportunity to hear a lawsuit[193] involving a plea of discrimination in a civil service recruitment. Although the plaintiff was unsuccessful with her action, the case is important because civil courts did not question **their own jurisdiction** to hear an anti-discrimination lawsuit in any phase of the proceedings.[194]

In future, the courts will also determine whether cases of discriminatory termination of a service relationship, unequal pay and (sexual) harassment in civil service fall within the

190 Judgement of the Supreme Court of 24 April 2018, File No. 21 Cdo 5948/2017.

191Judgement of the Supreme Administrative Court of 9 November 2017, Ref. No. 10 Ads 316/2016-50.

192 The cited provisions apply by analogy on the basis of Section 98 of the Civil Service Act.

193 It should be noted that the Civil Service Act did not enter into effect until 1 July 2015. This is why there are only a very few judgements available as compared to the Labour Code or the Security Corps Service Relationship Act.

194 The case concerns a procedure on the admission to civil service and a plea of multiple discrimination, and is held before the District Court in Bruntál under File No. 11 C 7/2016.

jurisdiction of civil courts or that of administrative courts. For the time being, this question remains unclear.

Reflecting the activities of labour inspectorates in civil court decisions

In a total of **seven cases**, the courts referred in the reasoning of their decisions to **findings made previously by labour inspectorates**.

In cases where a labour inspectorate issues a final decision that an employer has committed an infraction against an employee under the Labour Inspection Act, consisting in violation of the prohibition of discrimination, the civil court considers this a preliminary question within the meaning of Section 135 (1) of the Code of Civil Procedure.[195] This was also true of a plea of age discrimination at a public higher education institution, where the court considered itself obliged to reflect on a final decision of the State Labour Inspectorate, which had fined the defendant for violation of the principle of equal treatment. The court "could not reach any conclusion other than that the criteria laid down in Section 10 (1) of the Anti-Discrimination Act had been met".[196] It thus granted the plaintiff's claim.

There was also another case where the court relied on a decision of a labour inspectorate to rule in the **plaintiff's favour**. In this case, the labour inspectorate imposed a fine on the employer for failing to discuss with an employee her complaint regarding harassment, and failed to assign her to the relevant pay grade although she had been asked to perform more demanding work.[197] The court subsequently received the employee's lawsuit in which she filed several claims based on harassing conduct of her superior against which the employer had failed to intervene despite having learnt about it on the basis of her repeated complaints.[198] The clear unwillingness of the employer to prevent sexual harassment and unequal pay, which had been reflected in the plaintiff's sickness benefits (both facts supported by findings of the labour inspectorate), was among the main reasons why the appellate court changed the first-instance judgement in favour of the plaintiff.[199]

If a labour inspectorate determines during an inspection that an employer has violated the Labour Code in relation to an employee, but **has yet to make a final decision on an infraction** at the time when the court is to decide on an action for annulment of a notice of termination comprising a plea of discrimination, the courts will tend to **disregard** its inspection findings. This is evidenced by a case of a nutritional therapist working at a retirement home who was dismissed as redundant. The plaintiff pleaded, among other

195 The court is bound by a decision of the competent authorities to the effect that a criminal offence, infraction or some other administrative offence punishable under special regulations has been committed and who committed it, as well as by a decision on a personal status; however, the court is not bound by decisions made in summary proceedings.

196 Judgement of the District Court in Ostrava of 8 March 2018, File No. 85 C 60/2016-163, paragraph 22.

197 The employer found to commit the infraction defended himself against the imposed fine in administrative justice. The Supreme Administrative Court eventually confirmed the fine. For more details, see the judgement of the Supreme Administrative Court of 30 December 2014, Ref. No. 4 Ads 211/2014-36.

198 Judgement of the District Court in Rakovník of 29 January 2014, Ref. No. 9 C 132/2009-954, pp. 13, 19-20.

199 Judgement of the Regional Court in Prague of 17 March 2015, Ref. No. 23 Co 229/2014-1079.

things, discrimination on grounds of her being a president of the local trade union organisation, which disagreed with her dismissal. Although the labour inspectorate noted in the inspection record that the employer had violated Section 61 (2) and (4) of the Labour Code by giving her notice despite the trade union's disagreement, this had no effect on the court's decision, because "only a court can make a binding decision that a notice of termination is valid despite disagreement of the trade union".[200]

The courts also tend to quote inspection findings of labour inspectorates in cases where an action comprising a plea of discrimination is about to be **dismissed** as the labour inspectorate found no discrimination. [201] They did so in the case of a kindergarten teacher who referred to age discrimination,[202] and also in the case of harassment of a bank's employee[203] and unequal pay for an officer in public administration.[204] In the last mentioned case, the first-instance court (and subsequently also the appellate court) relied on the outcome of an inspection carried out by the State Labour Inspectorate, which found no violation of the rules of equal pay at the Road and Motorway Directorate of the Czech Republic. The case was later assessed by the Supreme Court, which cancelled the previous court decisions and referred the case back for further proceedings. In doing so, it reproached the courts for ignoring the kind of work "the employees (including the plaintiff) performed, the pay grade and class they were assigned to, whether the assignment was carried out in accordance with the legal regulations and whether the differences in remuneration were justified..."[205] These are key questions that can be expected to be assessed not only by the courts, but also by the State Labour Inspectorate.

The **Constitutional Court criticised** civil courts in the period under scrutiny for formalistically adopting conclusions made by labour inspectorates regarding a "failure to prove discrimination".[206] In a notice of termination received by a children's home educator, the civil courts found no discrimination on grounds of sex. In doing so, the courts referred to a conclusion made by a labour inspectorate, which had found no discrimination at the workplace during its inspection. However, according to the Constitutional Court, the courts cannot adopt such a conclusion without further ado in a situation where they are required to apply Section 133a of the Code of Civil Procedure regarding shared burden of proof. The plaintiff (potential victim of discrimination) cannot bear the consequences of inadequate work of the inspection bodies (the labour inspectorate). Where the courts adopted – in a

200 Judgement of the District Court in Hodonín of 24 September 2018, Ref. No. 10 C 347/2017-476, paragraph 16, p. 13.

201 The judgement of the District Court in České Budějovice of 25 February 2019, Ref. No. 23 C 276/2017-492, can be considered the only exception. Although, in that case, the labour inspectorate did not find any violation of the prohibition of discrimination against an employee with disability (cf. paragraph 53 of the judgement), the court nonetheless granted her anti-discrimination lawsuit after taking the relevant evidence. Nonetheless, its judgement was later reversed by the appellate court.

202 Judgement of the District Court in Uherské Hradiště of 28 November 2017, Ref. No. 9 C 45/2014-317.

203 Judgement of the District Court for Prague 1 of 22 February 2016, File No. 17C 24/2012.

204 Judgement of the District Court for Prague 4 of 14 July 2016, Ref. No. 48 C 118/2013-263.

205 Judgement of the Supreme Court of 28 November 2018, Ref. No. 21 Cdo 2262/2018-437.

206 Judgement of the Constitutional Court of 8 October 2015, File No. III. ÚS 880/15, paragraphs 36 and 39.

formalistic fashion – the conclusions made by a labour inspectorate, they thus ignored, in the opinion of the Constitutional Court, the plaintiff's assertion that the notice was merely one of several means of retaliation by the defendant for a previous exercise of the plaintiff's rights (filing complaints with the supervisory authorities).

I believe that the lesson to be learned from the Constitutional Court's judgement is that the common courts should **critically evaluate the findings of the labour inspectorates** when hearing anti-discrimination lawsuits. In doing so, they can use both the standards issued by the Defender[207] and individual reports on the Defender's inquiries.[208]

Approval of amicable settlement and withdrawal of the lawsuit in view of an agreement reached out of court

In a total of 5 cases, the parties to labour-law disputes involving a plea of discrimination reached amicable settlement which was subsequently approved by the court. In a further 4 cases,[209] they entered into an out-of-court agreement resulting in withdrawal of the lawsuit and discontinuation of the proceedings. Although the actual court resolutions approving amicable settlement or discontinuing the proceedings are formulated in concise terms, it can be determined[210] in what situations amicable settlement or an out-of-court agreement were typically reached.

Five cases involved less favourable treatment or harassment at work during the term of a labour-law relationship.

One of the plaintiffs objected against being bullied at the workplace and claimed financial compensation for intangible damage. Of the original amount of CZK 150,000 (EUR 5,828), the defendant eventually paid her CZK 40,000 (EUR 1,554) within amicable settlement.[211] Another plaintiff claimed that his employer pay a non-claimable (discretionary) component of salary (annual bonus) in the amount of CZK 68,750 (EUR 2,671) with interest. In this case, the court approved amicable settlement based on which the plaintiff received from the employer the total amount of CZK 65,000 (EUR 2,600). At the same time, the employer agreed to pay the plaintiff's costs of the proceedings in the amount of CZK 40,000 (EUR

207 The final statement of the Public Defender of Rights of 4 September 2018, File No. 5112/2014/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/6514.

208 In its judgement, the Constitutional Court cited the Public Defender of Rights' report on inquiry of 16 September 2013, File No. 5798/2013/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/738.

209 The lawsuit was withdrawn in a total of 9 cases in labour-law disputes covered by the survey. However, only in four of the cases did the decisions gathered make it possible to determine that the parties had reached an agreement and settlement.

210 Based on decisions of the first-instance and appellate courts that preceded the conclusion of amicable settlement, and opinions of the Public Defender of Rights issued by the Defender within the provision of methodological assistance to victims of discrimination under Section 21b (a) of the Public Defender of Rights Act. There was only a single instance where it was not possible to ascertain more detailed facts of the case; this was a resolution of the District Court for Prague 2 of 6 November 2015, Ref. No. 42 C 188/2015-36a.

211 Resolution of the District Court in Hradec Králové of 5 April 2017, Ref. No. 16 C 1/2014-132.

2,525).[212] In yet another dispute, the plaintiff claimed that the employer remove from her personal file all reprimands given to her for unspecified breaches of duties she had allegedly committed in her work at a neurology clinic's children's ward. The court approved amicable settlement in which the employer agreed to take the required steps and, at the same time, promised that it would not draw any further consequences for the plaintiff from this event.[213] In another case, a member of the municipal police force disagreed with his transfer to a new position. He claimed in court that the employer reassign him to the position of a "patrol officer", which carried a higher salary. He eventually withdrew his action six months after the proceedings were initiated and presented to the court an agreement on out-of-court settlement. The court therefore discontinued the proceedings.[214] In another case, the plaintiff (a teacher at a secondary grammar school) claimed that she had not misappropriated students' money earmarked for a school event abroad. She requested an apology and compensation for intangible damage in the amount of CZK 150,000 (EUR 5,828). The first-instance court dismissed her action. At an oral hearing held in appellate proceedings, the school headteacher apologised to the plaintiff. The plaintiff therefore withdrew the entire lawsuit.[215]

Three cases concerned termination of a labour-law relationship.

A scientist's employment was terminated when she returned from parental leave. She claimed that a court declare the notice of termination invalid and find that she had been discriminated against on grounds of her sex (maternity).[216] Eventually, she agreed with the employer that she would return to her original position, but on a full-time basis (originally, she worked only part-time). The employer also agreed to pay all the costs of litigation, including the fee charged by the plaintiff's legal counsel.[217] In another of these cases, a disabled man also defended himself against his dismissal from work.[218] After the court ordered that the two parties meet with a mediator, they managed to reach an agreement. The employer withdrew the notice of termination and the employment was terminated formally by agreement of the parties; the plaintiff received CZK 220,000 (EUR 8,548) on the basis of the amicable settlement approved by the court.[219] The very first case of discrimination by association heard by Czech courts also resulted in court settlement. An employee was given notice on grounds of a failure to perform her working duties although

212 Resolution of the District Court in Ostrava of 21 November 2017, Ref. No. 26 C 385/2017-64.

213 Resolution of the District Court in Hradec Králové of 26 April 2017, Ref. No. 15 C 193/2016-65.

214 Resolution of the District Court in Karviná of 29 August 2016, Ref. No. 25 C 61/2015-26.

215 Resolution of the Municipal Court in Prague of 14 May 2019, File No. 30 Co 100/2019-708.

216 Report of the Public Defender of Rights of 16 July 2015, File No. 7930/2014/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/4608.

217 Resolution of the Municipal Court in Brno of 7 September 2016, File No. 115 Co 21/2015-250.

218 Report of the Public Defender of Rights of 18 May 2015, File No. 5560/2014/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/3772.

219 Resolution of the District Court for Prague 3 of 9 February 2016, Ref. No. 20 C 349/2014-1054.

she had been taking care of a family member at the relevant time (her disabled father).[220] The employer concluded amicable settlement with the plaintiff and agreed to pay her "financial settlement" in the amount of CZK 120,000 (EUR 4,662).[221]

In seven sets of proceedings, the parties reached amicable settlement or out-of-court agreement before the judgement was rendered at first instance. In the remaining two cases, the courts made a decision on the lawsuit and only repeated hearing of the case eventually led the parties to settle their discrimination dispute by agreement. The length of the proceedings could also have played a role here, as they lasted four and eight years, respectively.

It cannot be generalised based on cases under scrutiny that amicable settlement was reached more often with regard to any specific ground or form of discrimination. It cannot be concluded either that amicable settlement or agreement was more preferred by private entities (the ratios are equal in this regard). The main driving forces in attaining amicable settlement are thus probably the parties' pro-active approach and the role played by the judge.

A partial conclusion can be made based on the above examples that a certain (not negligible) fraction of discrimination disputes in the field of labour law will always be resolved through amicable settlement or out-of-court agreement. It is therefore desirable for the Public Defender of Rights to take this fact into consideration when providing methodological assistance to victims of discrimination in bringing a lawsuit on grounds of discrimination.

3.2 Access to employment

Selection procedure for a kindergarten headteacher

In 2013, the founding authority of a kindergarten announced a selection procedure for its headteacher. The plaintiff, who had worked as the kindergarten's headteacher since 2006, objected to alleged discrimination on grounds of age as she had reached 62 years of age at the time when the selection procedure was announced. She claimed that the founder was trying get rid of her in this way. The term of her office as the headteacher would end on 31 July 2013. To support her claim, she stated that although the town was the founder of a total of 17 schools and school facilities, the only selection procedure it announced concerned the kindergarten where she worked. The plaintiff took part in the selection procedure, but did not succeed. The new headteacher was, in fact, only selected in another selection procedure, which took place in November 2013. The plaintiff did not take part in this new procedure and worked in the kindergarten until 31 March 2014. In court, she claimed an apology and compensation for intangible damage in the amount of CZK 100,000 (EUR 4,000). The district court established that, in the period of 2012-2013, the founder automatically prolonged the term of office of another 9 kindergarten headteachers. Nonetheless, it concluded that the plaintiff had not been discriminated against on grounds

220 Report of the Public Defender of Rights of 27 March 2017, File No. 3532/2016/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/5052.

221 Resolution of the District Court for Prague 6 of 27 March 2018, Ref. No. 19 C 228/2016-80.

of age as the founder had, in fact, been forced to announce a selection procedure in this case. This was required by Section 166 (2) of the Schools Act, in the wording effective from 1 January 2012 to 30 April 2015, including transitory provisions. The founder could not automatically prolong the plaintiff's term of office as she had begun working in the position of headteacher before 31 December 2011. In the court's opinion, the plaintiff thus relied on an incorrect legal opinion when she brought her lawsuit. The court added that even if the plaintiff's opinion were correct, the announcement of the selection procedure for the position of headteacher would not have been discriminatory, as this right is vested in the founder directly by the law. The court did not consider it relevant that the founder had not announced a selection procedure in its other school facilities, although this was required by the law and the founder thus violated the law.[222] The regional court confirmed this outcome.[223] The proceedings were thus closed through a final decision.

Civil service recruitment and a plea of multiple discrimination

In 2016, the plaintiff took part in two selection procedures for a service post at the contact office of a regional branch of the Labour Office of the Czech Republic. The first was the position of "specialist officer – mediation advisor", where she finished sixth, and the second concerned the post of "specialist/senior officer – verifier of assistance in material need", where she was evaluated as the eighth best. As the persons selected for the positions were significantly younger (born in 1992 and 1996, respectively), lacked any substantial professional experience and had only secondary education (the plaintiff had professional experience and full university education), she pleaded discrimination on grounds of age (she belonged to the 50+ age category) and medical condition (third degree disability discernible because of her "bald head and decision not to wear a breast epithesis following mastectomy"). She claimed from the defendant compensation for intangible damage in the amount of CZK 100,000 (EUR3,885). She asserted discrimination because the scoring of applicants in interviews with the selection committee and the selection criteria were allegedly subjective and unreviewable. The courts stated that an interview was envisaged by the Public Service Act and, according to evidence, all the applicants for the job were asked the same questions and the selection committee then scored them. The courts considered the above procedure transparent. University education and professional experience were never mentioned as a criterion that would provide any advantage. According to the courts, the fact that the successful applicants were younger than the plaintiff is not sufficient to conclude that the plaintiff had "likely" been unsuccessful on grounds of her age or medical condition. The courts dismissed the action because the plaintiff had failed to prove unfavourable treatment in the sense of Section 133a of the Code of Civil Procedure.[224] The proceedings were thus closed through a final decision.

222 Judgement of the District Court in Kroměříž of 22 February 2017, Ref. No. 6 C 59/2016-85.

223 Judgement of the Regional Court in Brno, branch in Zlín, of 6 June 2017, Ref. No. 60 Co 150/2017-119.

224 Judgement of the District Court in Bruntál of 20 June 2018, Ref. No. 11 C 7/2016-153; judgement of the Regional Court in Ostrava of 4 December 2018, Ref. No. 16 Co 178/2018-176; resolution of the Supreme Court of the Czech Republic of 29 January 2020, Ref. No. 21 Cdo 3166/2019-259; resolution of the Supreme Court of 29 January 2020, Ref. No. 21 Cdo 3166/2019-259.

3.3 Professional advancement in employment

Selection procedure for the position of "chief financial officer" in a heating company

The plaintiff worked as an economic advisor in a joint-stock company. In 2005, the company announced a selection procedure for the position of "chief financial officer", organised for the company by a consultancy agency. The selection procedure took place twice, and the plaintiff (a female) took part only in the first procedure (together with a male candidate, she advanced to the final round, but the board of directors did not select any of the two best candidates). The plaintiff was not invited to the second selection procedure. In the end, the company's board of directors chose a male candidate who had not participated in the first selection procedure. The plaintiff pointed out that she was a suitable candidate and that the proceedings had not been transparent (the conditions had been loosened in the second selection procedure and the applicants had not been evaluated based on pre-determined objective criteria). The plaintiff therefore claimed a public apology in a printed daily paper and financial compensation for intangible damage in the amount of CZK 1,000,000 (EUR 38,853). The courts heard the lawsuit repeatedly. Eventually, they concluded that the plaintiff had indeed been discriminated against on grounds of her sex (they relied, in particular, on the statement of the then-chairwoman of the board of directors) and granted her a public apology. However, they dismissed her claim for financial compensation for intangible damage, which was subsequently criticised by the Supreme Court. In its opinion, the courts failed to assess the interference in terms of its intensity, duration and scope of the unfavourable consequences incurred by the plaintiff. The courts must now assess the plaintiff's claim again while reflecting that this was a case of discrimination on grounds of sex, which in itself represents a circumstance requiring special consideration in determining the manner and extent of reasonable satisfaction.[225]

Removal from a senior position prior to commencing maternity leave

The former head of the Department of Equal Opportunities for Men and Women at the Office of the Government was removed from her senior position two days before she commenced her maternity leave. The removal was officially justified by the need to "ensure proper operation of the department". This occurred in August 2011, and the plaintiff filed her anti-discrimination lawsuit near the end of the three-year limitation period (2014). She claimed that the court declare her removal invalid and order the Office of the Government to publish an apology and pay her financial compensation for intangible damage. The defendant asserted in court that the reason for the removal was not the plaintiff's pregnancy, or rather her declared intention to return to work after the end of her maternity leave, but rather that the defendant was dissatisfied with the plaintiff's performance (different opinions on gender equality and communication with journalists violating the

225 Judgement of the District Court for Prague 7 of 25 September 2006, Ref. No. 26 C 25/2006-190; judgement of the Municipal Court in Prague of 23 May 2007, Ref. No. 54 Co 127/2007-258; judgement of the Supreme Court of the Czech Republic of 11 November 2009, Ref. No. 21 Cdo 246/2008-311; judgement of the District Court for Prague 7 of 13 December 2010, Ref. No. 26 C 25/2006-372; resolution of the Municipal Court in Prague of 20 September 2011, Ref. No. 54 Co 257/2011-410; judgement of the District Court for Prague 7 of 15 December 2017, Ref. No. 26 C 25/2006-684; judgement of the Municipal Court in Prague of 24 October 2018, Ref. No. 54 Co 286/2018-737; judgement of the Supreme Court of 20 January 2020, Ref. No. 21 Cdo 2770/2019-795.

defendant's internal regulations). The plaintiff contested each of the two dismissing judgements rendered by the first-instance court by an appeal. When deciding on the second appeal, the Municipal Court in Prague cancelled the first-instance judgement and assigned the case to another chamber. The court eventually came to the conclusion that the plaintiff's removal from the senior position was invalid and ordered the defendant to apologise to the plaintiff in writing. The court dismissed the claim for publication of the apology and compensation for intangible damage in the amount of CZK 50,000 (EUR 1,943).[226] The decision is final.

Announcement of a selection procedure for the position of "senior lecturer".

The plaintiff worked for four years as a senior lecturer at the Faculty of Medicine. Her employment contract was for a fixed term. Near the end of her employment, the employer announced a selection procedure in which the plaintiff did not succeed. A male applicant was eventually selected for the position. The plaintiff pointed out that a selection procedure had been announced only for her position and not for the positions of her other two (male) colleagues. She considered this procedure discriminatory as she had had a professional conflict with the head of the clinic (sexual harassment, bullying). She perceived the selection procedure as a retaliation for a complaint she had filed with regard to the mentioned conduct with the Dean of the Faculty. The plaintiff asked the court to cancel the announced selection procedure and its outcomes. She further claimed a new decision on the employment contract and payment of compensation for intangible damage in the amount of CZK 1,200,000 (EUR 46,624). The lawsuit was filed before the effective date of the Anti-Discrimination Act and relied on the prohibition of discrimination comprised in the former Labour Code. The courts dismissed the lawsuit. They argued that the higher education institution had the right to announce the tender procedure and that the evidence taken had not revealed anything that would question the selection of the male applicant. They also took into account that the higher education institution had chosen more women than men in selection procedures for the positions of academic staff members (in 2002–2006). Furthermore, it had not been proven in the proceedings that the announcement of the selection procedure had been an act of retaliation for the plaintiff previously rejecting inappropriate proposals made by the head of the clinic.[227]

226 Judgement of the District Court for Prague 1 of 29 January 2016, Ref. No. 23 C 146/2014-104; resolution of the Municipal Court in Prague of 12 October 2016, Ref. No. 23 Co 301/2016-150; judgement of the District Court for Prague 1 of 4 December 2017, Ref. No. 23 C 146/2014-202; resolution of the Municipal Court in Prague of 20 June 2018, Ref. No. 23 Co 128/2018-246; judgement of the District Court for Prague 1 of 15 March 2019, Ref. No. 23 C 146/2014-264.

227 Judgement of the District Court for Prague 1 of 29 October 2008, Ref. No. 23 C 77/2005-156; resolution of the Municipal Court in Prague of 4 December 2009, Ref. No. 51 Co 201/2009-197; judgement of the District Court for Prague 1 of 20 December 2010, Ref. No. 23 C 77/2005-231; judgement of the Municipal Court in Prague of 30 March 2012, Ref. No. 51 Co 433/2011-274; judgement of the Supreme Court of 16 January 2015, File No. 21 Cdo 1165/2013; resolution of the Constitutional Court of 17 May 2016, File No. III. ÚS 1067/15.

3.4 Equal pay

Remuneration of male and female head physicians in a private hospital

A female head physician of the children's ward at a private hospital found out from public sources that her male colleagues were paid higher salaries. The gross monthly salary of the head of the maternity ward was up to CZK 80,000 (EUR 3,108), and the salary of the head of the surgery ward was CZK 100,000 (EUR 3,885). During the same period, the plaintiff's gross salary varied around CZK 53,000 (EUR 2,059). In her lawsuit, she therefore claimed that the employer pay her the amount of CZK 477,800 (EUR 18,564) as compensation for damage. The employer argued that the salary had been set in a mutual contract and that the work of the head physicians at the individual wards was neither identical nor comparable.[228] The regional court stated that although the salary had been set in a contract, the employer nevertheless had to comply with the principle of equal treatment even in respect of non-claimable components. It further noted that no transparent rules of remuneration had been set in the employer's organisation.[229] However, after some more detailed evidence was taken, the district court (following the legal opinion of the regional court) concluded that the differences in remuneration were justified (the work of the head of the maternity ward was more demanding) and dismissed the action.[230] The regional court then rejected the plaintiff's appeal as she had failed to give any ground of appeal in spite of the court's request.[231]

Severance pay under the collective bargaining agreement and old-age pension

An employee of a heating plant was made redundant due to an organisational change. Pursuant to the collective bargaining agreement, she was entitled to severance pay in the amount of fourteen times her average monthly salary, since she had worked for the employer for more than thirty years. She did not receive this severance pay under the rules set in the collective bargaining agreement, because she was simultaneously entitled to old-age pension. In court, she claimed the existence of discrimination on grounds of age. The lower courts did not consider this conduct discriminatory and stated that severance pay was primarily aimed to help overcome a difficult social situation. That was not the case of the plaintiff, because she received old-age pension.[232] The first court to agree with the plaintiff's arguments was the Supreme Court as it stated that such severance pay, agreed beyond the scope of the statutory severance pay, constituted indemnification for a loss of employment through no fault of the employee and a form of an employee benefit that should be paid to workers regardless of whether or not they have reached pensionable age.[233] On these

228 Judgement of the District Court in Blansko of 30 April 2013, Ref. No. 78 EC 1342/2011-173.

229 Resolution of the Regional Court in Brno of 17 September 2014, Ref. No. 49 Co 319/2013-217.

230 Judgement of the District Court in Blansko of 30 June 2015, Ref. No. 78 EC 1342/2011-279.

231 Resolution of the Regional Court in Brno of 30 October 2015, Ref. No. 49 Co 297/2015-291.

232 Judgement of the District Court in České Budějovice of 24 June 2015, Ref. No. 17 C 130/2015-58; judgement of the Regional Court in České Budějovice of 22 September 2015, Ref. No. 19 Co 1656/2015-89.

233 Judgement of the Supreme Court of 18 January 2017, File No. 21 Cdo 5763/2015.

grounds, the district court granted the claims in the next round of proceedings and ordered the plaintiff's former employer to provide her with severance pay of CZK 572,362 (EUR 22,238).[234] The employer did not appeal against the judgement.

Denial of bonuses to a financial officer of the Fire Rescue Service

The plaintiff was employed in a service relationship with the Fire Rescue Service of the Ústí Region from 2001 to 2013 (the longest spell being as the head of the Finance Department). Throughout this period, there was a personal animosity between her and the senior management of the office where she worked. In her lawsuit, she claimed the existence of discrimination on grounds of worldview. She pointed out that she considered the communist regime to be criminal and there were persons in the management of the authority who had been members of the Communist Party of Czechoslovakia prior to 1989. The courts did not accept this plea. Nevertheless, they admitted that she had become a victim of unequal pay and unequal treatment without any link to the discrimination grounds set out in the Security Corps Service Relationship Act. During an extensive process of taking evidence, the courts found that in the long term, the employer had denied discretionary components of salary to the plaintiff, although other employees had been granted these components on a regular basis in the order of tens of thousands of crowns, even for the performance of trivial work tasks. At the same time, the plaintiff performed extraordinary or especially important tasks, which were in no way rewarded. Furthermore, the employer did not grant the plaintiff a bonus on the occasion of her life anniversary in the same amount as provided to the other employees. The plaintiff's unfavourable performance review of 2007, which comprised fabricated criticism of the plaintiff's work, was assessed by the courts as an abuse of the employer's right. In further hearings, the courts found no other violation of the principles of equal treatment or concluded that the claims had already become time-barred. The courts awarded the plaintiff financial compensation for intangible damage in the total amount of CZK 400,000 (EUR 15,541).[235]

Remuneration of a shift leader

The plaintiff worked in a private company as a "logistic worker". After two years of work, she was promoted to the position of "shift leader" as a consequence of production reorganisation. She alleged that her male colleagues working the same job had a CZK 5 000 (EUR 194) higher monthly salary with the variable performance bonus higher by CZK 2 000 (EUR 78). She claimed that this discrimination in remuneration be eliminated by setting a higher monthly salary and an incentive component. Her employer argued that the plaintiff's work was of the same value as that of her two male colleagues who were promoted to the same position during the same period as the plaintiff. These employees (including the plaintiff) were subject to a trial period (they had no prior experience with managing personnel). After the end of the trial period and determination of positive work results, the employer was prepared to top up the salary and incentive component to the same amount as that provided to other staff members employed as "shift leaders". The court found that

234 Judgement of the District Court in České Budějovice of 12 April 2017, File No. 17 C 130/2015-147.

235 Judgement of the District Court in Ústí nad Labem of 30 March 2017, Ref. No. 19 C 1102/2009-954; judgement of the Regional Court in Ústí nad Labem of 6 February 2019, Ref. No. 12 Co 346/2017-1073.

the documentary evidence (itemised salary statements) were in line with the employer's assertions and the witness testimonies of other shift leaders. It considered that a higher remuneration of shift leaders having professional experience as compared to new shift leaders was a legitimate justification of salary differences. It therefore dismissed the action.[236] The judgement is final.

3.5 Harassment

During the period under scrutiny, Czech courts dealt with two cases of unequal treatment of a lecturer at a public higher education institution. In the first of these cases, the plaintiff pleaded that the reason for her harassment was higher age, while in the second case, the unequal treatment was allegedly caused by the fact that the plaintiff unsuccessfully stood as a candidate for the office of dean.

Harassment on grounds of age at a higher education institution

A lecturer at a higher education institution claimed that her employer had discriminated against her on grounds of her age. The employer's unlawful conduct consisted primarily in frivolous exercise of rights against the complainant. The employer allegedly adopted a selective approach to checking her working time, ordered her to undergo extraordinary medical check-ups without any justification, created a hostile working environment at the workplace, and addressed her in vulgar terms in front of students and colleagues. The court followed from witness testimonies and an administrative decision adopted by the State Labour Inspectorate, which fined the employer for committing an infraction under the Labour Inspection Act (the fine was CZK 75,000, EUR2,914). The court awarded to the complainant an apology and compensation for intangible damage in the amount of CZK 50,000 (EUR 1,943).[237] The employer did not appeal against the judgement.

Unequal treatment of an unsuccessful candidate for the office of dean

The plaintiff asserted that she had faced unequal treatment at the workplace (a faculty of a public higher education institution) between 2011 and 2013. The alleged reason for bullying was that she had unsuccessfully stood as a candidate for the position of dean in 2010. When the plaintiff was unable to resolve conflicts with her department's management in the Academic Senate, she referred the case to the court. She pleaded that the employer had failed to take into consideration that she had also been teaching at another faculty of the same higher education institution; had excessively checked the performance of her working duties, including the records of working time; had required her to ask for permission whenever she wanted to see a physician; had advised her without justification of the possibility of dismissal on grounds of an error she had made in approving a business trip to a professional conference; had carried out her performance reviews in a biased manner; had frequently checked her presence in classes; and had failed to take into consideration her work as a professional guarantor for the area of social services in regional and municipal bodies. The plaintiff claimed that the employer had not acted in this way with regard to

236 Judgement of the District Court for Plzeň-City of 25 May 2015, Ref. No. 21 C 607/2014-84.

237 Judgement of the District Court in Ostrava of 8 March 2018, File No. 85 C 60/2016-163.

other persons employed at the faculty. Based on extensive evidence-taking, the court partially agreed with the plaintiff as regards inspection of the records of working time; the request that she obtain permission for seeing a physician; the advice of a possible dismissal on grounds of undertaking a formally unapproved business trip; and the failure to take into account her work as a guarantor in the bodies of regional and local government. The court therefore ordered the employer to apologise to the plaintiff and take into consideration her work in bodies of regional and local government. The court also ordered the employer to send a letter of apology to the members of the Academic Senate and display it on the school's website in the "News" section. The plaintiff did not ask for financial compensation for intangible damage.[238] The proceedings were thus closed through a final decision.

Harassment of a teacher with visual impairment

A secondary school teacher complained against discrimination in the form of harassment on grounds of disability. The harassment was allegedly committed by the headteacher. The court dealt with as many as eight different acts of the employer. As regards dismissal on grounds of redundancy; failure to assign teaching work; denying the plaintiff access to the "Bakaláři" IT system; and ordering the plaintiff to undergo an extraordinary medical check-up at a very short notice (one day), the court indeed found the described conduct discriminatory against the plaintiff. In contrast, the court did not find any discrimination in the assignment of librarian tasks in the staffroom, requesting a signature on a warning letter, and ordering a medical check-up when the validity of the previous check-up had run out. The court awarded to the plaintiff a compensation for intangible damage in the amount of CZK 75,000 (EUR 2,914).[239] The regional court which heard the case based on the employer's appeal modified the judgement in that it dismissed the action. Indeed, it found a reasonable and legitimate justification for the four defendant's acts which were considered discriminatory by the first-instance court.[240] The plaintiff filed an application for appellate review of the second-instance ruling by the Supreme Court, which has not decided on the case by the time when this report was issued.

3.6 Sexual harassment

Harassment of a female member of the Fire Rescue Service

The plaintiff was a civil servant working in the position of head of the department for internal administration, HR and legal matters. She sued her employer (the Fire Rescue Service of the Pardubice Region) who failed to take steps against harassing conduct on the part of her direct superior. The latter, as the head of the regional director's office, allegedly pushed for three years for the plaintiff's dismissal, ridiculed her personal relationship with another man, pressed her to end this relationship, and questioned her moral and professional qualities. In her lawsuit, she requested publication of an apology and payment of financial compensation for intangible damage in the amount of CZK 150,000 (EUR 5,828).

238 Judgement of the District Court in České Budějovice of 31 May 2016, Ref. No. 21 C 43/2013-243; judgement of the Regional Court in České Budějovice of 6 April 2017, Ref. No. 19 Co 1805/2016-342.

239 Judgement of the District Court in České Budějovice of 25 February 2019, File No. 23 C 276/2017-492.

240 Judgement of the Regional Court in České Budějovice of 25 February 2020, Ref. No. 19 Co 889/2019-717.

While the district court dismissed the action (because the relevant acts had not been proven), the regional court changed the first-instance judgement and granted the relief sought (relying particularly on the testimonies of the plaintiff's former colleague and of a psychologist). Based on an enforceable judgement of the regional court of 2010, the former employer paid financial compensation in the claimed amount, but did not apologise to the plaintiff. However, the Supreme Court subsequently cancelled all the judgements on grounds of defects in application of Section 133a of the Code of Civil Procedure. The plaintiff then withdrew her anti-discrimination suit. Based on the unique circumstances of the case, the court did not grant compensation of the costs of the proceedings.[241]

Sending pornography at the workplace

The (female) plaintiff's direct superior (head of the transport department at a municipal authority) allegedly engaged in sexual harassment (by sending e-mails with pornography, MMS messages with images of his genitals) and subsequently treated the plaintiff unequally (by revoking consent to her secondary gainful activities, checking her attendance, reducing her personal extra pay) with the aim to force her out of her job. The courts determined that the two employees of the defendant had a special relationship in the period from 2005 to 2008, which had sexual overtones, but based on consent. This allegedly changed in 2009, but the courts were unable to reliably ascertain the cause of the ensuing conflict (possibly rejection by the plaintiff of the head of the transport department or a shift in the man's attention to another employee). The conflict led to deterioration of the situation at the workplace and a complaint, which the employer failed to properly address. The regional court concluded that the plaintiff's direct superior had lost control of the situation and the defendant as the employer had failed to appropriately intervene. The court therefore granted the plaintiff an apology and financial compensation for intangible damage, in the amount of CZK 50,000 (EUR 1,943). The defendant was also required to pay the outstanding amount of the plaintiff's sickness benefits of CZK 6,336 (EUR 246) and pay a fine to the State in the amount of CZK 80,000 (EUR 3,108) imposed by the labour inspectorate for an infraction consisting in failure to deal with a complaint against bossing. The courts did not grant the costs of the proceedings to any of the parties.[242]

241 Judgement of the District Court in Pardubice of 12 March 2008, Ref. No. 8 C 373/2006-107; resolution of the Regional Court in Hradec Králové of 2 October 2008, Ref. No. 23 Co 327/2008-132; judgement of the District Court in Pardubice of 30 March 2009, File No. 8C 373/2006-308; judgement of the Regional Court in Hradec Králové of 27 October 2010, Ref. No. 23 Co 282/2009-397; judgement of the Supreme Court of 29 May 2013, File No. 21 Cdo 867/2011; resolution of the District Court in Pardubice of 30 September 2013, Ref. No. 8 C 373/2006-455; resolution of the Regional Court in Hradec Králové of 31 March 2014, Ref. No. 23 Co 105/2014-465; resolution of the Supreme Court of 9 October 2015, File No. 21 Cdo 962/2015; resolution of the Regional Court in Hradec Králové of 30 December 2015, Ref. No. 21 Co 105/2014-507; resolution of the Supreme Court of 3 November 2016, File No. 21 Cdo 2993/2016.

242 Judgement of the District Court in Rakovník of 29 January 2014, Ref. No. 9 C 132/2009-954; judgement of the Regional Court in Prague of 17 March 2015, Ref. No. 23 Co 229/2014-1079; resolution of the District Court in Rakovník of 23 September 2015, Ref. No. 9 C 132/2009-1132; resolution of the Regional Court in Prague of 30 December 2015, Ref. No. 23 Co 393/2015-1148.

3.7 Termination of employment

Two cases of dismissal of pregnant employees during the trial period

During the period under scrutiny, Czech courts heard two lawsuits brought by employees who were dismissed during the trial period although they were pregnant at the time. While the first of these cases has already been closed through a final decision, the other lawsuit has reached the Supreme Court, which has yet to rule on the plaintiff's application for appellate review.

In the first case, the plaintiff began working for the employer without having advised him of her pregnancy. The employment was agreed for an indefinite term with a three-month trial period. Twelve days before expiry of the trial period, the employer terminated her employment. The plaintiff claimed that this was because of her pregnancy. The employer first gave no reason for terminating the employment but later stated in court that the ground for termination had been the plaintiff's inadequate performance. The plaintiff opposed by asserting that her superior had not criticised her for any shortcomings in her performance. The common courts dismissed her action, stating the plaintiff had failed to prove that the employer had treated her less favourably as compared to other employees in a similar position. The courts took into account that the employer had enabled the plaintiff to see a doctor and the employment had not been terminated immediately after the employer learnt about the employee's pregnancy.[243] The Constitutional Court later rejected her constitutional complaint. It stated that the prohibition of direct discrimination on grounds of pregnancy with regard to Section 66 of the Labour Code could not be interpreted so broadly as to *de facto* eliminate the possibility of dismissing a pregnant employee during the trial period.[244]

In the second of the two cases mentioned above, the plaintiff worked for the defendant for two years as a cleaning lady. After that, she took a two-month job for another employer. She returned to the defendant as a forest worker (seasonal work). The plaintiff became pregnant during the three-month trial period and was informed that her employer had no other job for her. Although individual employees (direct superior, HR officer) knew about her pregnancy, the dismissal was signed by the company's statutory representative who allegedly was not aware that she was expecting. Indeed, in the confirmation included in the employment termination file, the occupational physician stated that the plaintiff had lost medical fitness in the long term (but did not mention her pregnancy). The plaintiff considered the employer's procedure to be discriminatory on grounds of pregnancy. She claimed that the termination of her employment be declared invalid, the existence of discrimination noted and compensation provided for intangible damage in the amount of CZK 10,000 (EUR389). Both the district and regional courts dismissed her lawsuit. They stated that a pregnant employee could be lawfully dismissed during the trial period. As

243 Judgement of the District Court for Prague 2 of 19 August 2016, File No. 43 C 5/2015-109; judgement of the Municipal Court in Prague of 15 February 2017, Ref. No. 62 Co 431/2016-140; resolution of the Supreme Court of 5 October 2017, File No. 21 Cdo 2694/2017.

244 Resolution of the Constitutional Court of 13 March 2018, File No. IV. ÚS 4091/17.

regards the plaintiff, it was not proven in the proceedings that the reason for terminating her employment was her pregnancy.[245] The plaintiff applied to the Supreme Court for appellate review of the judgement.

Discrimination of an educator in a children's home

The employer gave notice to the plaintiff because he did not meet the qualification criteria for the profession of an educator in a children's home (lack of education in the field of special pedagogy). The plaintiff asserted that the actual reason for termination of his employment was his gender. Indeed, a woman was also employed by the employer at the same time even though she did not meet the formal requirements either, and she was not dismissed. The plaintiff pointed out the higher fluctuation of male employees, unequal pay and retaliation by the children's home management (the notice was allegedly an act of retaliation for his complaints filed with other institutions). The common courts dismissed his lawsuit, among other things because the district labour inspectorate had not found any discrimination in the employer's organisation.[246] After the Constitutional Court's intervention in 2015,[247] the common courts took more detailed evidence in view of the wording of Section 133a of the Code of Civil Procedure. In the next round of the proceedings, the court examined a total of twelve witnesses and concluded that the environment at the workplace was not discriminatory against men. As compared to the plaintiff, the woman who had not been given notice (a "comparator") seemed more promising for the employer. This woman (unlike the plaintiff) had at least applied for enrolment in higher education. The court also did not accept the assertion that the plaintiff had been unable to increase his qualifications because of the schedule of shifts (he had actually agreed to the schedule) and that the notice of termination had, in substance, been an act of retaliation because of a complaint lodged with the founder of the children's home and the administrative authorities. The lower remuneration for work was explained by the fact that the plaintiff had ceased to perform duties in the field of prevention. The courts therefore dismissed the action.[248] A second constitutional complaint was filed belatedly.[249]

Invalidity of judicial officer's dismissal because of age discrimination

A woman worked as a judicial officer for many years. The employer eventually gave her notice on grounds of redundancy. In addition, the employer also dismissed two other employees over 60 years of age and had previously agreed on termination of employment

245 Judgement of the District Court for Prague 6 of 4 September 2019, Ref. No. 14 C 86/2018-76; judgement of the Municipal Court in Prague of 15 January 2020, Ref. No. 23 Co 381/2019-101.

246 Judgement of the District Court in Uherské Hradiště of 16 August 2013, Ref. No. 4C 57/2012-109; judgement of the Regional Court in Brno – branch in Zlín of 20 March 2014, Ref. No. 60 Co 447/2013-191; resolution of the Supreme Court of 16 January 2015, File No. 21 Cdo 3211/2014.

247 Judgement of the Constitutional Court of 8 October 2015, File No. III. ÚS 880/15.

248 Judgement of the District Court in Uherské Hradiště of 11 November 2016, Ref. No. 4C 57/2012-412; judgement of the Regional Court in Brno of 16 May 2017, Ref. No. 60 Co 58/2017-476; resolution of the Supreme Court of 20 October 2017, File No. 21 Cdo 4520/2017.

249 Resolution of the Constitutional Court of 16 January 2018, File No. III. ÚS 124/18.

with a further six employees older than 60 years. The employee was convinced that the redundancy was merely a pretext while the actual reason was her retirement age. She successfully challenged this in court and her dismissal was declared invalid on grounds of discrimination. In the court's opinion, the defendant merely simulated the organisational change.[250] The appellate court upheld the judgement.[251] The employer filed an application for appellate review, which the Supreme Court rejected.[252] The plaintiff also enforced a claim for compensation for intangible damage in the amount of CZK 50,000 (EUR 1,943) under the Anti-Discrimination Act. The first-instance court has yet to decide on this part of her lawsuit.

Redundancy of a disabled warehouse worker

The plaintiff worked for the defendant as a warehouse worker. In 2016, the defendant adopted an organisational measure which resulted in dismissal of 11 employees, including the plaintiff. The plaintiff claimed that he had been chosen because of his adverse medical condition. He also stated that the other employees, too, had been given notice on the same discrimination ground. While the first-instance court followed from settled case law according to which a court was not competent to review the choice of redundant employees,[253] the appellate court disagreed. It stated that review was possible precisely in cases where discrimination was pleaded.[254] The defendant subsequently stated that employees had been chosen for redundancy based on their salaries, as the defendant had intended to streamline its operations and reduce salary costs. The plaintiff's salary (CZK 16,000, EUR 622) was higher than that of his colleagues (CZK 13,000, EUR 505). Since older employees usually receive higher salaries, the first-instance court found indirect discrimination on grounds of age.[255] However, the appellate court satisfied the defendant's appeal because the plaintiff never claimed the existence of age discrimination.[256] Therefore, the first-instance court eventually examined witnesses (both current and former employees of the defendant) and concluded that discrimination on grounds of disability had not occurred. In the choice of employees to be made redundant, the employer prioritised an employee who had completed secondary school education with a school-leaving examination and had basic knowledge of English.[257] The judgement is final.

Use of an audio recording to prove age discrimination

As a promotional officer, the plaintiff co-ordinated and implemented projects of tourist infrastructure and regional development. In 2014, the employer abolished his position and gave him notice under Section 52 (c) of the Labour Code. The plaintiff objected that the

250 Judgement of the District Court in Blansko of 26 July 2017, Ref. No. 12 C 374/2015-196.

251 Judgement of the Regional Court in Brno of 13 March 2019, Ref. No. 49 Co 367/2017-397.

252 Resolution of the Supreme Court of 22 October 2019, File No. 21 Cdo 2662/2019.

253 Judgement of the District Court in Ostrava of 7 February 2017, Ref. No. 85 C 245/2016-37.

254 Resolution of the Regional Court in Ostrava of 2 August 2017, Ref. No. 16 Co 67/2012-67.

255 Judgement of the District Court in Ostrava of 23 January 2018, Ref. No. 85 C 245/2016-98.

256 Resolution of the Regional Court in Ostrava of 12 June 2018, Ref. No. 16 Co 65/2018-116.

257 Judgement of the District Court in Ostrava of 4 April 2019, File No. 85 C 245/2016-190.

actual reason for his dismissal was retirement age and claimed that the notice be declared invalid. The employer denied any such discrimination. In actual fact, the reason for terminating the plaintiff's employment was an organisational change corresponding to the director's new concept of operation of the organisation as such (transfer of projects from several teams to one). The plaintiff submitted to the court a recording made with the knowledge of his superior. The employer had no objection to the recording being played in court as a means of evidence. The recording documented a fifteen-minute conversation between the plaintiff and the director who had made the decision to reorganise. On two occasions, the director mentioned that he wanted to give a chance to younger people and did not wish to have a number of "pensioners" working at the department. If there were vacancies at the workplace, they should be filled by young people. He also stated that he was not dismissing the plaintiff as a pensioner but because his position would no longer exist. The court did not consider these statements discriminatory. It stated however that the defendant's director should have chosen a better and more sensitive manner of communication.[258]

Dismissal of an HIV-positive police officer

The plaintiff worked as a civil servant at the Unit for the Protection of Constitutional Officials of the Police of the Czech Republic. He was discharged from service in 2011 based on a medical report according to which the plaintiff had lost his medical fitness to perform service in the long term. This was because he had contracted the human immunodeficiency virus (HIV). The plaintiff asked the court to note the existence of discrimination and order the defendant to compensate intangible damage in the amount of CZK 500,000 (EUR 19,427). The common courts acknowledged that an HIV infection fell under the definition of disability. They also stated that the case was covered by the Anti-Discrimination Act (as *lex generalis*). The Security Corps Service Relationship Act did not protect officers against discrimination on grounds of disability. However, based on expert evidence, the common courts concluded that the plaintiff's medical condition justified termination of his service relationship.[259] In 2018, the Supreme Court surprisingly discontinued the whole proceedings and referred the case to the Police Presidium. It stated that the case did not belong to the jurisdiction of civil courts. If a plaintiff was enforcing a claim based on a decision made by the competent officer (which was also the case here), he had to refer it to the competent administrative authority.[260] The Constitutional Court rejected a constitutional complaint as it reached the conclusion that the Supreme Court's judgement was not a final decision in the case.[261] At the time when the report was issued, the plaintiff's claims were being dealt with by the Municipal Court within administrative justice.

258 Judgement of the District Court in Prachatice of 27 May 2015, Ref. No. 6 C 27/2015-52; resolution of the Regional Court in České Budějovice of 14 August 2015, Ref. No. 19 Co 1617/2015-65.

259 Judgement of the District Court for Prague 7 of 16 May 2017, Ref. No. 10 C 239/2013-241; judgement of the Municipal Court in Prague of 9 November 2017, Ref. No. 20 Co 343/2017-279.

260 Judgement of the Supreme Court of 15 August 2018, Ref. No. 21 Cdo 2550/2018-320

261 Resolution of the Constitutional Court of 27 December 2018, File No. III. ÚS 3915/18.

4. Healthcare

Only five cases monitored during the relevant period were in the area of healthcare. This may owe to three reasons, based on the Defender's experience with resolving complaints of discrimination. The first is that persons discriminated against in access to or in the provision of healthcare usually strive to obtain quality healthcare as quickly as possible. When health is at stake, time is a primary concern. It might not be a priority for the victims of discrimination to bring lawsuits that may take several years to resolve. The second reason is that this is a very sensitive area where people objecting to discrimination have to disclose data on their medical condition to third parties (court, experts, etc.). The idea that their sensitive data would be revealed in public court proceedings could thus dissuade them from taking their matter to court. The third reason might be that only victims of discrimination on grounds of race, ethnic origin and sex can benefit from shared burden of proof in litigation.

However, a majority of disputes in the area of healthcare and health services heard by the courts concerned failure to accept a person as a patient. This is also the most common issue dealt with by the Public Defender of Rights in this area. Denial of care on grounds of discrimination is most frequently encountered by people with various kinds of disability and Roma people.

Whenever healthcare providers refuse to accept a patient, they are required to issue a report explaining the reasons for the non-acceptance, while the law provides an exhaustive list of reasons why a provider may refuse a patient.[262] Given that a majority of communication between the provider and the patient regarding his or her acceptance or non-acceptance takes place informally, by telephone or in the provider's waiting room, there usually is no record of such communication and the providers often do not issue a report on non-acceptance of a patient unless they are explicitly requested to do so. There is thus no proof of any dealings between the patient and the provider, and even less so of its contents. Even in cases where the provider issues a report on non-acceptance of a patient, no discrimination ground will usually be explicitly mentioned. It will thus be difficult for the plaintiff to prove that the reason for his or her rejection entailed discrimination.

The plaintiff's position in terms of proof is also complicated by the fact that, in the area of healthcare, the burden of proof is shared only in the case of alleged discrimination on grounds of race, ethnic origin and sex;[263] in other cases, the burden of proof is borne exclusively by the plaintiff. Reversal of the burden of proof need not be apparent at first sight from the wording of the Code of Civil Procedure in all cases of discrimination on grounds of sex – according to the Code of Civil Procedure, the burden of proof is shared in case of alleged discrimination on grounds of sex in access to goods and services, as required

262 Section 48 of the Healthcare Services Act.

263 Section 133a of the Code of Civil Procedure. This relates to implementation of the Race Equality Directive and the Gender Directive.

by the Gender Directive. As EU law includes healthcare and healthcare services among services in general, they are thus covered by the directive which requires sharing of the burden of proof.[264] Consequently, the provisions of the Code of Civil Procedure must also be interpreted in that the burden of proof will be shared in the area of provision of healthcare both in cases of alleged discrimination on grounds of race and ethnicity and in cases of discrimination on grounds of sex.[265]

As it is impossible to prove discriminatory conduct in any other way, the plaintiffs use secret recordings or "situation testing" to prove their allegations. According to case law of the Constitutional Court, the use of such recordings as evidence in litigation is admissible if this is necessary for the protection of rights of a significantly weaker party in a civil dispute who is at risk of a major harm unless the facts can be proven by other means.[266] In my opinion, a patient looking for a physician who would accept him or her as a patient is a significantly weaker party in relation to the healthcare services provider in view of the patient's sensitive personal situation. A recording of the patient's dealings with the healthcare provider, whether made directly during such dealings or as part of situation testing, should therefore be admissible in most court proceedings.

Roma patients refused by a dentist

The plaintiff was looking for a dentist and therefore made an appointment with a doctor who was later sued in this case. But when he actually visited the dentist, she rejected him. The plaintiff believed that the reason could have been his Roma origin and turned to a non-profit organisation for help. The non-profit organisation organised a situation testing with the assistance of the plaintiff's wife (the second plaintiff in the dispute) and an employee of the non-profit organisation who, unlike the plaintiffs, was not ethnically Roma. The situation testing took place in that the second plaintiff and, subsequently, the employee of the organisation made an appointment with the dentist. The dentist refused to accept the Roma plaintiff, just like she had previously refused to provide care to her husband, while the non-Roma employee of the non-profit organisation was treated without any problem. As a reason for rejection, the dentist stated that she only exceptionally registered adult patients and chose them only when she met them in person. The second plaintiff made a secret recording of her visit to the dentist.[267]

Subsequently, the plaintiffs brought an anti-discrimination lawsuit against the dentist, where they claimed an apology and financial compensation for intangible damage. After the

264 This is in no way changed by the fact that unlike in usual services, healthcare is mostly not directly paid for by the patient, but rather indirectly from public health insurance. This is also confirmed by case law of the Court of Justice of the EU, e.g. judgement of 12 July 2001, *Smits and Peerbooms v Stichting CZ Groep* Zorgverzekeringen, C-157/99.

265 The European Commission interprets the Directive in the same way. For more details, see the European Commission. *Report on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, COM(2015) 190.* In EUR-Lex.

266 Judgement of the Constitutional Court File No. II. ÚS 1774/14 of 9 December 2014 (N 221/75 SbNU 485), available at: http://nalus.usoud.cz.

267 Report on a case where discrimination was found of 23 May 2012, File No. 67/2012/DIS, available at: http://eso.ochrance.cz/Nalezene/Edit/1472.

court proceedings were initiated, the parties concluded an amicable settlement, which the court subsequently approved. The settlement included the defendant's apology to both plaintiffs and a compensation for intangible damage in the amount of CZK 15,000 to each of the plaintiffs.[268]

Rejected HIV-positive patient

The courts dealt with two cases where a dentist refused to treat an HIV-positive patient.

In the first case, the plaintiff went to a hospital (the defendant) to get treatment for toothache. Treatment was, however, denied to her. The court was unable to clarify the facts of the case to such an extent as to remove any doubts and the lawsuit was therefore dismissed. The plaintiff claimed that the defendant had refused to treat her. A nurse allegedly told her that the hospital was not equipped for HIV-positive patients and recommended her to visit a different healthcare facility. The defendant objected that it had been prepared to provide care to the plaintiff at the end of the working time once all other patients had left, which the plaintiff rejected and left. All this was allegedly a misunderstanding.[269]

The regional court upheld the judgement of the district court. While it found the defendant's conduct somewhat inadequate in professional terms, since the plaintiff had requested the courts to find direct discrimination on grounds of her HIV positivity, which had not been proven, the court confirmed the first-instance judgement as materially correct.[270]

In the second of the mentioned cases, the defendant offered amicable settlement of the dispute after the lawsuit was brought. Specifically, the defendant offered the requested treatment to the plaintiff and also made a financial donation to the HIV-positive community. The dispute was thus resolved amicably and the plaintiff withdrew the suit to the full extent.[271]

Provision of lower-quality treatment as discrimination

The plaintiffs claimed an apology and compensation for intangible damage caused by discriminatory conduct of a hospital, ultimately resulting in death of their daughter. According to the plaintiffs, the discrimination lay in the fact that when their daughter's medical condition deteriorated because of another illness which had the nature of disability, they did not attempt to resuscitate and merely informed her parents of the impending death. The plaintiffs forced the doctors to begin resuscitation, but it was too late. In the plaintiffs' opinion, if their daughter had not been suffering from this other illness, the doctors would have proceeded with her resuscitation immediately. The defendant objected

268 Resolutions of the Municipal Court in Brno of 3 February 2016, File No. 112 C 289/2014 and 33 C 316/2014.

269 Judgement of the District Court in Plzeň-City of 1 August 2018, File No. 13 C 47/2018.

270 Judgement of the Regional Court in Plzeň of 5 December 2018, File No. 18 Co 240/2018.

271 Resolution of the District Court for Prague 7 of 24 November 2015, File No. 29 C 274/2015.

that healthcare had been provided to the plaintiffs' daughter in a *lege artis* manner.[272] The treatment procedure requested by the plaintiffs could be regarded in ethical terms as causing and prolonging their daughter's suffering.

Neither the district nor the regional court addressed the issue of discrimination; they dismissed the action on grounds of lacking standing of the plaintiffs – in the courts' opinion, protection against discrimination can only be claimed by a person directly affected by the discriminatory conduct.[273]

The Supreme Court granted the plaintiffs' application for appellate review and cancelled the first-instance and appellate judgements.[274] In its legal opinion, protection against discrimination may also be claimed by persons close to the direct victim of discrimination if they justifiably consider the harm to the person being discriminated against to be their own harm. In this conclusion, it relied primarily on the need to interpret the Anti-Discrimination Act in conformity with the EU directives and case law of the Court of Justice of the EU, which require that defence against discrimination be also available to persons other than the direct victim.[275] In doing so, the Supreme Court agreed with my *amicus curiae* opinion.[276] Proceedings in this case are yet to be closed through a final decision.

272 *Lege artis* denotes the best medical procedure according to state of the art in medicine.

273 Judgement of the District Court for Prague 5 of 5 October 2015, File No. 28 C 17/2014; judgement of the Municipal Court in Prague of 18 May 2016, File No. 39 Co 74/2016.

274 Judgement of the Supreme Court of 13 December 2017, File No. 30 Cdo 2260/2017.

275 Judgement of the Court of Justice (Grand Chamber) of 17 July 2008, S*. Coleman v Attridge Law and Steve Law*, C-303/06.

276 Opinion of the Public Defender of Rights of 6 November 2015, File No. 61/2015/DIS, available at: http://eso.ochrance.cz/Nalezene/Edit/3608.

5. Education

During the period under scrutiny, the courts heard 11 cases of discrimination in the area of education (ca. 12% of the total 90 cases and a total of 23 decisions); six of these eleven cases have already been closed by a final decision. The plaintiffs were successful only in two of these cases (ca. 33% of the cases resolved). Appellate or appellate review proceedings are pending in the remaining five cases. Most often, the plaintiffs pleaded discrimination on grounds of disability, followed by ethnic origin and religion.

Table 10 – Numbers of proceedings according to the protected characteristic invoked (N = 11)

Protected characteristic invoked	**Number of lawsuits**	**Closed – lawsuit successful**	**Closed – lawsuit unsuccessful**	**Not closed**
Disability	6	1 (ca. 17%)	2 (ca. 33%)	3 (ca. 50%)
Ethnic origin	3	1 (ca. 33%)	1 (ca. 33%)	1 (ca. 33%)
Religion	2	0	1 (ca. 50%)	1 (ca. 50%)
Total	**11**	**2 (ca. 18%)**	**4 (ca. 36%)**	**5 (ca. 45%)**

The first successful lawsuit was a case of harassing statements made about pupils' ethnicity and their non-enrolment in the first grade of primary school. The court granted the plaintiffs a written apology. The second case involved failure to ensure education for a pupil with an autism spectrum disorder. The court awarded the plaintiff a written apology and compensation for intangible damage in the amount of CZK 50,000 (EUR 1,943).

Given that the plaintiffs are mostly minor children, cases in the area of education exhibit several specific features:

- the need to ask the guardianship court for consent to bringing an anti-discrimination lawsuit;
- examination of the minor plaintiffs as parties to the proceedings;
- no reimbursement of the costs of the proceedings.

These specific features are described in the introduction of the chapter. This is followed by analysis of the specific court decisions as regards access to education and its conditions.

5.1 Specific features of cases in the area of education

Consent of the guardianship court

Save for ordinary matters, the parents need court approval for any juridical acts relating to children's property.[277] According to the Supreme Court, this also applies to bringing a lawsuit for protection against discrimination under the Anti-Discrimination Act.[278] This is also true if the child claims a mere apology, and not financial compensation for intangible damage. Indeed, if the child failed to succeed in court with this claim, the court might require the child to reimburse the other party for its costs of the proceedings, and this would adversely affect the child's property.

However, requiring consent of the guardianship court has yet to become a regular practice. Out of the ten cases under scrutiny (in one case, the plaintiff was already of legal age), in a mere three the courts explicitly stated that the guardianship court had approved the lawsuit brought by the parents for their child. In six cases, the courts did not mention any such consent. I therefore assume that it was not granted. In the last case, the core of the dispute changed in such a way that consent became required (see the above conclusions of the Supreme Court).

Examination of the minor plaintiff

In two cases, the minor plaintiffs moved for their own examination. However, the courts decided not to take evidence in this way. In one case, this was because the plaintiff's examination would allegedly not be relevant as the plaintiff was unaware of the lawsuit and did not understand the purpose of litigation (notions such as discrimination, denial or education were incomprehensible to the plaintiff) and the child was already burdened enough by the parents' frequent disputes regarding his upbringing.[279] The plaintiff was 14 years old at the time when this decision was issued. In the second case, the court did not examine the minor plaintiff as, according to the Code of Civil Procedure, examination of a party to the proceedings constitutes merely a subsidiary piece of evidence.[280] At the same time, the court did not want to create negative memories for the plaintiff and worsen his medical condition (he had already attempted suicide). The court thus followed at least from a letter sent by the plaintiff to the court.

On the contrary, in one case, the court examined the minor plaintiff without any of the parties having moved for such a step.[281] The examination took place without the presence of the parties and their lawyers. The court subsequently concluded based on the

277 Section 898 of the Civil Code: "Parents need court approval for juridical acts concerning existing and future assets and liabilities of a child or the individual parts thereof unless they are ordinary matters or exceptional matters concerning a negligible property value."

278 Resolution of the Supreme Court of 18 January 2017, File No. 30 Cdo 3421/2016, accessible at: www.nsoud.cz.

279 Judgement of the District Court in Kolín of 26 June 2018, File No. 12 C 447/2015.

280 Judgement of the Municipal Court in Brno of 25 April 2019, Ref. No. 35 C 207/2016-279.

281 Judgement of the District Court for Prague 7 of 4 September 2015, File No. 5 C 228/2013.

information thus obtained that the plaintiff had adopted most of her allegations (also in terms of their phrasing) from her parents' opinions. At the same time, she did not state anything that could warrant the conclusion that the school's procedures had seriously affected her mental condition. The court dismissed her lawsuit.

Reimbursement of the costs of the proceedings

The courts usually did not grant the successful defendant reimbursement of the costs of the proceedings, as they considered this too harsh.[282] They took into consideration that the plaintiffs were minors and were disabled or financially dependent on their parents. In one case where the defendant was the State, the court took into account the negligible impact of not granting reimbursement of the costs of the proceedings on State's property.

However, the appellate court deviated from this practice in two cases.[283] The principle of success in the case is the basic principle governing decision-making on payment of the costs of civil contentious proceedings. This principle can be overcome in specific exceptional cases. In one case, the plaintiff's parents failed to obtain consent of the guardianship court and the court had to discontinue the proceedings for this reason. In another case, the court considered the lawsuit frivolous. In its opinion, the plaintiff's mother abused her disabled minor child as a "human shield" to settle accounts with the school she sued. Moreover, according to the courts, the schools sued in these cases cannot be fairly required to pay unnecessarily expended costs of legal representation from their budget (this serves for a different purpose, and school employees and students should not be asked to bear the consequences of an unfounded lawsuit). Therefore, in the first mentioned case, the plaintiff had to pay the amount of CZK 61,000 to the school. In the second case, the plaintiff's mother was ordered to reimburse the school for the amount of CZK 246,954.

5.2 Access to education

As concerns access to education, the courts heard a total of five cases. Plaintiffs most often claimed the existence of discrimination on grounds of their Roma ethnicity (2 cases, 40%) and disability (2 cases, 40%). In one case, the plaintiff claimed the existence of discrimination on grounds of her religious beliefs (20%).

Non-admission of Roma pupils to a primary school

In 2014, a group of Roma children enrolled in the first grade of a primary school in Ostrava. The headteacher was concerned that the school would start to be perceived as a "Roma" school and that the majority children would leave. He therefore decided to open only one class in the first grade and choose the children according to the school readiness test. He also spoke to the media about the need to regulate the number of Roma pupils in the class.

282 Section 150 of the Code of Civil Procedure: "The court need not exceptionally grant payment of costs to a party successful in the case if there are reasons deserving special attention or if the party refuses, without a serious reason, to participate in the initial meeting with a mediator ordered by the court."

283 Resolution of the Municipal Court in Prague of 6 November 2017, File No. 21 Co 401/2017; and judgement of the Regional Court in Prague of 12 June 2019, File No. 21 Co 329/2018.

As a result, two Roma boys who were not admitted to the school by the headteacher sued for discrimination on grounds of ethnicity. They requested that the school provide a written apology and financial compensation for intangible damage in the amount of CZK 50,000 (EUR 1,943). The court concluded that the school had directly discriminated against the Roma boys. The headteacher's comments on the need to regulate the number of Roma pupils interfered with their dignity. They were meant in that Roma children were not as desired as children from the majority population and tarnished the school's reputation among the majority society. The statements put the boys in the role of "lesser" people who were "lacking dignity".

The court admitted as evidence a secret recording of a conversation with the headteacher since the interest in revealing discrimination is a public interest which takes precedence over the headteacher's right to protection of privacy.

The court granted the boys only a written apology and dismissed their claim for financial compensation for intangible damage. Indeed, the headteacher reflected his errors to some degree and tried to mitigate the discriminatory conduct by ultimately admitting the boys to the school. Since both parties to the dispute were successful only partially, the court did not grant any of them the right to reimbursement of the costs of the proceedings.[284] The decision is final.

Assigning a Roma child to a school for children with special needs

A man who, back in 1985, was assigned by a communist district national committee to a special school for children with mental disabilities suspected that the real reason was his Roma ethnicity. Education in this school limited his further educational track and success on the labour market. Therefore, by virtue of an action for the protection of personal rights, he claimed an apology from the State and compensation for intangible damage in the amount of CZK 500,000 (EUR 19,427).

The Municipal Court in Prague dismissed his action and the Superior Court in Prague upheld this judgement. The man was also unsuccessful with an application for appellate review[285] and ultimately with a constitutional complaint.[286] He did not lodge an application with the European Court of Human Rights (ECtHR).

In this case, the Supreme Court and the Constitutional Court dealt with the importance of statistics demonstrating suspected indirect discrimination. The Supreme Court followed from case law of the ECtHR, which admitted in D. H. and Others v. the Czech Republic that statistics could *prima facie* be a proof of discrimination if they were reliable and important for the case at hand. However, the court believed that the ECtHR added to this conclusion in Oršuš v. Croatia that the statistics had to be sufficiently significant (the data had to be

284 Judgement of the District Court in Ostrava of 1 March 2017, File No. 26 C 42/2016.

285 Judgement of the Supreme Court of 13 December 2012, File No. 30 Cdo 4277/2010, accessible at www.nsoud.cz.

286 Judgement of the Constitutional Court File No. III. ÚS 1136/13 of 12 August 2015 (N 143/78 SbNU 209), available at: http://nalus.usoud.cz.

relevantly disproportionate). The threshold of statistical significance should be a 50% or higher share of Roma pupils in the school or class.

However, this conclusion was rebutted by the Constitutional Court. According to the latter, the Supreme Court misinterpreted the conclusions of the ECtHR. A generally set threshold of statistical significance is not sufficiently conclusive. According to the Constitutional Court, statistical data may give rise to the assumption of indirect discrimination if they indicate such a disproportion that can be used *prima facie* to infer a conclusion on a discriminatory practice based on reasonable considerations and taking into account the relevant context.

Non-admission of an autistic child to a primary school

A boy with an autism spectrum disorder was receiving education in a school for children with special needs. However, he was more capable than most of his classmates. The school counselling facility therefore recommended his integration into a standard primary school in the third grade. He asked for a transfer to his catchment school. However, the school's headteacher stated informally that a small village school and its teachers would not be able to manage his demanding integration. She also had to take into account the reactions of some of the other parents who had announced that they would transfer their children elsewhere if this child was brought to the school. The official application for a transfer to the school was rejected by the headteacher on grounds of insufficient staff and full capacity. The boy's mother then approached eleven other schools in the area, but without success.

The mother filed a lawsuit on the boy's behalf, pleading discrimination on grounds of disability. She requested an apology and compensation for intangible damage in the amount of CZK 100,000 (EUR 3,885) from the municipality which had failed to provide him with access to education at the catchment school or elsewhere.

The court accepted the mother's arguments. The municipality, acting through the headteacher, committed direct discrimination as it did not allow the boy's transfer to the municipal school because the school and its teachers would be unable to manage the integration, while also taking into account the response of some other parents. Insufficient capacity can be a reason for not admitting a child to the catchment school. However, in that case, the municipality must negotiate with other municipalities nearby and find a place for the child in some other school, which it failed to do. Moreover, the school did not even determine what the child's integration in a regular school would require and simply rejected this possibility altogether.

The court therefore ruled that the municipality had committed discrimination, ordered it to apologise to the boy in writing, pay a compensation for intangible damage in the amount of CZK 50,000, and reimburse the plaintiff for the costs of the proceedings in the amount of CZK 10,890. The court believed that a mere apology would not be sufficient since the procedure taken by the municipality and the headteacher could unfavourably affect the boy's development and health. By discussing the matter with other parents, the headteacher also negatively affected the boy's dignity and esteem in the municipality. The court did not grant a higher amount (originally, the plaintiff claimed CZK 100,000, i.e. EUR 3,885) in view of certain objective reasons that led to the boy's rejection (insufficient

capacity, need for organisational changes, limited number of classes and teachers).[287] The decision is final.

Non-admission of a student wearing a hijab to a secondary school

In the summer of 2013, a Muslim girl wearing a hijab enrolled in a secondary medical school. However, wearing a headdress was prohibited at this school. In early September, the headteacher therefore asked her to comply with the school regulations. The girl did not want to remove her hijab and left the school. She then requested that the school provide a written apology and a compensation for intangible damage in the amount of CZK 60,000 (EUR 1,943).

The first-instance court concluded that the girl had not become a student of the school due to a lack of documents and, therefore, could not exercise her right to equal treatment.[288] The appellate court upheld the first-instance judgement and, moreover, expressed its opinion on the issue of discrimination. It stated that there was no right to unlimited wearing of a hijab at a public school. The plaintiff's right to express her religion stood against the right to have no religion, not to wear religious symbols and not to be exposed to their influence. In the opinion of the appellate court, the Czech Republic – just like France – was a secular State (where religion is separated from its institutions). This does not constitute discrimination as the plaintiff was in no way disadvantaged. In contrast, she was claiming positive discrimination, specifically the privilege to wear a headdress.[289]

The plaintiff filed an application for appellate review. The Supreme Court then cancelled the decisions of both lower-instance courts and referred the case back to the first instance. It substantiated this ruling by stating that the prohibition of wearing headdress by Muslim students during theory classes at the school was not justified by any legitimate aim. Consequently, the plaintiff had been indirectly discriminated against in access to education within the meaning of Section 3 of the Anti-Discrimination Act. The Supreme Court thus expressed a legal opinion binding on the first-instance court that the plaintiff had been discriminated against in access to education. The first-instance court was therefore supposed to rule

merely on the enforced claims in the further round of the proceedings.[290] However, the plaintiff eventually withdrew her lawsuit.[291]

287 Judgement of the District Court in Vyškov of 18 March 2016, File No. 10 C 250/2014.

288 Judgement of the District Court for Prague 10 of 27 January 2017, File No. 17 C 61/2016.

289 Judgement of the Municipal Court in Prague of 19 September 2017, File No. 12 Co 130/2017.

290 Judgement of the Supreme Court of the Czech Republic of 27 November 2019, Ref. No. 25 Cdo 348/2019-311.

291 LIDOVKY.cz. A Muslim girl withdraws her lawsuit against a Prague school that prohibited her to wear a hijab. The headteacher disagrees. [online]. Prague: MAFRA, a. s., 28 April 2020 [retrieved on: 2020-05-27]. Available at: https://www.lidovky.cz/domov/muslimka-ktera-se-soudila-se-skolou-kvuli-zakazu-noseni-hidzabu-zalobu-stahla-reditelka-nesouhlasi.A200428_214834_ln_domov_ele.

Non-admission to recreational learning in after-school groups

The minor plaintiff was a student with special educational needs who was assigned a teaching assistant based on a recommendation of the school counselling facility. His primary school did not allow him to attend recreational learning in an after-school group because it was afraid that it would not be possible to manage the student in the absence of a teaching assistant. The plaintiff pleaded discrimination in access to education on grounds of disability and claimed an apology and a compensation for intangible damage in the amount of CZK 140,000 (EUR 5,439). The Municipal Court in Brno dismissed the action. The reason was that the discriminatory conduct had not been proven. In the court's opinion, the plaintiff was in no way excluded from the after-school group, but rather actually attended it.[292] Appellate proceedings are currently pending.[293]

5.3 Conditions of education

Ethnic segregation at a primary school

Six pupils sued an Ostrava primary school and the city because of separate education of Roma and non-Roma children. The school has two buildings. One of them is used primarily by Roma children, while the other by non-Roma children. The plaintiffs claimed compensation for intangible damage in the amount of CZK 75,000 (EUR 2,914). At the same time, they requested that the court order the city and the school to desegregate the two buildings so that the ethnic composition of the children was not in gross disproportion to the ethnic composition of the population of the school district.

The court considered the requirement for desegregation incomprehensible, indeterminate, unreviewable and thus unenforceable. For this reason, the plaintiffs further specified their claim in that the school was to open classes in the 1st to 5th grades for both Roma and non-Roma children in one building and do the same for the 6th to 9th grades in the other building, or to achieve the desegregation effect in some other way.[294] The court still considered this indefinite and thus rejected the claim.[295] The plaintiffs appealed the ruling. The appellate court accepted their arguments and stated that the relief sought was sufficiently definite. It

292 Judgement of the Municipal Court in Brno of 25 April 2019, Ref. No. 35 C 207/2016-279.

293 Conducted by the Regional Court in Brno under File No. 70 Co 304/2019.

294 Specifically, the plaintiffs further specified their claim as follows: "The Defendants are required to provide for teaching at the workplaces [of the school] in that classes in the 1st to 5th grades in all educational programmes implemented [by the school] will take place in one of the two buildings in which the workplaces [of the school] are situated, at the addresses ... as determined [by the school], while classes in the 6th to 9th grades in all educational programmes implemented [by the school] will be taught in the second building, all that beginning on 1 September of the calendar year following the year in which the judgement enters into legal force. The Defendants may be relieved of this duty by using other means and methods of their choice to achieve, by the same deadline, an outcome where the pupils [of the school] who are of Roma ethnicity are divided evenly in the two buildings [of the school] for their classes; even distribution means a situation where not more than 60% of the Roma pupils are taught in one building and not less than 40% of the Roma pupils are taught in the other building."

295 Resolution of the District Court in Ostrava of 20 December 2017, File No. 54 C 192/2016.

therefore changed the operative part of the first-instance court to the effect that their claim was not rejected.[296]

In the end, the plaintiffs withdrew this part of the action, as they had ceased to attend this school once they had completed compulsory school education. The first-instance court subsequently dismissed the remaining requirement for financial compensation for intangible damage. In the court's opinion, the plaintiffs had failed to bear the burden of allegation and burden of proof insofar as they had requested a transfer from a building attended primarily by Roma pupils with lower quality education to the second building with better education. The court considers that the very existence of segregation is not unlawful unless a breach of an obligation under some other legal regulation is proven or unless the defendants acted with a discriminatory intent.[297] The plaintiffs appealed against the judgement.[298]

Funding for a teaching assistant for students with special educational needs

The greatest number of cases in the area of education (4 out of 6, ca. 67%) concerned the funding for a teaching assistant for students with special educational needs.[299] Of this number, one case has been closed and appellate proceedings are pending in the remaining three.

The cases are specific in that the facts predate the adoption of the "inclusion amendment to the Schools Act" in September 2016. Indeed, there was no entitlement at that time to free support of a teaching assistant and regional authorities generally financed only a part of the required working time. Therefore, the parents of students with special educational needs had to pay a part of the costs of a teaching assistant. Following the adoption of the amendment, children with special educational needs became entitled to receive supporting measures free of charge. It can therefore be expected that similar disputes will no longer appear.

In cases where a part of the costs of a teaching assistant had to be paid, it is still unclear who the student should sue. In the cases under scrutiny, the defendants included the Czech Republic (the Ministry of Education, Youth and Sports), an administrative region, a municipality as the founder of the school and a primary school. In a single successful case, the appellate court attributed the lack of funding to the State.[300] This is because the State is

296 Resolution of the Regional Court in Ostrava of 29 March 2018, File No. 57 Co 104/2018.

297 Judgement of the District Court in Ostrava of 14 August 2019, File No. 54 C 192/2016.

298 The appellate proceedings are being conducted by the Regional Court in Ostrava under File No. 57 Co 433/2019.

299 Judgement of the District Court for Prague 1 of 13 July 2016, File No. 26 C 121/2014; judgement of the District Court for Prague 5 of 18 September 2017, File No. 21 C 69/2015; judgement of the Municipal Court in Prague of 15 March 2018, File No. 29 Co 466/2017; judgement of the District Court in Kolín of 26 June 2018, File No. 12 C 447/2015; judgement of the Regional Court in Prague of 12 June 2019, File No. 21 Co 329/2018; judgement of the District Court for Prague 1 of 29 January 2018, File No. 26 C 25/2016; judgement of the Municipal Court in Brno of 25 April 2019, File No. 35 C 207/2016 (the case of non-admission to recreational learning in an after-school group, described above in Chapter 5.2 – Access to education).

300 Judgement of the Municipal Court in Prague of 15 March 2018, File No. 29 Co 466/2017.

the one who pays teachers' salaries from the State budget. The regional authority merely administers the finances. The State, acting through the Ministry of Education, Youth and Sports, failed to adopt secondary legal regulations and methodological guidelines that would enable the regional authority to fully finance the activities of teaching assistants. The court also relied on analogy with the State Liability for Damages Act, according to which the State is liable for damage caused by bodies of local and regional government if the damage occurred in the exercise of State's administration. However, the ruling in the case has been challenged by an application for appellate review and the case will be heard by the Supreme Court.[301]

In other cases, the courts mostly referred to decisions of the Supreme Administrative Court[302] and of the Constitutional Court[303] according to which the services of a teaching assistant constituted only one of a number of supporting measures to which there was no legal entitlement at that time. The manner of financing a teaching assistant could not be attributed to the State as it was fully within the competence of the headteacher. The latter could also pay the assistant from sources other than the State budget (from the school's own income, resources provided by the founder or other persons). In this respect, however, the appellate court stated in the sole case where the plaintiff succeeded that the conclusions of the Supreme Administrative Court were not relevant for a civil dispute and that the first-instance court did not evaluate the case through the prism of anti-discrimination law.[304]

Exclusion of a student from non-curricular events due to her religious belief

A student who (like her parents) was a member of Jehovah's Witnesses pleaded discrimination on grounds of religion. This was allegedly manifested by her exclusion from school camps, denial of the possibility to attend an after-school group, being forced to wait in an unsuitable environment after the end of classes, and exclusion from a course preparing students for a secondary grammar school. She claimed compensation from the school in the amount of CZK 12,100, i.e. EUR 410 (for legal representation in previous proceedings against the school on grounds discrimination[305]) together with compensation for intangible damage in the amount of CZK 250,000 (EUR 9,713).

The first-instance court dismissed the student's lawsuit on grounds that she had been unable to prove that the school had restricted her because of her religious belief. She did not go to the school camp for reasons of safety in view of her parents' attitude towards possible medical treatment. Fifth-grade students were allowed to attend an after-school

301 The appellate review proceedings are being held under File No. 25 Cdo 3821/2018. Further appellate review proceedings concerning the financing of a teaching assistant are being conducted by the Supreme Court under File No. 25 Cdo 244/2020.

302 Judgement of the Supreme Administrative Court of 31 October 2013, Ref. No. 8 As 4/2013-52, No. 3031/2014 Coll. SAC, www.nssoud.cz

303 Resolution of the Constitutional Court File No. II. ÚS 365/14 of 18 March 2014, available at: http://nalus.usoud.cz.

304 Judgement of the Municipal Court in Prague of 15 March 2018, File No. 29 Co 466/2017.

305 At the time, the plaintiff withdrew her lawsuit assuming that the school would end the discrimination. This did not happen.

group only exceptionally (e.g. commuting families, children from incomplete families). A bench was placed in the vestibule of the school where the student waited for her parents. The preparation for the secondary grammar school took place in regular classes and the student thus took part in it. A special non-curricular course was a private initiative of the headteacher.[306]

The appellate court and the Supreme Court subsequently dealt with the procedural question of whether consent of the guardianship court was required for bringing the lawsuit (see above in Section 5.1, Specific features of cases in the area of education).[307] Since the plaintiff had not obtained this consent, the first-instance court discontinued the proceedings. The plaintiff subsequently turned to the Constitutional Court, but her complaint was rejected as clearly unfounded.[308]

306 Judgement of the District Court for Prague 7 of 4 September 2015, File No. 5 C 228/2013.

307 Resolution of the Municipal Court in Prague of 2 May 2016, File No. 21 Co 148/2016; resolution of the Supreme Court of 18 January 2017, File No. 30 Cdo 3421/2016, available at: www.nsoud.cz; resolution of the District Court for Prague 7 of 21 June 2017; File No. 5 C 228/2013; resolution of the Municipal Court in Prague of 6 November 2017, File No. 21 Co 401/2017; resolution of the Supreme Court of 11 December 2018, File No. 30 Cdo 663/2018, available at: www.nsoud.cz.

308 Resolutions of the Constitutional Court of 14 January 2020, File No. I. ÚS 3960/17, and of 18 February 2020, File No. I. ÚS 1359/19.

6. Goods and services

In the period under scrutiny, civil courts heard only two cases concerning discrimination in the area of provision of goods and services (except for housing). As a matter of fact, the Defender receives complaints regarding discrimination in this area quite frequently. However, instead of bringing an anti-discrimination lawsuit, the complainants mostly try to resolve their case amicably or turn to inspection authorities focusing on consumer protection.

The presented decisions do not reveal much about the courts' procedure in these cases because one of the disputes ended with out-of-court settlement and the second never actually reached the stage of litigation since the plaintiff failed to pay the judicial fee in time. The court proceedings were thus closed without examination of their merits. Both cases are known to the Public Defender of Rights as the Defender dealt with the alleged discrimination before the plaintiffs decided to refer their cases to court.

The District Court for Prague 4 dealt with the question of **subtitles in television news**. The plaintiff claimed that the court put an end to his discrimination and order an apology. He perceived the discrimination in the practice of Czech Television, which used only subtitles, rather than read-out translation, to translate foreign-language contributions in some newscasts. This made the content inaccessible to blind persons, persons with other visual impairment and people with reading disorders. Agreement was reached between the parties during the course of the litigation and the plaintiff withdrew the lawsuit.[309]

The Public Defender of Rights sent a recommendation to Czech Television concerning the issue of making newscasts accessible to people with visual impairment.[310]

The District Court for Prague 5 dealt with **access to social services for people with autism spectrum disorders**. The plaintiff was a person with disability accompanied by behavioural disorders. This problematic behaviour was the main cause why his family was unable to find a suitable social service for him in the long term. The plaintiff perceived discrimination in the procedure of the administrative region, which was unable to ensure availability of social services in its territory in the long term, and claimed that the court declare the existence of discrimination and order the defendant to provide an apology and financial compensation for intangible damage.

The court discontinued the proceedings because the judicial fee had not been paid.[311] However, the legal counsel informed the Public Defender of Rights that amicable settlement had been reached with the administrative region. The Defender dealt with the case in her

309 Resolution of the District Court for Prague 4 of 9 May 2019, File No. 16 C 40/2018.

310 Recommendation for Czech Television regarding accessibility of the main newscast for people with visual impairment of 27 May 2016, File No. 44/2015/DIS, available at: https://eso.ochrance.cz/Nalezene/Edit/4532.

311 Resolution of the District Court for Prague 5 of 20 September 2018, File No. 16 C 69/2018.

report.[312] The duties of the administrative region in terms of ensuring availability of social services (without any link to the prohibition of discrimination) were addressed by the Constitutional Court. The Court inferred that, within their independent competence, administrative regions had the duty to ensure availability of suitable social services in their territory, and this duty had its counterpart in a public right of the persons concerned to have access to such services.[313]

312 Report of the Public Defender of Rights of 7 June 2018, File No. 851/2018/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/6052.

313 Judgement of the Constitutional Court of 23 January 2018, File No. I. ÚS 2637/17.

7. Housing

In the surveyed period, courts decided on 9 cases concerning equal access to housing. In most cases, people defended themselves against discrimination on grounds of their Roma ethnicity (7 cases, 78%); the other cases involved a disability (2 cases, 22%). In 5 cases, the court acknowledged that discrimination had occurred (ca. 56%), in 2 cases, the parties settled out of court (ca. 22%), one case concerned accommodation at a hotel (ca. 11%), 6 cases involved looking for housing on a private real estate market (ca. 67%), and 2 cases concerned discrimination in access to municipal housing (ca. 22%).

As regards taking of evidence, these cases are specific in that the discriminating entity often states that access to housing is denied on the very grounds of ethnic origin. Typically, this concerns situations where a real estate agent or property owner does not want to give the lease to a person of Roma origin. In these cases, a recording of the telephone call is a key piece of evidence. Given that conversations concerning a lease do not comprise any manifestations of personal nature and the person interested in housing is the weaker party, evidence in the form of a secret recording is admissible in court.

In cases where the person providing housing did not openly express his or her discriminatory motives, the evidence-taking in court used to be difficult and the courts not always adhered to the rules of shared burden of proof. In one case, the necessary intervention was made by the Constitutional Court as the last resort.

So far, the plaintiffs have been unable to succeed with a lawsuit aimed against systemic segregation policies of two cities (Olomouc, Kladno). The courts either rejected their lawsuit because of alleged indeterminacy of the relief sought or did not take evidence in accordance with the rules of shared burden of proof. Although the courts were still hearing the two cases at the time when the survey report was being prepared, their provisional outcomes could have a dissuasive impact especially on future potential plaintiffs.

7.1 Accommodation at a hotel

Several Roma applicants objected to being denied accommodation at a hotel. In November 2005, in the evening hours, the plaintiffs arrived at a motel in Most where they wanted to stay. They were told that all the rooms with accessories were taken. Therefore, they asked the receptionist to find them a place at another hotel in the town. The receptionist called a hotel where they confirmed they had a vacancy. Thus, at around eight o'clock in the evening, the plaintiffs travelled to that hotel, assuming they had rooms booked there. However, once they arrived, the hotel staff refused to accommodate them. The hotel manager told them that they had no vacancy. When they verbally complained against this and pointed out that this was discriminatory, the manager asked them to leave. According to the defendant, the original booking was made by mistake because a different receptionist was on duty at the time when the phone call was made from the motel and she was not aware there was no vacancy.

By virtue of an action for the protection of personal rights,[314] the plaintiffs sought a written apology and financial satisfaction in the amount of CZK 25,000 (EUR 971). They did not succeed in common courts[315] and thus filed a constitutional complaint. The Constitutional Court cancelled the contested decision of the Superior Court in Prague because it had violated the plaintiffs' right to a fair trial. Unlike common courts, the Constitutional Court was not satisfied with the justification provided by the defendant that the hotel staff had refused the plaintiffs because of a last-minute booking of the whole hotel, which the client later cancelled. Indeed, the client was a company belonging to a corporate group operating the hotel. It later took over the hotel's operation as the legal successor of the original operator. The Constitutional Court stated that, in its opinion, the evidence taken had not eliminated doubts that all the vacancies could have been booked only formally, in order to justify the conduct of the hotel staff who had denied accommodation to the plaintiffs. It reproached the appellate court for incorrectly distributing the burden of proof (the doubts should have been attributed to the defendant operating the hotel) and also the fact that it had substantiated the finding on non-existence of discrimination by that fact that the hotel staff had made no mention of the plaintiffs' Roma ethnic origin. The Constitutional Court noted in this regard that discrimination was often concealed under a pretext not directly communicated to the discriminated person.[316]

Subsequently, the Regional Court in Ústí nad Labem, as the first-instance court, granted a written apology to two of the plaintiffs and a reasonable satisfaction in the amount of CZK 5,000 (EUR 194) to all three plaintiffs, especially because the effect of the apology had been weakened because of the delay. According to the court, this amount was reasonable.[317] Both the plaintiffs and the defendant lodged an appeal against the decision of the regional court.

The Superior Court in Prague changed the wording of the apology and granted it to all three plaintiffs, and also granted the requested financial satisfaction in the amount of CZK 25,000 (EUR 971) and reimbursement of the costs of the proceedings to each of the plaintiffs.[318] After more than thirteen years of continuing litigation, the plaintiffs were thus fully successful in the case. The deadline for filing an application for appellate review has not expired at the time of preparation of this survey report.

7.2 Seeking housing in the private sector

Discrimination can also occur if a person is merely "testing" his or her rights. In a case closely followed by the media, a social worker of Roma origin filed an anti-discrimination

314 The lawsuit was brought before the adoption of the Anti-Discrimination Act.

315 Judgement of the Regional Court in Ústí nad Labem of 12 December 2008, Ref. No. 34 C 25/2006-173; judgement of the Superior Court in Prague of 30 June 2010, Ref. No. 1 Co 151/2009-195; judgement of the Regional Court in Ústí nad Labem of 8 April 2011, Ref. No. 34 C 25/2006-22; judgement of the Superior Court in Prague of 19 November 2012, Ref. No. 3 Co 87/2011-261.

316 Judgement of the Constitutional Court of 22 September 2015, File No. III. ÚS 1213/13.

317 Judgement of the Regional Court in Ústí nad Labem of 16 January 2019, Ref. No. 34 C 25/2006-356. This was preceded by a resolution of the Superior Court in Prague of 19 June 2017, Ref. No. 3 Co 87/2011-324.

318 Judgement of the Superior Court in Prague of 27 April 2020, File No. 3 Co 84/2019-389.

action against real estate agent Ms Nosková and partially succeeded in proceedings before the District Court in Litoměřice. The real estate agent had to apologise for discrimination in access to housing because of the victim's Roma ethnicity. The court did not award any financial compensation for intangible damage because the plaintiff had no actual interest in the flat in question; she had only been checking whether she could exercise her rights without obstructions.[319] The decision of the first-instance court was a compromise and both parties eventually withdrew their appeals.

The Defender inquired into the case on the basis of a complaint filed by another social worker who pointed out the frequent discrimination of the Roma on the private housing market.[320] Eventually, Ms Balogová (a social worker other than the original complainant), who carried out the situation testing, brought a lawsuit without the Defender's knowledge. The case attracted great media attention.

A landlord may be guilty of discrimination. A similar court dispute was pursued by a woman interested in renting a flat, but not against a real estate agency, but rather directly against the landlord. The main difference was that the plaintiff was actually interested in the flat. She lived with her little daughter and a partner in unsuitable housing, alternately in a hostel and with her mother. The plaintiff's partner had a permanent job and they were saving for their own home.

Together with a social worker, the plaintiff found an offer of a suitable flat and asked her to contact the landlord on her behalf. The social worker called the landlord, who confirmed the offer. However, when she told him that her clients were Roma, the landlord told her that this would not be possible. Apart from their ethnicity, he did not want to hear any further information about the family.

The plaintiff was unsuccessful at first instance.[321] The decision of the District Court in Ostrava was later changed on appeal by the Regional Court in Ostrava. The plaintiff was thus eventually successful in the dispute. The regional court ordered the landlord to apologise to the plaintiff in writing for discriminating against her, pay her satisfaction in the amount of CZK 60,000 with default interest and pay the costs of the proceedings.[322] The Supreme Court rejected an application for appellate review filed in the case.[323]

Out-of-court settlement with a landlord is possible in some cases. Discrimination was pleaded on grounds of ethnicity because the defendant refused to rent a flat to the plaintiff. The plaintiff originally claimed the amount of CZK 250,000 (EUR 9,713), but the parties

319 Judgement of the District Court in Litoměřice of 14 August 2015, File No. 14 C 46/2013.

320 Report of the Public Defender of Rights of 10 September 2014, File No. 112/2012/DIS, available at: https://eso.ochrance.cz/Nalezene/Edit/2000.

321 Judgement of the District Court in Ostrava of 4 March 2015, File No. 24 C 329/2013-55.

322 Judgement of the Regional Court in Ostrava of 13 November 2015, File No. 71 Co 164/2015-113.

323 Resolution of the Supreme Court of 16 November 2016, File No. 30 Cdo 1671/2016.

ultimately agreed out of court on satisfaction in the amount of CZK 20,000 (EUR 777), and the plaintiff asked the court to discontinue the proceedings.[324]

The principle of non-discrimination also applies to real estate brokers. In another court dispute concerning a similar matter, a crucial piece of evidence was a telephone conversation between a real estate broker and a social worker who was seeking a flat for the plaintiff and his family. After they discussed the size of the flat in terms of the size of the family, the real estate agent asked whether the potential tenants were "white". When hearing that the father of the family was Roma, she noted that there was no landlord who would wish to rent a flat to the Roma. She promised to ask again, but a few days later she said she could not find any flat for the family.

The lawsuit was heard by a regional court in the first instance. It was probably filed in the form of an action for the protection of personal rights, where first instance jurisdiction belonged to regional courts in 2013.[325] The regional court granted the lawsuit and ordered an apology and financial compensation in the amount of CZK 60,000, as claimed by the plaintiff. The court stated that it was aware that the defendant had only been a broker and the landlords themselves were the ones who had refused to grant a lease to Roma people. However, this could not release the real estate agency from its liability.[326]

The Superior Court in Olomouc, acting on appeal, changed the judgement of the regional court in that it reduced the amount of reasonable satisfaction for discrimination from CZK 60,000 (EUR 2,331) to CZK 20,000 (EUR 777). When reducing the compensation for intangible damage, the appellate court reflected that the plaintiff learned about the real estate broker's statement indirectly through a social worker. The court therefore considered that the violation of dignity was of a lesser intensity, i.e. preferred the form over the contents.[327] The Supreme Court rejected an application for appellate review.[328]

7.3 Access to municipal housing

A blind applicant was denied lease of a municipal flat. He attempted to rent a municipal flat in a "sealed first-price auction". Although he offered the highest rent, the town leased the flat to an applicant who ranked second. It reasoned that the flat was not suitable for the applicant as he was blind and might request construction modifications to the flat in future. The plaintiff turned to the Public Defender of Rights and the latter issued a report on discrimination on grounds of disability.[329]

324 Resolution of the District Court for Prague 5 of 6 February 2018, Ref. No. 5 C 302/2017-81.

325 The proceedings were initiated on 19 December 2013.

326 Judgement of the Regional Court in Ostrava of 12 May 2015, File No. 23 Co 20/2014-91.

327 Judgement of the Superior Court in Olomouc of 7 January 2016, File No. 1 Co 124/2015.

328 Resolution of the Supreme Court of 23 November 2016, File No. 30 Cdo 2712/2016.

329 Report of the Public Defender of Rights of 10 March 2015, File No. 169/2013/DIS.

The plaintiff referred the case to a court, where he claimed an apology, execution of a lease contract for the municipal flat and financial compensation for intangible damage in the amount of CZK 100,000. The District Court in Jindřichův Hradec granted him an apology and financial compensation in the amount of CZK 50,000. The court considered imposing the duty to enter into a lease for the municipal flat problematic especially because the town had already leased the flat to a third party.[330] The Regional Court in České Budějovice upheld the judgement of the district court.[331]

An appropriate measure for people with disabilities may consist in exchanging a municipal flat for a barrier-free flat. The Defender dealt with a case where a married couple could not live in a rented municipal flat in a nursing home because the complainant was unable to negotiate stairs. According to a medical report, the flat was not suitable for him. The spouses therefore asked the town hall to exchange the flat for a barrier-free flat. The town hall initially denied the request although they did have a suitable flat available. The Defender issued a report establishing the existence of indirect discrimination against the complainant on grounds of his disability. The discrimination lay in the fact that the town failed to adhere to its duty to adopt reasonable measures for the complainant in the form of exchanging his flat for a barrier-free one, even though such a measure would not have burdened the town unreasonably.[332]

The spouses brought an anti-discrimination lawsuit. Before the first-instance court could render its judgement, the parties settled and the court discontinued the proceedings.[333] The town assigned a barrier-free flat to the plaintiff.

7.4 Discrimination in the provision of housing – segregation

A town moved tenants from one excluded area to another because of their ethnicity

The Defender was approached by several Roma families that referred to their unfavourable treatment by the town in the provision of housing. The town decided to convert a housing block where the families were living into a retirement home. The building's inhabitants included both Roma and non-Roma tenants, some of whom owed rent while others did not. The town set a single termination date for all leases and ended them. In exchange, it offered them a three-month lease in a newly refurbished building in an industrial zone which had originally served as provisional housing and now comprised social housing flats with no more than 30 sq. m. of floor area and reduced rent. The town moved only Roma tenants without outstanding rent to these flats; non-Roma tenants were offered standard municipal flats and Roma with rent arrears were forced to move to neighbouring villages. The families moved to the social housing flats were often large and, in some cases, the space per person

330 Judgement of the District Court in Jindřichův Hradec of 24 January 2017, Ref. No. 6 C 216/2015-221.

331 Judgement of the Regional Court in České Budějovice of 22 June 2017, Ref. No. 8 Co 960/2017-263.

332 Report of the Public Defender of Rights of 25 February 2016, File No. 1307/2014/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/3702.

333 Resolution of the District Court in Rokycany of 14 August 2017, File No. 11 C 84/2016.

was close to the area reserved for one prisoner serving a custodial sentence, i.e. 4 sq. m. Although the families repeatedly applied for standard municipal flats, the town refused to deal with their situation. The Defender's recommendation formulated in the report[334] did not lead to any change in this practice and some victims of discrimination therefore decided to bring their case to court. They asked the court to rule that:

1. By assigning to the plaintiffs municipal flats solely in a socially excluded area, the defendants (the town and the town's joint-stock company managing its real estate) committed unlawful discrimination.

2. The town is required to refrain from discriminating against the plaintiffs by adopting transparent, objective and non-discriminatory criteria for the assignment of municipal flats within 6 months of the date of the legal force of the court ruling so as to ensure that these criteria are in accordance with the objective of municipal housing and respect the duty to prevent the establishment of segregated areas and enable the plaintiffs to have equal access to dignified housing.

3. The town is obliged to eliminate the consequences of its discriminatory conduct by adopting specific and targeted measures to end ethnic segregation of the locality within 6 months of the date of legal force of the ruling.

4. The facility management company must send a written apology to each of the plaintiffs within 30 days of the legal force of the ruling.

5. The defendants are required, jointly and severally, to pay to each of the plaintiffs the amount of CZK 100,000 (EUR 3,885) on grounds of compensation for intangible damage caused by discrimination.

However, the District Court in Olomouc refused to hear the case. It reasoned that the relief sought was indeterminate, incomprehensible and materially unenforceable. In the court's opinion, the plaintiffs had failed to sufficiently remedy this defect although they had supplemented the relief sought on request of the court.[335] The plaintiffs subsequently did not succeed with an appeal either.[336] They eventually decided to bring a new anti-discrimination lawsuit at a district court, but the court rejected it as *res judicata*.[337] Based on the plaintiffs' appeal, the regional court changed the decision in that the proceedings would continue.[338] Indeed, the district court had previously rejected the lawsuit, i.e. refused to hear it on its merits, and it therefore could not constitute a *res judicata*. The District Court in Olomouc then once again refused to hear the lawsuit on grounds of indeterminacy and unenforceability of the relief sought in terms of the adoption of non-discriminatory criteria

334 Report of the Public Defender of Rights of 15 April 2015, File No. 107/2013/DIS, available at: http://eso.ochrance.cz/Nalezene/Edit/2940.

335 Resolution of the District Court in Olomouc of 16 June 2017, Ref. No. 25 C 62/2017-282.

336 Judgement of the Regional Court in Ostrava of 19 December 2018, Ref. No. 65 A 60/2018-69.

337 Resolution of the District Court in Olomouc of 10 October 2018, File No. 16 C 121/2018.

338 Resolution of the Regional Court in Ostrava of 9 April 2019, File No. 75 Co 39/2019.

for the assignment of flats (see paragraph 2 above) and preparation of the town's plan to end ethnic segregation in the locality.[339] The plaintiffs appealed against this resolution; at the time when this survey report was being prepared, the case was pending in appellate court.

Furthermore, two of the three plaintiffs decided to file with the Regional Court in Ostrava, the branch in Olomouc, an action against unlawful interference consisting in a failure to take targeted and specific steps aimed at desegregation of the excluded area and in applying the town's housing policy, which contributed to continued social exclusion and segregation of the plaintiffs. The court dismissed the action.[340] The plaintiffs filed a cassation complaint with the Supreme Administrative Court, but it was also dismissed.[341]

Segregating housing policy in the town of Kladno

Two plaintiffs pleaded interference with their personal rights, consisting allegedly in discriminatory and segregating conduct of the town of Kladno. This was specifically a matter of creating segregated housing in a building of the former meat factory based on Roma ethnicity. Along with objections to the principles followed by the town of Kladno in the management of its property, the plaintiffs pleaded discrimination resulting from further unwritten procedures employed by the town in addressing housing issues. The common courts dismissed the lawsuit.[342] The plaintiffs went on to file a constitutional complaint. The Constitutional Court found violation of the plaintiffs' right to a fair trial and cancelled the decisions of the common courts. It criticised them for not dealing with "hidden" indirect discrimination and pointed out that their conclusions were inherently contradictory. The contradiction lay in the statement that the complainants had been subjected to segregation and discriminatory conduct, while simultaneously excluding any form of discrimination.[343]

The Regional Court in Prague dismissed the action in the new round of proceedings on grounds that the principles used in the management of flats owned by the town of Kladno had no unequal impact on the plaintiffs. When they moved to the building of the former meat factory, the premises were freshly refurbished. In the court's opinion, the location of the building could not be considered discrimination because there existed a bus service in the area. The court concluded that the town could not have influenced the dilapidated state of the building because it was devastated by the tenants themselves, especially due to a high number of persons residing in individual flats. The court excluded any indirect

339 Resolution of the District Court in Olomouc of 22 May 2020, File No. 16 C 121/2018.

340 Judgement of the Regional Court in Ostrava – the branch in Olomouc of 19 December 2018, Ref. No. 65 A 60/2018-69.

341 Judgement of the Supreme Administrative Court of 30 June 2020, Ref. No.: 7 As 40/2019-32.

342 Judgement of the Regional Court in Prague of 1 August 2011, Ref. No. 36 C 122/2009-432; judgement of the Superior Court in Prague of 13 March 2012, Ref. No. 1 Co 328/2011-483; resolution of the Supreme Court of 28 February 2013, Ref. No. 30 Cdo 3456/2012-525.

343 Judgement of the Constitutional Court of 11 August 2015, File No. I. ÚS 1891/13.

discrimination.[344] The judgement was contested by an appeal which was still pending at the time when this survey report was prepared.

344 Judgement of the Municipal Court in Prague of 3 May 2019, Ref. No. 36 C 122/2009-613.

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Annex 1: Set of decisions subject to the survey

The survey comprised 104 decisions rendered by district courts in 90 sets of proceedings.

Table 11 – Decisions of district courts in the first instance[345]

Court	File number/reference number	Form invoked	Area invoked	Ground invoked	Outcome of the proceedings
Regional Court in Ostrava	23 C 20/2014	direct	housing	Roma ethnicity	granted
Regional Court in Prague	36 C 122/2009 - 613	indirect	housing	Roma ethnicity	dismissed
Regional Court in Ústí nad Labem	34 C 25/2006	direct	housing	Roma ethnicity	dismissed
Regional Court in Ústí nad Labem	34 C 25/2006-356	direct	housing	Roma ethnicity	partially granted
Municipal Court in Brno	112 C 289/2014-91, 33 C 316/2014	direct	healthcare	Roma ethnicity	other – settlement approved by the court
Municipal Court in Brno	115 C 21/2015	direct	work and employment	sex	discontinued
Municipal Court in Brno	35 C 207/2016	direct	education	disability	dismissed
District Court for Prague 1	23 C 146/2014	direct	work and employment	sex	partially granted
District Court for Prague 1	26 C 25/2016	direct, indirect	education	disability	dismissed
District Court for Prague 1	26 C 121/2014	indirect, indirect special	education	disability	dismissed

345 This table also includes decisions of regional courts made at first instance.

District Court for Prague 1	18 C 8/2014-59	without detailed specification	not specified	not specified	discontinued
District Court for Prague 1	17 C 24/2012	direct, indirect, sexual harassment	work and employment	sex	dismissed
District Court for Prague 1	23 C 24/2011-57	direct	work and employment	sex	dismissed
District Court for Prague 1	23 C 24/2011	direct	work and employment	sex	discontinued
District Court for Prague 1	23 C 77/2005-231	direct	work and employment	sex	dismissed
District Court for Prague 10	17 C 61/2016	indirect	education	religion, belief	dismissed
District Court for Prague 2	42 C 188/2015	without detailed specification	work and employment	not specified	discontinued
District Court for Prague 2	43 C 5/2015-109	direct	work and employment	sex	dismissed
District Court for Prague 3	20 C 349/2014-1054	without detailed specification	work and employment	not specified	other – settlement approved by the court
District Court for Prague 4	10 C 41/2017	without detailed specification	work and employment	not specified	other – settlement approved by the court
District Court for Prague 4	16 C 40/2018	indirect	goods and services	disability	discontinued
District Court for Prague 4	48 C 118/2013	victimisation (retaliation)	work and employment	not specified	discontinued
District Court for Prague 4	7 C 81/2012	indirect	education	not specified	dismissed
District Court for Prague 4	48 C 118/2013-545	indirect	work and employment	worldview	dismissed
District Court for Prague 5	16 C 69/2018	indirect	goods and services	disability	other – settlement

					approved by the court
District Court for Prague 5	21 C 69/2015	indirect special	education	disability	other – partially discontinued, partially dismissed
District Court for Prague 5	28 C 17/2014	direct	healthcare	disability	dismissed
District Court for Prague 5	48 C 377/2013-62	without detailed specification	social security	Roma ethnicity	dismissed
District Court for Prague 5	5 C 302/2017-81	direct	housing	Roma ethnicity	discontinued
District Court for Prague 5	20 C 319/2011	direct	housing	Roma ethnicity	dismissed
District Court for Prague 5	4 C 204/2016	without detailed specification	work and employment	age	dismissed
District Court for Prague 5	11 C 2/2011-434	direct	work and employment	sex, other – membership in a trade union	discontinued
District Court for Prague 5	24 C 148/2012-176	direct	work and employment	Roma ethnicity, sexual orientation	dismissed
District Court for Prague 5	5 C 130/2018-102	direct	work and employment	not specified	discontinued
District Court for Prague 5	16 C 69/2018-76	without detailed specification	goods and services	disability	discontinued
District Court for Prague 6	8 C 256/2016-36	direct	work and employment	not specified	discontinued
District Court for Prague 6	27 C 73/2018-208	direct	work and employment	Roma ethnicity	dismissed

District Court for Prague 6	14 C 86/2018-76	direct	work and employment	sex	dismissed
District Court for Prague 7	10 C 239/2013-241	direct	work and employment	disability	dismissed
District Court for Prague 7	26 C 25/2006-684	direct	work and employment	sex	partially granted
District Court for Prague 7	5 C 228/2013	harassment	education	religion, belief	dismissed
District Court for Prague 7	30 C 10/2016-15	without detailed specification	not specified	not specified	other – action rejected
District Court for Prague 7	29 C 274/2015	direct	not specified	not specified	discontinued
District Court for Prague 8	28 C 393/2014-77	without detailed specification	work and employment	not specified	discontinued
District Court for Prague 8	28 C 70/2016-74	without detailed specification	work and employment	not specified	discontinued
District Court for Prague 9	40 C 288/2014-24	without detailed specification	work and employment	not specified	discontinued
District Court for Plzeň-City	13 C 47/2018	direct	healthcare	disability	dismissed
District Court for Plzeň-City	21 C 607/2014-84	direct	work and employment	sex	other – partially discontinued, partially dismissed
District Court for Prague-West	16 C 7/2012-183	direct	work and employment	age	dismissed
District Court for Prague 5	13 C 134-2018-45	direct	work and employment	sex	discontinued
District Court in Blansko	12 C 374/2015	direct, victimisation (retaliation)	work and employment	age	granted
District Court in Blansko	78 EC 1342/2011	direct	work and employment	not specified	dismissed

District Court in Blansko	12 C 154/2016-41	indirect	work and employment	age	discontinued
District Court in Bruntál	11 C 7/2016	direct	work and employment	age, other – medical condition	dismissed
District Court in Česká Lípa	11 C 20/2017	direct, victimisation (retaliation)	work and employment	age	dismissed
District Court in Český Krumlov	2 C 26/2016	direct	work and employment	not specified	dismissed
District Court in Český Krumlov	6 C 105/2016	direct	work and employment	not specified	dismissed
District Court in Český Krumlov	7 C 268/2012	direct	work and employment	not specified	dismissed
District Court in Český Krumlov	9 C 249/2015	direct	work and employment	not specified	dismissed
District Court in Český Krumlov	7 C 26/2012	direct	work and employment	not specified	dismissed
District Court in Český Krumlov	9 C 249/2015	direct	work and employment	not specified	dismissed
District Court in Český Krumlov	2 C 26/2016	direct	work and employment	not specified	dismissed
District Court in Český Krumlov	6 C 105/2016	direct	work and employment	not specified	dismissed
District Court in České Budějovice	17 C 130/2015	direct	work and employment	age	dismissed
District Court in České Budějovice	23 C 276/2017	harassment, victimisation (retaliation)	work and employment	disability	partially granted
District Court in České Budějovice	21 C 43/2013-243	without detailed specification	work and employment	other – personal antipathy	other – partially discontinued, partially dismissed
District Court in České Budějovice	17 C 130/2015-147	direct	work and employment	age	granted

District Court in Hodonín	10 C 347/2017	direct	work and employment	age	dismissed
District Court in Hodonín	10 C 347/2017-476	direct	work and employment	age, other – membership in a trade union	dismissed
District Court in Hradec Králové	15 C 193/2016	without detailed specification	work and employment	not specified	other – settlement approved by the court
District Court in Hradec Králové	16 C 1/2014-80	without detailed specification	work and employment	not specified	discontinued
District Court in Hradec Králové	16 C 1/2014-81	without detailed specification	work and employment	not specified	dismissed
District Court in Chrudim	8 C 258/2014	indirect	work and employment	age	partially granted
District Court in Jihlava	12 C 337/2014	without detailed specification	work and employment	not specified	dismissed
District Court in Jindřichův Hradec	6 C 216/2015	direct	housing	disability	partially granted
District Court in Karlovy Vary	12 C 149/2015	victimisation (retaliation)	work and employment	not specified	other – partially dismissed, partially discontinued
District Court in Karviná	20 C 103/2018	without detailed specification	healthcare	other – medical condition	discontinued
District Court in Karviná	20 C 103/2018	without detailed specification	other – prisons	other – medical condition	discontinued
District Court in Karviná	25 C 61/2015-26	direct	work and employment	not specified	discontinued
District Court in Kolín	12 C 447/2015	indirect	education	disability	dismissed
District Court in Kroměříž	6 C 59/2016	direct	work and employment	age	dismissed

District Court in Liberec	16 C 314/2014	direct	work and employment	not specified	other – action rejected
District Court in Litoměřice	14 C 46/2013	direct	housing	Roma ethnicity	partially granted
District Court in Olomouc	25 C 62/2017	direct	housing	Roma ethnicity	other – action rejected on grounds of failure to remedy defects
District Court in Ostrava	26 C 42/2016	direct	education	Roma ethnicity	partially granted
District Court in Ostrava	24 C 329/2013	direct	housing	Roma ethnicity	dismissed
District Court in Ostrava	85 C 60/2016	direct	work and employment	not specified	partially granted
District Court in Ostrava	85 C 245/2016-37	direct	work and employment	disability	dismissed
District Court in Ostrava	85 C 245/2016-98	direct	work and employment	disability	granted
District Court in Ostrava	85 C 245/2016-190	direct	work and employment	disability	dismissed
District Court in Ostrava	54 C 192/2016-164	without detailed specification	education	Roma ethnicity	other – action rejected
District Court in Ostrava	26 C 385/2017-64	without detailed specification	work and employment	not specified	other – settlement approved by the court
District Court in Pardubice	8 C 373/2006-107	sexual harassment	work and employment	sex	dismissed
District Court in Pardubice	8 C 373/2006-308	sexual harassment	work and employment	sex	dismissed

District Court in Pardubice	8 C 373/2006-455	sexual harassment	work and employment	sex	discontinued
District Court in Prachatice	6 C 27/2015-52	direct	work and employment	age	dismissed
District Court in Rokycany	11 C 84/2016	indirect special	housing	disability	discontinued
District Court in Uherské Hradiště	4 C 57/2012	direct	work and employment	not specified	dismissed
District Court in Uherské Hradiště	9 C 45/2014	direct	work and employment	age	dismissed
District Court in Ústí nad Labem	19 C 1102/2009-954	direct	work and employment	worldview	partially granted
District Court in Ústí nad Labem	33 C 226/2018	without detailed specification	work and employment	other	discontinued
District Court in Rakovník	9 C 132/2009-1132	direct, sexual harassment	work and employment	not specified	other – settlement approved by the court
District Court in Rakovník	9 C 132/2009-954	direct, sexual harassment	work and employment	not specified	dismissed
District Court in Vyškov	10 C 250/2014	direct	education	disability	partially granted

The survey comprised 56 decisions rendered by regional courts on appeal, issued in 39 sets of proceedings.

Table 12 – Decisions of regional courts on appeal[346]

Court	**File number**	**First-instance court**	**File number in the first instance**	**Decision of the first-instance court**	**Result of the appellate proceedings**
Regional Court in Brno	49 Co 367/2017	District Court in Blansko	12 C 374/2015	granted	decision of the first-instance

346 This table also includes one decision of the Superior Court in Prague as an appellate court.

					court confirmed
Regional Court in Brno	49 Co 297/2015	District Court in Blansko	78 EC 1342/2011	dismissed	other
Regional Court in Brno	49 Co 339/2017-141	District Court in Jihlava	12 C 337/2014-67	dismissed	other
Regional Court in Brno, branch in Zlín	60 Co 58/2017-476	District Court in Uherské Hradiště	4 C 57/2012	dismissed	decision of the first-instance court confirmed
Regional Court in Brno, branch in Zlín	60 Co 150/2017	District Court in Kroměříž	6 C 59/2016	dismissed	decision of the first-instance court confirmed
Regional Court in Brno, branch in Zlín	60 Co 171/2018-362	District Court in Uherské Hradiště	9 C 45/2014-317	dismissed	decision of the first-instance court confirmed
Regional Court in České Budějovice	19 Co 1656/2015	District Court in České Budějovice	17 C 130/2015	dismissed	decision of the first-instance court confirmed
Regional Court in České Budějovice	19 Co 1305/2015	District Court in Český Krumlov	7 C 268/2012	dismissed	decision of the first-instance court confirmed
Regional Court in České Budějovice	19 Co 79/2017	District Court in Český Krumlov	9 C 249/2015	dismissed	decision of the first-instance court confirmed
Regional Court in České Budějovice	19 Co 2440/2016	District Court in Český Krumlov	2 C 26/2016	dismissed	decision of the first-instance court confirmed

Regional Court in České Budějovice	19 Co 227/2017	District Court in Český Krumlov	6 C 105/2016	dismissed	decision of the first-instance court confirmed
Regional Court in České Budějovice	8 Co 960/2017-263	District Court in Jindřichův Hradec	6 C 216/2015	partially granted	decision of the first-instance court confirmed
Regional Court in České Budějovice	19 Co 1617/2015-65	District Court in Prachatice	6 C 27/2015-52	dismissed	decision of the first-instance court changed
Regional Court in České Budějovice	19 Co 1805/2016-342	District Court in České Budějovice	21 C 43/2013-243	discontinued	decision of the first-instance court confirmed
Regional Court in České Budějovice	19 Co 889/2019-717	District Court in České Budějovice	23 C 276/2017-492	partially granted	decision of the first-instance court changed
Regional Court in Hradec Králové	23 Co 282/2009	District Court in Jindřichův Hradec	6 C 216/2015	dismissed	case referred back to the first-instance court for further proceedings
Regional Court in Hradec Králové	23 Co 327/2008	District Court in Jindřichův Hradec	6 C 216/2015	dismissed	decision of the first-instance court changed
Regional Court in Hradec Králové	23 Co 105/2014-465	District Court in Jindřichův Hradec	6 C 216/2015	discontinued	case referred back to the first-instance court for

					further proceedings
Regional Court in Hradec Králové	19 Co 412/2015-106	District Court in Hradec Králové	16 C 1/2014-81	dismissed	case referred back to the first-instance court for further proceedings
Regional Court in Hradec Králové – branch in Pardubice	23 Co 105/2014-507	District Court in Pardubice	8 C 373/2006	discontinued	decision of the first-instance court changed
Regional Court in Ostrava	16 Co 67/2017	District Court in Ostrava	85 C 245/2016	dismissed	case referred back to the first-instance court for further proceedings
Regional Court in Ostrava	16 Co 65/2018	District Court in Ostrava	85 C 245/2016	dismissed	case referred back to the first-instance court for further proceedings
Regional Court in Ostrava	16 Co 178/2018-176	District Court in Bruntál	11 C 7/2016	dismissed	decision of the first-instance court confirmed
Regional Court in Ostrava	16 Co 128/2016	District Court in Bruntál	11 C 120/2011	dismissed	decision of the first-instance court changed

Regional Court in Ostrava	57 Co 104/2018-204	District Court in Ostrava	54 C 192/2016	other	decision of the first-instance court changed
Regional Court in Ostrava	71 Co 164/2015	District Court in Ostrava	24C 329/2013	dismissed	decision of the first-instance court changed
Regional Court in Plzeň	18 Co 240/2018	District Court for Plzeň-City	13 C 47/2018	dismissed	decision of the first-instance court confirmed
Regional Court in Plzeň	10 Co 581/2016-408	District Court in Karlovy Vary	12 C 149/2015-357	dismissed	decision of the first-instance court confirmed
Regional Court in Prague	23 Co 393/2015	District Court in Rakovník	9 C 132/2009	settlement approved by the court	decision of the first-instance court confirmed
Regional Court in Prague	23 Co 229/2014-1079	District Court in Rakovník	9 C 132/2009-954	dismissed	case referred back to the first-instance court for further proceedings
Regional Court in Ústí nad Labem	12 Co 346/2017-1073	District Court in Ústí nad Labem	19 C 1102/2009	partially granted	decision of the first-instance court changed
Regional Court in Ústí nad Labem	36 Co 48/2019	District Court in Česká Lípa	11 C 20/2017	dismissed	decision of the first-instance court confirmed

Regional Court in Ústí nad Labem	11 Co 253/2018	District Court in Ústí nad Labem	33 C 226/2018	discontinued	decision of the first-instance court cancelled and the proceedings discontinued
Municipal Court in Prague	23 Co 301/2016	District Court for Prague 1	23 C 146/2014	partially granted	case referred back to the first-instance court for further proceedings
Municipal Court in Prague	23 Co 128/2018	District Court for Prague 1	23 C 146/2014	dismissed	case referred back to the first-instance court for further proceedings
Municipal Court in Prague	30 Co 207/2017-49	District Court for Prague 6	8 C 256/2016	discontinued	decision of the first-instance court confirmed
Municipal Court in Prague	20 Co 343/2017-279	District Court for Prague 7	10 C 239/2013	dismissed	other
Municipal Court in Prague	54 Co 286/2018-737	District Court for Prague 7	26 C 25/2006	partially granted	decision of the first-instance court changed
Municipal Court in Prague	30 Co 207/2017	District Court for Prague 6	8 C 256/2016	discontinued	decision of the first-instance court confirmed

Municipal Court in Prague	30 Co 278/2016-284	District Court for Prague 1	17 C 24/2012	dismissed	case referred back to the first-instance court for further proceedings
Municipal Court in Prague	62 Co 123/2012-117	District Court for Prague 1	23 C 24/2011	dismissed	case referred back to the first-instance court for further proceedings
Municipal Court in Prague	30 Co 100/2019	District Court for Prague 5	20 C 319/2011	dismissed	decision of the first-instance court cancelled and the proceedings discontinued
Municipal Court in Prague	29 Co 466/2017	District Court for Prague 5	21 C 69/2015	other	other
Municipal Court in Prague	21 Co 148/2016-256	District Court for Prague 7	5 C 228/2013	dismissed	case referred back to the first-instance court for further proceedings
Municipal Court in Prague	12 Co 130/2017	District Court for Prague 10	17 C 61/2016	dismissed	decision of the first-instance court confirmed
Municipal Court in Prague	21 Co 401/2017-373	District Court for Prague 7	5 C 228/2013	dismissed	other

Municipal Court in Prague	68 Co 373/2018-89	District Court for Prague 5	16 C 69/2018	discontinued	decision of the first-instance court confirmed
Municipal Court in Prague	70 Co 201/2015	District Court for Prague 4	7 C 81/2012	dismissed	decision of the first-instance court confirmed
Municipal Court in Prague	30 Co 145/2017	District Court for Prague 4	48 C 118/2013	dismissed	case referred back to the first-instance court for further proceedings
Municipal Court in Prague	30 Co 115/2018	District Court for Prague 4	10 C 41/2017	dismissed	decision of the first-instance court changed
Municipal Court in Prague	23 Co 423/2014-48	District Court for Prague 5	11 C 2/2011-434	dismissed	decision of the first-instance court confirmed
Municipal Court in Prague	51 Co 433/2011-274	District Court for Prague 1	23 C 77/2005-231	dismissed	decision of the first-instance court confirmed
Municipal Court in Prague	62 Co 431/2016-140	District Court for Prague 2	43 C 5/2015-109	dismissed	decision of the first-instance court confirmed
Municipal Court in Prague	23 Co 381/2019-101	District Court for Prague 6	14 C 86/2018-76	dismissed	decision of the first-instance court confirmed

Municipal Court in Prague	30 Co 10/2020-595	District Court for Prague 4	48 C 118/2013-545	dismissed	decision of the first-instance court confirmed
Superior Court in Prague	3 Co 87/2011	Regional Court in Ústí nad Labem	34 C 25/2006	dismissed	case referred back to the first-instance court for further proceedings

The survey comprised 25 decisions rendered by the Supreme Court in appellate review, issued in 23 sets of proceedings.

Table 13 – Decisions of the Supreme Court in appellate review

File number	Second-instance court	File number in the second instance	Decision of the second-instance court	Result of appellate review proceedings
21 Cdo 2694/2017	Municipal Court in Prague	62 Co 431/2016	case referred back to the first-instance court for further proceedings	rejected
21 Cdo 5948/2017-73	Municipal Court in Prague	30 Co 207/2017	case referred back to the first-instance court for further proceedings	other
21 Cdo 2550/2018-320	Municipal Court in Prague	20 Co 343/2017	other	decisions of the lower instances cancelled and proceedings discontinued
21 Cdo 5763/2015	Regional Court in České Budějovice	19 Co 1656/2015	decision of the first-instance court confirmed	case referred back to the first-instance court for further proceedings
21 Cdo 4520/2017	Regional Court in Brno	60 Co 58/2017	decision of the first-instance court confirmed	rejected
21 Cdo 436/2016	Regional Court in České Budějovice	19 Co 1305/2015	decision of the first-instance court confirmed	dismissed
21 Cdo 3026/2017	Regional Court in České Budějovice	19 Co 79/2017	decision of the first-instance court confirmed	rejected
21 Cdo 2183/2017	Regional Court in České Budějovice	19 Co 2440/2016	decision of the first-instance court confirmed	rejected
21 Cdo 2935/2017	Regional Court in České Budějovice	19 Co 227/2017	decision of the first-instance court confirmed	rejected

21 Cdo 3111/2017	Regional Court in Ostrava	16 Co 128/2016	decision of the first-instance court confirmed	rejected
30 Cdo 3421/2016	Municipal Court in Prague	21 Co 148/2016	decision of the first-instance court confirmed	dismissed
30 Cdo 4277/2010	Superior Court in Prague	1 Co 314/2009	decision of the first-instance court confirmed	dismissed
30 Cdo 1671/2016	Regional Court in Ostrava	71 Co 164/2015	decision of the first-instance court changed	rejected
21 Cdo 2993/2016-531	Regional Court in Hradec Králové, branch in Pardubice	23 Co 105/2014-507	decision of the first-instance court changed	dismissed
21 Cdo 962/2015-498	Regional Court in Hradec Králové, branch in Pardubice	23 Co 105/2014-465	decision of the first-instance court changed	case referred back to the second-instance court for further proceedings
21 Cdo 867/2011-440	Regional Court in Hradec Králové, branch in Pardubice	23 Co 282/2009	decision of the first-instance court changed	case referred back to the first-instance court for further proceedings
21 Cdo 2262/2018-437	Municipal Court in Prague	30 Co 145/2017-378	decision of the first-instance court changed	case referred back to the first-instance court for further proceedings
21 Cdo 860/2019	Regional Court in Brno, branch in Zlín	60 Co 171/2018-362	decision of the first-instance court confirmed	rejected
21 Cdo 2386/2015	Municipal Court in Prague	23 Co 423/2014-48	decision of the first-instance court confirmed	rejected

21 Cdo 1165/2013	Municipal Court in Prague	51 Co 433/2011-274	decision of the first-instance court confirmed	rejected
21 Cdo 2662/2019	Regional Court in Brno	49 Co 367/2017-397	decision of the first-instance court confirmed	rejected
21 Cdo 3653/2017-441	Regional Court in Plzeň	10 Co 581/2016-408	decision of the first-instance court confirmed	rejected
21 Cdo 2770/2019-795	Municipal Court in Prague	54 Co 286/2018-737	decision of the first-instance court confirmed	other – partially rejected, partially referred back to the first instance
30 Cdo 2712/2016	Superior Court in Olomouc	1 Co 124/2015-128	decision of the first-instance court changed	rejected
25 Cdo 348/2019	Municipal Court in Prague	12Co 130/2017 - 228	decision of the first-instance court confirmed	case referred back to the first-instance court for further proceedings

The survey comprised 19 decisions rendered by the Constitutional Court.

Table 14 – Decision of the Constitutional Court

File number	**File number at the Supreme Court**	**Decision of the Supreme Court**	**Outcome of the proceedings on the constitutional complaint**
III. ÚS 3915/18	21 Cdo 2550/2018	decisions of the lower instances cancelled and proceedings discontinued	rejected
IV. ÚS 4091/17	21 Cdo 2694/2017	rejected	rejected
III. ÚS 1213/2013[347]			granted

347 No application for appellate review was lodged in this case.

III. ÚS 1136/13	30 Cdo 4277/2010	dismissed	dismissed
I. ÚS 1891/13	30 Cdo 3456/2012	rejected	granted
Pl. ÚS 6/16	not determined	not determined	discontinued
III. ÚS 880/2015	21 Cdo 3211/2014	rejected	granted
III. ÚS 124/2018	21 Cdo 4520/2017	rejected	rejected
II. ÚS 2499/19	21 Cdo 860/2019-415	rejected	rejected
III. ÚS 1067/15	21 Cdo 1165/2013	rejected	dismissed
II. ÚS 1481/18	21 Cdo 5322/2017-299	rejected	rejected
IV. ÚS 2418/14	21 Cdo 755/2014	rejected	rejected
II. ÚS 3464/18	21 Cdo 2691/2018-1679	rejected	rejected
III. ÚS 3400/18	21 Cdo 1142/2018-460	rejected	rejected
I. ÚS 3387/17	21 Cdo 3111/2017-599	rejected	rejected
III. ÚS 867/17	21 Cdo 436/2016-470	dismissed	rejected
II. ÚS 2856/17	25 Cdo 3305/2016-245	rejected	rejected
I. ÚS 3960/17	30 Cdo 3421/2016-302	dismissed	rejected
I. ÚS 1359/19	30 Cdo 663/2018-459	rejected	rejected

Annex 2: Letter sent to district courts

Simultaneously with this survey, the Public Defender of Rights also carried out a survey of decision-making by Czech courts on hate speech online.[348] *The request addressed to district courts was the same in both surveys.*

Dear Madam or Sir,

I take the liberty of asking you to co-operate in **two surveys** concerning equal treatment and protection against discrimination.[349]

In the first of the mentioned surveys, I will focus on **case law of Czech common courts in the area of discrimination** (2015-2019). In this regard, I follow on from my 2015 survey report, where I described the trends in case law over the first five years of effect of the Anti-Discrimination Act (2009-2014).[350]

In the second survey, I will concentrate on **punishment of criminal offences motivated by prejudice**. The survey is one of my activities I carry out within in-depth examination of hate speech, especially that expressed online.

Both these surveys should contribute to a better understanding of how Czech courts make their decisions under the applicable law. Based on the information I obtain, I will be **able to perform my statutory tasks more effectively**: provide methodological assistance to the victims of discrimination, formulate recommendations to key institutions and governmental authorities, and promote changes in legislation, if appropriate.

I would therefore like to ask you to provide **copies of court decisions** pertaining to the two specific areas of law. Exact information on the types of decisions I need, as well as instructions regarding the preferred deadline for the provision of the decisions are given in **two separate annexes to this letter**. There you can also find the **contact persons** whom you can contact if necessary.

I will **send both the survey reports to you** as soon as they are published. I will present my findings at two expert conferences that I plan to organise in the autumn of this year. I would already like to invite you to these events at this point.

Thank you very much for your co-operation. Sincerely,

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights
(this letter bears electronic signature)

348 The survey report is available at: https://ochrance.cz/fileadmin/user_upload/ESO/47-2019-DIS-PZ-Vyzkumna_zprava.pdf.

349 Section 21b (b) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

350 Discrimination in the Czech Republic: Victims of Discrimination and Obstacles in Access to Justice. The final survey report is available at: https://www.ochrance.cz/fileadmin/user_upload/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf.

Annex 1 to the letter sent to district courts – DECISION-MAKING IN THE AREA OF DISCRIMINATION (2015-2019)[351]

INTRODUCTION

Long-term findings indicate that **most victims of discrimination do not exercise their guaranteed rights in court or at other authorities**. This phenomenon is called "underreporting". Although the number of discrimination complaints received by the Public Defender of Rights has been growing in the long term, this number has not exceeded 400 in any of the recent years. According to information available to the Defender, **lawsuits concerning discrimination are also quite rare**.

The Defender strives to ensure that victims of discrimination are not afraid to exercise their guaranteed rights. By her continuous activities, she would like to contribute to **eliminating obstacles** that might prevent them from doing so. Under Section 21b of the Public Defender of Rights Act,[352] her task is to contribute to the promotion of the right to equal treatment, also by conducting various surveys.

In 2015, she already conducted a survey aimed to map the experience of the Czech population with the phenomenon of discrimination and analyse the individual, societal and institutional difficulties encountered by discrimination victims when asserting their rights. In the framework of that survey, the Defender also **monitored decision-making of Czech courts** in disputes where the existence of discrimination was claimed (2009-2014).[353] The survey was very well received both in the Czech Republic and abroad. She now wants to follow up on the outcomes of that survey.

Of course, the Defender is aware that her competence **does not cover judicial decision-making**, except for the State administration of courts, and fully respects the law. A more detailed overview of the manner of decision-making in discrimination cases across individual courts could be used very effectively within the methodological assistance she provides to the victims of discrimination and in formulation of her legislative recommendations.

REQUEST FOR COURT DECISIONS IN CASES OF DISCRIMINATION

In view of the above, the Defender would like to ask you to provide anonymised copies of all judgements concerning alleged discrimination, as well as of all resolutions by which the proceedings concerning alleged discrimination were closed, for the period from 1 January 2015 to this day (17 June 2019).

It can be further stated that the survey will be concerned with decisions on lawsuits by which

(1) the plaintiff enforced claims under Section 10 of the Anti-Discrimination Act;

351 Annex 2, concerning the other parallel survey, is not included in this report.

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

353 Discrimination in the Czech Republic: Victims of Discrimination and Obstacles in Access to Justice. The final survey report is available at: https://www.ochrance.cz/fileadmin/user_upload/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf.

(2) the plaintiff enforced claims analogous to claims provided in Section 10 of the Anti-Discrimination Act, but based on special legal regulations, e.g., claims following from Section 77 (9) of the Security Corps Service Relationship Act[354] and Section 2 (5) of the Professional Soldiers Act;[355]

(3) the plaintiff enforced a claim which was, by its nature, special with regard to claims provided in Section 10 of the Anti-Discrimination Act, e.g., a decision on an action to declare employment termination invalid where the plaintiff invoked discriminatory conduct in the termination;

(4) the plaintiff enforced another claim (following from Act No. 262/2006 Coll., the Labour Code, as amended, for instance) and referred to discrimination on grounds provided in Section 2 (3) of the Anti-Discrimination Act, e.g., where the plaintiff sought compensation for damage in relation to discrimination or his/her salary claims (Section 109 *et seq.* of the Labour Code), etc.

If the plaintiff or defendant filed an appeal and the decision was cancelled, the Defender asks to be provided with both the cancelled decisions and the final decisions.

DEADLINE, CONTACT PERSONS, FURTHER PROCEDURE

The Defender would appreciate it if you could send anonymised copies of the decisions **not later than by 12 July 2019 to** podatelna@ochrance.cz**, re: File No. 61/2019/DIS/JF**. Copies of the decisions **can be sent gradually,** depending on the process of anonymisation.

If the court issued no decision corresponding to the parameters set out above during the relevant period, **we would also welcome** this information.

Should you **have any questions concerning the research and its performance**, please contact the authorised employee of the Office of the Public Defender of Rights, **JUDr. Jiří Fuchs, Ph.D.** (tel.: 542 542 255, e-mail: fuchs@ochrance.cz). During his absence, you can contact the head of the Equal Treatment Department, **Mgr. Petr Polák** (tel.: 542 542 374, e-mail: polak@ochrance.cz).

The Defender will issue a survey report, which she will send to all the courts, **in September 2019**. She will also organise an expert international conference in October 2019, where court officials will be invited.[356]

354 Act No. 361/2003 Coll., on the service relationship of the members of security corps, as amended.

355 Act No. 221/1991 Coll., on professional soldiers, as amended.

356 For more information: https://www.ochrance.cz/diskriminace/antidiskriminacni-zakon-2009-2019/.

Annex 3: Coding key

A. **Coder:** coder abbreviation (e.g. MUR, JF, JS)

B. **Level of proceedings**

1 = fact-finding

2 = appellate

3 = appellate review

4 = Constitutional Court

C. **Name of the court:** full name according to the relevant annex to the Courts and Judges Act[357]

D. **Reference number / file number:** please specify

E. **Dates of initiation of the proceedings and issue of the decision:** please specify in the DD.MM.YYYY format[358]

F. **Brief description of the case:** e.g. "refusal of a job seeker on grounds of Roma ethnicity"

G. **Form of discrimination <u>invoked</u>:** please specify each form separately (in a separate column)

1 = direct discrimination

2 = indirect discrimination

3 = indirect special discrimination

4 = discrimination by association

5 = incitement to discrimination

6 = instruction to discriminate

7 = harassment

8 = sexual harassment

9 = victimisation (retaliation)

357 Act No. 2/2002 Coll., on courts, judges, lay judges and State administration of the judiciary and on amendment to some other laws (Courts and Judges Act), as amended.

358 If the date of initiation of the proceedings cannot be determined from the text of the decision, please refer to infoSoud.

10 = discrimination without further specification

H. Area invoked (under the Anti-Discrimination Act[359]): please specify each area separately (in a separate column)

0 = not identified

1 = work and employment

2 = membership and activities in trade union and professional organisations, including the benefits provided by these organisations to their members

3 = social security

4 = granting and provision of social benefits

5 = access to and provision of healthcare

6 = access to and provision of education, including professional training

7 = access to goods and services

8 = housing

9 = other: specify

I. Discrimination ground invoked (under the Anti-Discrimination Act): please specify each ground separately (in a separate column)

0 = not identified

1 = race, ethnicity – Roma

2 = race, ethnicity – other

3 = nationality *(národnost)*

4 = sex

5 = sexual orientation

6 = age

7 = disability

8 = religion, belief

9 = worldview

10 = nationality/citizenship *(státní příslušnost)*

359 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.

11 = other: specify

J. Outcome

Fact-finding proceedings

1 = action fully granted

2 = action partially granted

3 = action dismissed

4 = proceedings discontinued

Appellate proceedings

5 = first-instance decision confirmed

6 = first-instance decision changed

7 = first-instance decision cancelled and the proceedings referred back to the first instance

8 = first-instance decision cancelled and the proceedings discontinued

Appellate review proceedings

9 = application for appellate review dismissed

10 = decision of the appellate court changed

11 = decision of the appellate court cancelled and the proceedings referred back to the appellate court

12 = decision of the appellate court cancelled, decision of the first-instance court cancelled and the proceedings referred back to the first-instance

13 = the decision of the appellate court cancelled, decision of the first-instance court cancelled and the proceedings discontinued

Constitutional Court

14 = constitutional complaint rejected on grounds of inadmissibility

15 = constitutional complaint granted

16 = constitutional complaint dismissed

17 = constitutional complaint partially granted and partially dismissed

Other

18 = other: specify[360]

K. Form of discrimination <u>found</u>

0 = discrimination not found

1 = direct discrimination

2 = indirect discrimination

3 = indirect special discrimination

4 = discrimination by association

5 = incitement to discrimination

6 = instruction to discriminate

7 = harassment

8 = sexual harassment

9 = victimisation (retaliation)

10 = discrimination without further specification

L. Area of discrimination <u>found</u> under the Anti-Discrimination Act: please specify each area separately (in a separate column)

0 = not identified

1 = work and employment

2 = membership and activities in trade union and professional organisations, including the benefits provided by these organisations to their members

3 = social security

4 = granting and provision of social benefits

5 = access to and provision of healthcare

6 = access to and provision of education, including professional training

7 = access to goods and services

360 This value will also be filled in if the proceedings were closed by a combination of two or more outcomes – e.g. the proceedings were partially discontinued and the remaining part of the action was dismissed. In this case, the coder will specify what occurred.

8 = housing

9 = other: specify

M. Discrimination ground <u>found</u> (under the Anti-Discrimination Act): please specify each ground separately (in a separate column)

0 = not identified

1 = race, ethnicity – Roma

2 = race, ethnicity – other

3 = nationality *(národnost)*

4 = sex

5 = sexual orientation

6 = age

7 = disability

8 = religion, belief

9 = worldview

10 = nationality/citizenship *(státní příslušnost)*

11 = other: specify

N. Relief <u>sought</u>: please specify each form of relief separately (in a separate column)

1 = compensation for damage

2 = financial compensation for intangible damage

3 = statement that unlawful discrimination occurred

4 = refrainment from discrimination

5 = remedy of the consequences of discrimination

6 = private apology

7 = public apology

8 = invalidity of employment termination

9 = compensation for salary

10 = other: specify

O. **Amount of compensation for damage claimed:** please specify in CZK and EUR[361]

P. **Amount of financial compensation for intangible damage claimed:** please specify in CZK and EUR

Q. **Relief granted:** please specify each form of relief separately (in a separate column)

0 = not granted

1 = compensation for damage

2 = financial compensation for intangible damage: please specify in CZK and EUR

3 = statement that unlawful discrimination occurred

4 = refrainment from discrimination

5 = remedy of the consequences of discrimination

6 = private apology

7 = public apology

8 = invalidity of employment termination

9 = compensation for salary

10 = other

R. **Amount of compensation for damage granted:** please specify in CZK and EUR; if not granted, give 0

S. **Amount of financial compensation for intangible damage granted:** please specify in CZK and EUR; if not granted, give 0

T. **Total duration of the proceedings:** number of months (e.g. 5)[362]

U. **Costs of the proceedings**

0 = the court did not grant anyone payment of the costs of the proceedings

1 = costs of the proceedings paid by the plaintiff

2 = costs of the proceedings paid by the defendant

3 = other: specify

V. **Amount of costs of the proceedings paid by the plaintiff:** please specify in CZK and EUR

361 To be converted according to the exchange rate published by the Czech National Bank on 24 June 2019 – EUR 1 = CZK 25.738. The amount shall be rounded to whole euros.

362 Rounded to whole months – rounded down to the 15th day of the month, inclusive, and rounded up from the 16th day of the month.

W. Amount of costs of the proceedings paid by the defendant: please specify in CZK and EUR

X. Plaintiff: legal counsel

0 = none

1 = non-profit organisation

2 = attorney-at-law

3 = general attorney

4 = other: specify[363]

Y. Defendant: legal counsel

0 = none

1 = non-profit organisation

2 = attorney-at-law

3 = general attorney

4 = other: specify[364]

Z. Did the court reverse the burden of proof?

0 = cannot be determined

1 = yes

2 = no

ZZ. Note on sharing the burden of proof

363 This value is to be filled in, for example, where there were several plaintiffs and they were represented in various ways (e.g. one by an attorney-at-law and another without representation).

364 Analogously as specified in note 7.