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From Discrimination to Dismissal: Navigating Obstacles on the Path to Workplace Justice

Abstract: This article explores the challenges faced by employees in the Czech Republic when seeking legal redress in cases of discrimination and unfair dismissal. It emphasizes the importance of accessible legal recourse as a means to rectify individual grievances and reinforce equitable employment practices. In the context of discrimination, the article discusses challenges such as low awareness of anti-discrimination rights and the ancillary nature of sanctions. Recommendations include aligning the Anti-Discrimination Act with the Civil Code, empowering NGOs or the Ombudsman to initiate lawsuits in the public interest, and raising awareness among potential victims. In the section on unfair dismissal, the article outlines the complex process involved in disputing terminations from an employee's perspective. It discusses obstacles such as complex, costly, and lengthy legal procedures and the requirement for reinstatement. These challenges contribute to the low number of employment lawsuits in the Czech Republic. Recommendations for improvement include enhancing the visibility of court actions, providing free or subsidized legal advice, shifting the focus of lawsuits towards monetary compensation, promoting mediation, and expediting proceedings. The article identifies common challenges in discrimination and unfair dismissal cases in the Czech Republic, highlighting the need for reforms to improve access to justice, reduce financial barriers, expedite legal proceedings, and enhance the dissuasive impact of remedies. These reforms are seen as essential for creating a fair and equitable workplace environment for all employees in the country.
Keywords: discrimination, judicial redress, labour law, unfair dismissal

Introduction

In the vast legal landscape that governs the relationships between employers and employees, one right stands as a cornerstone upon which the principles of fair-

ness, dignity, and justice are built: the right to judicial redress (Pichrt, 2021, p. 322). This right plays a significant role in the assessment of the power imbalance between employers and employees (Hardy, 2021, p. 134; Waas, 2021, pp. 225–226). This fundamental entitlement takes on heightened significance in situations of discrimination and claims for unfair dismissal, circumstances that often leave individuals not only without their livelihood but also facing a profound violation of their basic human dignity. These instances, fraught with a profound imbalance of power, underscore how it is essential to have an accessible legal recourse (Husseini & Kopa, 2021), which is a mechanism that not only serves to rectify individual grievances but also strengthens the legal architecture that supports equitable employment practices and a fair workplace environment.

The intricate interplay between employment opportunities and legal safeguards has never been more pronounced than in our era of global connectivity and complex, multifaceted work arrangements. Within this dynamic, employees can find themselves in vulnerable positions, particularly when confronted with unfair dismissal or discriminatory practices that damage their well-being and future employment prospects. Such actions, often concealed under a veneer of corporate decision-making, not only shatter individual careers but also undermine the societal values that promote inclusivity, respect, and equality in the workplace.

In this area, the legal system plays a paramount role as the ultimate arbiter of justice, stepping in to correct the inequities that individuals cannot combat alone. The courts serve as a place where aggrieved employees can challenge the might of corporate entities and seek remedies that the internal mechanisms of the workplace may not provide. This judicial oversight is crucial, for without it, countless individuals would be left to the mercies of opaque administrative processes and potential corporate malpractice. However, the mere provision of this right within statutory frameworks is not an end in itself; it is the beginning of a complex and often challenging journey that requires the navigation of legal nuances and procedural intricacies (Tomsej, 2023a, pp. 69–119). Herein lies the heart of this discussion: the necessity to not only preserve the right to judicial redress but also to ensure its accessibility, its effectiveness, and its responsiveness to the evolving challenges of the modern workplace (Tomsej, 2020, p. 45).

This article will concentrate on exploring the boundaries of judicial redress, particularly through the lens of the Czech Republic, a nation where the incidence of lawsuits concerning employment and discrimination remains notably low.[1] The first section of the article will look at discrimination lawsuits, highlighting and analysing several frequently debated impediments that claimants encounter in their pursuit of justice. The next section will move to an examination of claims for unfair dismissal,

1 The Czech Republic is surely not the only country suffering with this problem; similar situations can be seen in many other countries. See e.g. Punta (2021, p. 248).

dissecting the potential barriers that may impede them and exploring the nuances that make these cases particularly complex in the Czech legal system. The concluding part of the article will synthesize the discussions from the preceding sections, offering a variety of insights drawn from the analysis, and will present overarching conclusions. These reflections will not only underscore the critical aspects of the current judicial approach but will also offer proposals for enhancing the accessibility and effectiveness of legal remedies in employment disputes within the Czech Republic and potentially beyond.

1. Discrimination

In the Czech Republic, the legal framework for discrimination lawsuits is primarily governed by the Anti-Discrimination Act. This 2009 act must, however, be read together with the 2014 Civil Code, which provides more detail for awarding damages, including compensation for non-pecuniary damage (Pichrt, 2021, pp. 580–581). Under Section 10 of the Anti-Discrimination Act, the primary means of compensation for discrimination cases is an injunction to cease discriminatory practices and provide rectification. A second layer consists of the award of reasonable compensation, which can often take a non-monetary form, such as an apology (Tomsej et al., 2023, pp. 206–215). Monetary compensation is also possible under the Civil Code, although non-pecuniary damages can only be claimed as a subsidiary remedy. The Anti-Discrimination Act (Section 10(2)) specifies that if none of the available forms of redress appear adequate, victims of discrimination have the right to seek monetary compensation for non-pecuniary damages, particularly in cases involving significant harm to the victim's reputation, dignity, or social status due to discrimination (see also Tomsej, 2022). While the wording of this provision might imply that monetary compensation is reserved for exceptional cases, recent case law tends to favour this over non-monetary satisfaction (Judgment of the Czech Supreme Court 2020). Moreover, prevailing opinions suggest that the Act should be interpreted in line with the Civil Code, which gives preference to monetary compensation for such claims (Pichrt, 2021, pp. 580–581).

The determination of the amount of compensation for non-pecuniary damages is left to the discretion of the judges, and there are no prescribed minimum or maximum awards or guidelines for calculation. Research by the Czech Ombudsman suggests that typical awards range between EUR 1,000 and 4,000. However, monetary compensation was only awarded in 17 out of 59 cases where it was claimed for (Office of the Public Defender of Rights, 2020). According to the same research, the number of discrimination claims raised before courts remains low; in the period between 2015 and 2019, only 90 lawsuits were observed by the Ombudsman (Office of the Public Defender of Rights, 2020).

Whether sanctions under the Anti-Discrimination Act are effective, proportional, and dissuasive is a cause of increasing concern. Both the Racial Equality Directive and the Employment Equality Directive mandate that Member States ensure that sanctions for violating principles of non-discrimination are not only effective and proportionate but also sufficiently dissuasive.[2] Furthermore, case law from the Court of Justice of the European Union has established additional criteria, specifically relating to procedural effectiveness and equivalence.[3] In a previously published paper, I highlighted where the enactment of these mandates could be significantly enhanced, particularly in the contexts of the Czech Republic, Slovakia, and Poland (Office of the Public Defender of Rights, n.d.). The existing legislation which enacts the ancillary nature of these sanctions can be one of the key factors; to address these issues, the Czech Ombudsman (Office of the Public Defender of Rights, 2018) recommended amending the Anti-Discrimination Act to replace the provisions on this subsidiary nature with a reference to the Civil Code, but this change has not been implemented. As regards effectiveness, the Ombudsman has recently put forth a set of recommendations for lawyers representing victims of discrimination, with a view, among other things, to bolster the effectiveness of discrimination lawsuits. This guidance particularly encourages the pursuit of monetary compensation, advocating the use of strategic litigation to challenge the notion that such claims are merely subsidiary.

While it could be contended that the language of the Anti-Discrimination Act is a primary obstacle to its enforcement, the problem seems to be more pervasive. Awareness of anti-discrimination statutes appears to vary significantly across society. Ironically, those most susceptible to discrimination are often the least informed about the rights they possess and the procedures available for redress, rendering them more defenceless. For certain bases of discrimination, such as disability or sexual orientation, victims might refrain from seeking justice due to apprehension over negative media coverage and the potential public exposure of their status, which could result in further stigmatization. Regrettably, there appears to be a lack of initiatives to address this issue (Tomsej, 2022, p. 63). One viable approach to enhance the enforcement of anti-discrimination laws could be to empower NGOs or the Ombudsman to initiate an *actio popularis*, lawsuits filed in the public interest. Although there have been two proposals advocating for this measure in recent years, neither has been successful (Tomsej, 2022, p. 65).

2 See also the UN Convention on the Elimination of All Forms of Racial Discrimination, Article 6; the UN Convention on the Elimination of Discrimination against Women, Articles 2(b) and 2(c); the UN Convention on the Rights of Persons with Disabilities, Article 13; the European Convention on Human Rights, Articles 1 and 13; the Treaty on the European Union, Article 19; and the Charter of Fundamental Rights of the European Union, Article 47.

3 See Judgments of the Court of Justice of the European Union 2013, 2014, 2015, January 2016, October 2016, and 2017.

The ongoing challenges in the enforcement of the Anti-Discrimination Act in the Czech Republic underscore the pressing need for systemic reform. The current legislation's ambiguity, particularly concerning the subsidiary nature of monetary compensation for non-pecuniary damages, contributes to its ineffectiveness. Furthermore, the lack of awareness in society about anti-discrimination rights and procedures exacerbates the vulnerability of those the Act is designed to protect. To address these shortcomings, legislative amendments are crucial, particularly in aligning the Anti-Discrimination Act with the Civil Code to ensure clarity in compensation claims. Additionally, creating a more informed public through awareness campaigns and educational programmes could empower potential victims with the knowledge they need to pursue justice. The role of NGOs and the Ombudsman should also be increased, potentially through allowing an *actio popularis* to advocate more forcefully on behalf of those facing discrimination.

2. Unfair dismissal

The termination of an employment relationship can be a contentious issue, open to challenge by either the employer or the employee (Pichrt, 2021, p. 322). This section looks at the intricacies of the process surrounding unfair dismissal disputes, with an emphasis on the employee's standpoint, although it can be noted that similar principles apply in less common instances where employers contest a termination initiated by employees (Labour Code, sections 69–72). Both employers and employees have the right under labour laws to challenge the termination of employment.

When an employee disputes a dismissal, they must first assert to the employer their intent to continue the employment relationship and request the allocation of work (Labour Code, section 69(1)). It is imperative for subsequent legal proceedings for the employee to have evidence of the employer's receipt of this notification to prove that this procedural condition was fulfilled. If this step is not taken – for instance, if the employee disagrees with the dismissal but prefers finding a new job over reinstatement – then they will forfeit any claims to salary compensation (Tomsej, 2023a, pp. 169–171). An employer can respond by retracting the termination or proposing an out-of-court settlement, potentially with a severance package (Tomsej, 2023a, pp. 169–191). If a resolution is not reached amicably, the employee must file a lawsuit within two months of the employment termination (Labour Code, section 72). The claim should detail the reasons the dismissal is believed to be invalid, provide evidence, and request that the termination notice is declared invalid. There is a nominal fee for the lawsuit submission.[4]

4 Currently CZK 2,000, which is approximately EUR 40.

After evaluating the lawsuit, the employer's response, and reviewing any proposed evidence, the court will issue a verdict. If the court rules in favour of the employee, it will declare the termination invalid, and the employer is obliged to reinstate the employee (Tomsej, 2023a, pp. 169–171). Complications can arise if the position has been eliminated or filled, or if the employee has secured new employment. Under such circumstances, a mutual agreement is typically sought, as neither party will prefer to continue the employment relationship under strained conditions.

Besides job reinstatement, an employee insisting on continued employment is entitled to compensation for the period they were effectively unemployed due to the unfair dismissal (Tomsej, 2023b, pp. 35–67). This compensation, however, is determined in separate proceedings, following the resolution of the dismissal's validity. If the employer refuses to pay, the employee must pursue a new legal claim for compensation, keeping in mind the three-year statute of limitations. The court has the discretion to limit compensation, potentially reducing it to a sixth of average monthly earnings, considering factors like alternative earnings during the dispute period. Czech law is, however, very restrictive in the exercise of this option.

The annual number of employment lawsuits filed in the Czech Republic remains remarkably low, with fewer than 2,000 cases recorded each year (Ministry of Justice, 2022). This statistic is particularly striking when considering the nation's sizable workforce of over 5 million employees, which underscores the relatively stable and harmonious labour relations within the country. The low number of employment lawsuits filed in the Czech Republic can be attributed to a combination of factors that collectively create a significant deterrent for employees seeking legal redress in the workplace (Pichrt et al., 2017, pp. 6–7). These factors encompass a range of legal, financial, and procedural challenges, making the pursuit of employment-related litigation a less attractive option for workers. First and foremost, one of the key reasons for the low number of lawsuits is the difficulty of accessing the court system; navigating the complex legal process for employment disputes can be a daunting task for the average employee. The need to adhere to strict protocols and a short time limit can discourage many individuals from initiating legal action. This complexity may discourage employees from pursuing their grievances through the legal system, especially when they lack legal expertise or resources.

Another significant barrier to the initiation of lawsuits is the high cost associated with legal proceedings. While it was noted above that the court fee is not prohibitively high, the total costs, including lawyer fees, can significantly exceed an employee's budget. Moreover, Czech procedural laws contain an additional financial consideration – the principle that whoever wins in a lawsuit is eligible for compensation for the costs of the proceedings, including legal fees. This provision can act as a considerable deterrent for employees contemplating legal action.

The duration of legal proceedings is another significant factor. According to available statistics, it often takes more than a year for a first-instance court to reach

a decision in a labour law case; when considering the possibility of appeals, the entire legal process can easily extend to three years or more. This prolonged period of legal uncertainty can leave employees feeling insecure about their career prospects for a long time. The emotional toll of protracted litigation may also discourage individuals from pursuing their cases, with some opting to seek new job opportunities instead. Furthermore, the requirement for employees to request a return to the workplace from which they were fired can act as a disincentive; although part of the legal process, this may not always align with an employee's preferences or interests. It may discourage individuals from pursuing legal action, particularly if they have little desire to return to an environment where they faced unfavourable conditions or discrimination.

The low number of employment lawsuits in the Czech Republic is the result of a combination of barriers and challenges that deter employees from seeking legal remedies in the workplace. The difficulty of accessing the court system, high costs, the limited availability of legal support, prolonged legal proceedings, and the requirement for reinstatement at the workplace all contribute to a system where many employees choose alternative means to resolve their disputes. These factors highlight the need for reforms and improvements in the accessibility and affordability of the legal process for employment-related issues, ensuring that employees have a fair and equitable means of addressing their concerns. To address these challenges, a multifaceted approach can be adopted to create a more accessible and efficient system for resolving disputes. One significant improvement could involve enhancing the visibility of court actions and legal procedures related to such disputes (Vosko et al., 2021, p. 165). This can be achieved through comprehensive awareness campaigns, easily accessible online resources, and clear, user-friendly guidelines on how to initiate proceedings. By making information more transparent and readily available, individuals would be better informed about the process, thus fostering greater understanding and confidence in seeking legal redress when necessary.

Moreover, a crucial step in improving access to justice for employees could involve extended access to free or subsidized legal advice and assistance. Many potential litigants are deterred by the high costs associated with hiring legal representation; if employees were able to access competent legal counsel at little to no cost, they would be more inclined to pursue their grievances through the legal system, thus levelling the playing field and ensuring that justice is accessible to all, regardless of financial means.

Another significant reform could centre on modifying the legal framework to shift the focus of employment lawsuits. Currently, the system includes the possibility of reinstating employees to their previous positions, which may not always align with their preferences or with practical considerations. To address this, the legal system could be adjusted to prioritize monetary compensation for aggrieved employees. This adjustment would streamline the legal process, reducing its complexity and

allowing for quicker resolutions, making the system more attractive to employees seeking redress.

Expanding the options for mediation and out-of-court settlements is another essential aspect to improve the situation. Mediation can offer a quicker and less adversarial route to resolving disputes, and employees should be encouraged to explore this alternative before resorting to litigation. Promoting mediation and settlement negotiations could lead to swifter resolutions, reducing the emotional toll on both parties and alleviating the burden on the court system.

Lastly, increasing the speed and efficiency of legal proceedings is crucial. Statistics indicate that it takes more than a year for a first-instance court to decide on a labour law case, with the potential for a longer timeline due to appeals, creating significant uncertainty for employees. Streamlining the legal process, setting clear timelines for resolution, and implementing measures to expedite proceedings could enhance the overall effectiveness of the system considerably. By improving visibility, providing accessible legal advice, shifting the focus of lawsuits, promoting mediation, and increasing the speed of proceedings, the Czech Republic can create a legal framework that encourages employees to seek redress when faced with workplace issues. These reforms would not only empower individuals to assert their rights but would also contribute to a more fair and harmonious labour environment within the country.

Conclusions

In examining two critical aspects of employment law in the Czech Republic, discrimination lawsuits and unfair dismissals, it becomes evident that there are noteworthy similarities in the challenges and limitations faced by employees seeking redress within the legal framework. Both kinds of case are governed by distinct legal provisions in the Czech Republic. In discrimination cases, the Anti-Discrimination Act and the Civil Code provide a basis for awarding damages, including non-pecuniary damages, while in unfair dismissal cases, labour laws outline the procedures and remedies available to employees. A common thread in both areas is the issue of access to justice. Employees often encounter difficulties in navigating the complex procedures and protocols involved in pursuing litigation. Whether it is the intricate process of filing a discrimination complaint or the requirements for contesting an unfair dismissal, the complexity of the legal system can act as a significant deterrent.

Financial barriers also feature prominently in both areas. High legal costs and the lack of affordable legal representation can discourage individuals from pursuing their claims. In discrimination cases, the uncertainty regarding the possible amount of monetary compensation further compounds these financial concerns. Similarly, employees who initiate unfair dismissal claims may face the risk of bearing the de-

fendant's legal costs if their case is unsuccessful. Another challenge shared by both types of claim is the issue of timeliness. Lengthy legal proceedings can be emotionally draining and leave employees in a state of uncertainty for extended periods, and delays in resolving cases can hinder the effectiveness of the legal system as a means of addressing grievances.

Moreover, the principle of dissuasiveness is not fully realized in either context. The existing legal frameworks do not consistently provide strong deterrents against discrimination or unfair dismissals. Monetary compensation often falls short of adequately addressing the harm and humiliation suffered by employees. In both areas, there is room for improvement in terms of procedural effectiveness and equivalence. Ensuring that the legal system is accessible, efficient, and provides equitable remedies for aggrieved employees is essential to addressing these issues effectively.

In conclusion, while discrimination lawsuits and unfair dismissals represent distinct areas of employment law, they share common challenges that impact employees seeking justice within the Czech legal system. Addressing these challenges, such as by improving access to justice, reducing financial barriers, expediting proceedings, and enhancing the dissuasive impact of remedies, is essential to creating a fair and equitable workplace environment for all employees in the Czech Republic.

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