



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Czech Republic
<b>Title:</b>	Constitutional Court on the burden of proof
<b>Date:</b>	11 February 2016
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Constitutional Court putting the practice of lower courts regarding the shift of burden of proof into question Sex
<b>Ground of discrimination:</b>	
<b>Source:</b>	National court decision
<b>Field:</b>	Employment
<b>Applicable law:</b>	Constitutional Court judgement Case No. III. ÚS 880/15 of 8 October 2015

### Content

**Case development:** The original dispute concerned the dismissal of a man who was the only male member of a collective of educators in an institute for children. Due to legislative changes, the man was not suitable for the work, as he did not meet the conditions for education of such workers. He was dismissed, whereas his colleague, who also did not meet qualification condition, was permitted to remain. In his dismissal, he saw a discriminatory behaviour of his employer based on gender and went to the court with a discrimination case. The general courts did not hear to discrimination argumentation and argued that the plaintiff did not proof that he was treated in a discriminatory way. To support this argument, the courts used the outcomes of a control of the labour inspection, which did not find any discrimination.

**Decision of the Court:** The Constitutional Court, in contrast, found that the labour inspection was not done in a proper way and used an opinion of the Czech equality body (Public Defender of Rights), who found, that the employee was probably discriminated against. The Public Defender of Rights labelled the conclusions of the labour inspection and also of the school inspection as too formalistic and in conflict with the principle of material truth. The Public Defender of Rights pointed out that the inspection office did not pay adequate attention to the detailed claim of the plaintiff, that there were always only a few men and mostly women at the workplace, and that there was also a pay gap. Last but not least, they argued discrimination in the form of persecution was not taken into account at all.

The Constitutional Court in its decision found the conclusions of inspection offices to be insufficiently reasoned and pointed out that the plaintiff had the right to define the comparator – a woman in a comparable situation. This definition of a comparator was not taken into account by the general courts, which, according to the Constitutional Court, represented a breach of the plaintiff's right to a just procedure. The Constitutional Court concluded that the burden of proof had to be shifted to the employer, which did not

happen, so the decision of the Constitutional Court abolished the judgment of the Supreme Court and of the regional court.

**Key points of analysis:** It is not an exception that a national (not only) gender discrimination case finishes on procedural aspects. This is why shifting the burden of proof remains a hot issue in Czech jurisprudence. The recent case of the Constitutional Court is important because the current practice of Czech courts was brought into question.

**Internet link source:**

Case can be viewed via

[http://www.usoud.cz/fileadmin/user\\_upload/Tiskova\\_mluvci/Publikovane\\_nalezy/III. US\\_880\\_15\\_an.pdf](http://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/III._US_880_15_an.pdf), accessed 16 January 2015.