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NEWS REPORT

Country:	Bulgaria
Title:	Supreme Court validates medical approach to disability
Date:	6 January 2017
Expert:	Margarita Ilieva
<u>Context</u>	
Issue at stake:	Job refused based on medical authorities' negative opinion
Ground of discrimination:	Disability
Source:	National court decision
Field:	Employment
Applicable law:	Protection Against Discrimination Act

Content

Case development: The Supreme Administrative Court (SAC) ruled that an employer had lawfully denied a job applicant with a disability (diabetes, inter alia) and a 61 % medically certified long-term inability to work. SAC upheld a ruling by the lower court against the job applicant that in turn confirmed the equality body's decision against her. The job in question was a cashier's in a food store. The employer requested an opinion from the medical authorities stating whether the applicant would be able to carry out the work that it said involved psychological stress, long hours of standing and heavy object lifting. The medical authorities gave a negative opinion, and the employer refused the application. SAC held that this refusal was necessary in order to protect the applicant's health, and that an employer was not free to hire a person with a disability in contravention to medical authorities' recommendations.

Decision of the Court: Decision No 12783 of 25.11.2016 in case No 11712/ 2015.

Key points of analysis: SAC and the lower instances endorsed a strictly formalistic medical approach to disability employment rights, ignoring the applicant's own perception of her ability to do the job, as well as the issue of potential reasonable accommodation. SAC's reasoning that an employer could not "at their own risk" disregard a negative medical opinion, and hire a person effectively transfers employment decisions to medical professionals who are not bound by the reasonable accommodation duty under equality law.

Internet link source:

<http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/7b33b15440c2e64fc2258073003d6a9a?OpenDocument> (in BG).