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NEWS REPORT

Country:	Sweden
Title:	Refusal to hire midwife who for religious reasons would not do abortions was not discriminatory
Date:	14 April 2017
Expert:	Per Norberg
<u>Context</u>	
Issue at stake:	Adapting a workplace to accommodate religious belief
Ground of discrimination:	Religion
Source:	Labour court decision ¹
Field:	Employment
Applicable law:	Discrimination Act – prohibition of indirect discrimination Chapter 1 section 4 point 2

Content

Case development: E:G was employed as a nurse but applied several times for a job as a midwife, however because of her Christian faith she refused perform some of the duties regarding abortions or contraceptives. Her employer refused to adapt the midwife job so that it corresponded to her faith. Her employer also refused to allow her “education wage” for the last two terms of the midwife specialist education, because they believed that she would not use the education for them by working as a midwife. E.G believed that the employer thus violated both the Swedish Discrimination Act and the ECHR Articles 9, 10 and 14.

Decision of the Court: The Labour Court found that this could not be a case of direct discrimination since all job seekers who refused to do some of the tasks would not have been hired.

The Labour Court found that the requirement on midwives to do some tasks regarding abortions was a potential source of indirect discrimination because it affected persons of certain Christian believes more than others.

In Sweden, a woman has a right to abortion during the first 18 weeks of the pregnancy. There is a general instruction to respect the woman’s decision and proceed with no delay if an abortion is requested. Therefore, the government bill to the Abortion Act, says that counties shall avoid hiring midwives or other staff who for religious reasons are against abortions in clinics where this question may arise. One cannot know in advance if a particular woman wants to discuss abortion when she meets the midwife.

Abortions are an integrated part of the work performed in a women’s clinic. would be delayed if the midwife in charge of the patient refused to do her tasks. The societal interest of having a high standard of healthcare was thus given preference and was

¹ Labour Court, case 23/17, E.G. v. Jönköping County (judgement 2017-04-12).

regarded as a valid justification of the negative impact.

Key points of analysis: The outcome of this case was expected. In Sweden, the employers right to lead their businesses are strongly protected within common principles of labour law.

The midwife was massively supported by right wing American Christian groups. This case has therefore been commented on in media and in academics. It is almost certain that the midwife will go all the way to the European Court of Human Rights.

The main part of the judgement is where the Labour Court applies the proportionality test of the Discrimination Act with regard to indirect discrimination. It states that generally, the Swedish practice with regard to religious discrimination and freedom of conscience conforms with the requirements of Articles 9, 10 and 14 of the ECHR and the Labour Court found no reason to discuss these articles in detail. Discussing these articles in detail were the aim of the Christian groups supporting the midwife.

Internet link source:

<http://www.arbetsdomstolen.se/upload/pdf/2017/23-17.pdf>.