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NEWS REPORT

Country:	Serbia
Title:	Complaint <i>D.K. v. RB K.L.</i> , opinion of the <i>Commissioner for the Protection of Equality</i> , no. 07-00-121/15-02, 21 August 2015
Date:	17 February 2016
Expert:	Krstic, Ivana
<u>Context</u>	
Issue at stake:	Discrimination against a female employee based on different retirement age for sexes
Ground of discrimination:	Age and gender
Source:	National equality body
Field:	Employment
Applicable law:	The Law on the Prohibition of Discrimination (LPD), Articles 2, par. 2 (1), 16, par. 1, 23

Content

Law development: In Serbia, according to Article 19 of the Law on Pension and Disability Insurance, state the imposed mandatory retirement age is 65 years with a minimum of 15 years of pension insurance, or 45 years of insurance. However, Article 19 a) prescribes that women can voluntarily retire with 60 years and 6 months and a minimum 15 years of pension insurance. Each year, retirement age for women will extend until 2032, when it will be equalized for both sexes and will request 65 years. In practice, many women are forced to retire when they reach retirement age.

In this case, D.K., who since 1980 was employed at K.L. company as a leading economist for planning and analyses, submitted a complaint against her employer for discrimination based on age. From 2001 until 2013 she served as a Chief of financial service. At the beginning of 2013, she was advised to retire as she fulfils conditions for retirement. She rejected this proposal and was replaced to a lower paid job without any justification. On 27 November 2014, she filed a complaint to her employer claiming that she was discriminated on the basis of age, but she didn't receive any reply from him.

She then submitted a complaint to the Commissioner for the Protection of Equality. In his reply to the complaint, the employer explained that she was moved to another job due to the increased volume and complexity of the work in the planning service, bearing in mind her work experience as an economist. However, she claimed that she didn't have any work assignments on her new post.

Decision of the Commissioner: In its opinion, the Commissioner relied on Article 21 of the Constitution that prohibits discrimination, Article 2, par. 2 (1) of the Law on the Prohibition of Discrimination that prohibits and defines discrimination, Article 16. par. 1 that prohibits discrimination in employment and Article 23, par. 1 that prohibits discrimination based on age, as well as on Article 18 of the Labour law that prohibits discrimination in employment.

In order to issue an opinion whether this is a case of discrimination, and whether there is

a casual link between personal characteristic – age – and the act (replacement in this concrete case), the Commissioner needed to rely on statistical data. Thus, the Commissioner requested additional information from the employer on the number of employees that were offered retirement or replacement. On 18 March 2013, among 13000 employees, more than 300 employees were offered to retire or to change their job position. In 2013, out of 154 employees who were placed to another position, 106 received a higher salary, 24 remained the same salary, while 24 employees received lower salary. In age group 20-30 16 employees were replaced, in group 30-40 49 employees, in group 40-50 35 employees, and in group 60-65 5 employees.

The Commissioner found that there is no case of discrimination as the company was entitled to change by means of an act of systematization and to perform personal changes in order to improve its business. In addition, the Commissioner considered that the employer provided enough reasons for its decision and that only 5 employees in the group 60-65 were replaced among 154 employees who were moved to another posts. However, a closer link between the explanation of the employer and the replacement was missing in this case, and the Commissioner didn't take into account the fact that the employer was ignoring D.K. attempts to get information on her shift.

Key points of analysis: Although it is important that the Commissioner relied on statistical data in order to prove discrimination, it seems that some important data were not requested. In order to reach a decision, it was necessary to get information on the total number of employees in the group 60-65 in order to assess the percentage of those who were replaced. Also, it was necessary to take into consideration the sex of those employees (24 of them) who were moved to lower paid jobs. Finally, it was important to assess the number of those who retired and their sex.

Internet link source: <http://www.ravnopravnost.gov.rs/rs/старосно-доба/притужба-д-к-против-рб-к-л-због-дискриминације-на-основу-старосног-доба-у-области-рада> last accessed 13/01/2015.