



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

### NEWS REPORT

<b>Country:</b>	Czech Republic
<b>Title:</b>	Czech Supreme Court: discrimination damages can be claimed by relatives of victims
<b>Date:</b>	25 April 2018
<b>Expert:</b>	Jakub Tomšej
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Access of relatives of victims of discrimination to discrimination claims
<b>Ground of discrimination:</b>	All grounds
<b>Source:</b>	National court decision
<b>Field:</b>	Social protection (Health care)
<b>Applicable law:</b>	Section 10 of the Anti-Discrimination Act

### **Content**

**Case development:** In a case decided by the Czech courts, parents of a deceased patient (a child) raised a discrimination claim against the hospital in which the patient died. Allegedly, the hospital refused for economic reasons to provide treatment to the patient which could have saved her life, claiming that due to her state of health, even if the imminent risk of death could have been avoided, a sufficient quality of her life would never be reinstated. According to the claimants, this represented discrimination on the basis of the patient's disability. On that basis, the claimants raised a claim for monetary compensation of the discrimination.

The claim has been refused both by the first instance court<sup>1</sup> and the appeal court<sup>2</sup> as both courts have interpreted the relevant law (Section 10 of the Anti-Discrimination Act) in a way that a claim for compensation of discrimination can only be filed by the victim of the discrimination (and not by any third persons).

**Decision of the Court:** Following an extraordinary appeal of the claimants, the Czech Supreme Court reviewed the case.<sup>3</sup> In the extraordinary appeal, the claimants argued that the approach taken by the local courts is contrary to the CJEU case law (in particular the case C-54/07). They claimed that it was them who asked the respondent to refrain from discrimination of their daughter, and therefore they should have the right to raise a discrimination claim. A failure of the Czech courts to approve the right of third persons to raise discrimination claims would mean that there would be no available redress against discrimination in a situation where discrimination leads into death of the victim of discrimination.

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<sup>1</sup> Decision of the District Court Prague 5 file no. 28 C 17/2014-106, dated 5 October 2015.

<sup>2</sup> Decision of the Municipal Court in Prague file no. 39 Co 74/2016-135, dated 18 May 2016.

<sup>3</sup> Decision of the Czech Supreme Court file no. 30 Cdo 2260/2017 (orally announced on 13 Dec 2017, full version with reasoning made publicly available in second half of March 2018).

The Supreme Court rendered both the first instance court and the appeal courts decisions void and instructed them to revisit their conclusions. The Supreme Court held that a discrimination claim can be raised by other persons in case they can prove that the damage of the victim of the discrimination can be deemed their damage as well. As a result, the Supreme Court instructed the lower courts to investigate whether this condition was fulfilled in the particular case. The opinion of the Supreme Court is binding for the lower courts.

**Key points of analysis:** The case has opened the question whether a discrimination claim can be raised by another person than the victim of discrimination (such as their relatives). Such a question was already addressed by Czech high courts in case of other immaterial damages, but not directly with regard to discrimination claims.

The Supreme Court has confirmed that this option is possible. However, the court remained rather vague about the conditions that must be fulfilled for such a claim to be successful. It appears that the right to redress would only be available to individuals who are close relatives or closely emotively attached to the victims of discrimination (not e.g. to NGOs defending the rights of victims of discrimination). The options to file a discrimination claim will need to be evaluated on case-by-case basis.

**Internet link source:**

[http://www.nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/97BBF6819C18E0CFC12582550041967C?openDocument&Highlight=0,null,diskriminace](http://www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/97BBF6819C18E0CFC12582550041967C?openDocument&Highlight=0,null,diskriminace).