



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

FLASH REPORT

Country:	Czechia
Title:	The Office of the Ombudsman released a report on the anti-discrimination case law of Czech courts
Date:	27 October 2020
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<u>Context</u>	
Issue at stake:	Access of victims of discrimination to justice
Grounds of discrimination:	All grounds
Field of application:	All fields
Source:	National equality body
Applicable law:	Act No. 198/2009 Coll., Anti-Discrimination Act; Act No. 99/1963 Coll., Civil Procedure Code.

Introduction: On 1 October, the Office of the Ombudsman (which is also the Czech Equality Body) published a research paper regarding the case law of Czech courts on discrimination. It is a long-awaited, comprehensive research that maps the reality of the judicial proceedings in discrimination cases and the access of victims of discrimination to courts during the years 2015 to 2019. The research was aimed at the number of cases, the substance of the claims, and their results.

This flash report brings the most important facts and conclusions from the research.

Main statistics and conclusions:

- During 2015 to 2019, Czech courts dealt with 90 discrimination cases. Altogether, courts of various instances released 204 decisions in these cases.
- Out of these claims, 54 ended up unsuccessfully for claimants of discrimination.
- Overall, the most commonly claimed ground of discrimination was disability.
- Overall, the most commonly claimed type of discrimination was direct discrimination.
- The most commonly claimed field of discrimination was employment (60 % of all the cases). Most often, discrimination on grounds of age (27 % of cases) and sex (25 % of cases) was claimed in this field.
- Victims of discrimination in fields of health care, housing or education had low rate of winning the dispute, because the legal framework does not allow the shift of the burden of proof in these situations.
- Courts hardly ever granted the compensation of non-pecuniary damages (in only 12 cases out of 59 cases where non-pecuniary damages were claimed). In only 2 cases, courts awarded the non-pecuniary damages in the exact sum that was claimed; in all the other cases, the sum was significantly lower.
- On average, the claimants asked for approx. EUR 21.932 (CZK 594.375) in non-pecuniary damages. On average, the courts awarded approx. EUR 2.936 (CZK 79.569), nearly eight times less.

- The highest granted sum of non-pecuniary damages was approx. EUR 15.546 (CZK 400.000). The lowest one was approx. EUR 553 (CZK 15.000) which, moreover, had to be divided among three claimants.
- Most usually, courts did not grant the compensation of the judicial costs to either of the parties.
- According to the Office of the Ombudsman, the high standard for obtaining non-pecuniary damages in discrimination cases means a lack of any preventive, satisfactory or punitive effect.

	Total cases	Upholding of the claim	Dismissal of the claim	Settlement of the parties	Proceedings continue	Other (usually rejected for procedural reasons)	Grounds mostly claimed
Employment	59	8	27	9	10	5	age, sex
Health Care	5	-	1	3	1	-	disability, Roma ethnicity
Education	11	2	4	-	5	-	Roma ethnicity, disability, religion
Goods and services	2	-	-	2	-	-	disability
Housing	9	5	-	2	2	-	Roma ethnicity, disability
Other areas (not specified by the report)	4	-	1	-	-	3	not specified

The Ombudsman's recommendations:

- to amend the Anti-Discrimination Act in order to simplify the access to non-pecuniary damages;
- to amend the framework regarding the shift of the burden of proof for all discrimination cases;¹
- to lower the judicial fee of an appeal against the decision of the first-instance court;
- to introduce the action in public interest (*actio popularis*) into the legal order;
- to introduce the concept of discrimination by association into the legal order;
- to regularly publish the judicial decisions in discrimination cases.

Source: Ombudsman (2020), 'Rozhodování českých soudů o diskriminačních sporech 2015-2019 (*Discrimination case law of Czech courts between years 2015-2019*)' – research paper, available at:

https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/2020-vyzkum_judikatura-DIS.pdf.

¹ Currently, the Section 133a of the Act No. 99/1963 Coll., Civil Procedure Code, is the key to the shift of the burden of proof in discrimination cases. However, it does not cover all situations of discrimination. For example, it applies to discrimination on any ground in the field of employment, but in the field of health care or education, it is applicable only to the ground of race. Thus, victims of various types of discrimination do not enjoy the same procedural protection before court. It would be praisable to widen the shift of the burden of proof to every type of discrimination.