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NEWS REPORT

Country: Czech Republic
Title: Supreme Court decision – no discrimination at the Charles University
Date: 22 July 2015
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Context

Issue at stake: Supreme Court did not find discrimination in its decision concerning a claim of sexual harassment and mobbing at the Charles University
Ground of discrimination: Sex

Source: Supreme Court decision
Field: Employment
Applicable law: Supreme Court decision No. 21 Cdo 1165/2013 of 16 January 2015

Content

Case: The claimant was a female employee in the position of research assistant at the Charles University, employed since 1997. Her fixed-term contract was extended twice (a normal practice) until 2002, after which time the faculty started a selection procedure for her position. She participated in this selection, but a male candidate was given the position. She brought a complaint before the court claiming that she was subject to mobbing and sexual harassment, and also that the selection procedure was initiated, whereas contracts of her male colleagues in the same position were prolonged without any selection procedure. The selection procedure is regulated by Act No. 111/1998 Coll. on higher education institutions. Discrimination, including mobbing and sexual harassment, is prohibited by Act No. 198/2009 Coll., Anti-Discrimination Act. However, this latter Act was not mentioned in the procedure.

The claims were rejected by the District Court of Prague, and then also by the City Court of Prague.

Decision of the Court: The Supreme Court confirmed the decisions of the lower courts and did not make a finding of discrimination on the ground of sex. The Court reasoned that the claimant participated voluntarily in the selection procedure, and did not claim that the decision of the jury was discriminatory. The claimant only asked to declare null the selection procedure, which, according to the Supreme Court (and also to lower courts), is not possible. The Court stated that starting selection procedures lies fully within the competence of the employer, and starting a selection procedure cannot of itself be considered discriminatory.

According to the Supreme Court, the claimant should have presented facts showing that the selection procedure as such was discriminatory.

Key points of analysis: This is not the only case where the Supreme Court has not found discrimination sufficient to shift the burden of proof to the defendant. By failing to do so, the courts almost never discuss the alleged discrimination, and tend to reject the case because of procedural failure.

The claimant has appealed against the decision and she has now brought a case before the Constitutional Court.

Internet link source:

Case can be viewed via:

[http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/\\$\\$WebSearch1?SearchView&Query=\[spzn1\]%20%3D%2021%20AND%20\[spzn2\]%3DCdo%20AND%20\[spzn3\]%3D1165%20AND%20\[spzn4\]%3D2013&SearchMax=1000&Start=1&Count=15&pohled=1](http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/$$WebSearch1?SearchView&Query=[spzn1]%20%3D%2021%20AND%20[spzn2]%3DCdo%20AND%20[spzn3]%3D1165%20AND%20[spzn4]%3D2013&SearchMax=1000&Start=1&Count=15&pohled=1), accessed 22 July 2015.