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NEWS REPORT

Country:	Latvia
Title:	Company Found Guilty of Discrimination by Dismissing Employee with Disability
Date:	5 October 2017
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<u>Context</u>	
Issue at stake:	Court found violation of prohibition of discrimination and victimisation for dismissing an employee with disability
Ground of discrimination:	Disability
Source:	National court decision; Riga Regional Court Civil Cases Court Collegium (<i>Rīgas apgabaltiesas Civillietu tiesas kolēģija</i>), Judgment of 22 December 2016, Case Nr. C33533415 Riga Regional Court Civil Cases Court Collegium (<i>Rīgas apgabaltiesas Civillietu tiesas kolēģija</i>), Decision of 17 August 2017, Case Nr. C33533415
Field:	Employment
Applicable law:	Articles 9 (2), 29 (9), 109 (2) Labour Law

Content

Case: The parties "Rīgas nami" (LLC Rīgas nami) and E.K. entered into a labour contract on 8 March 2011 and E.K. was hired as a client service specialist. In September 2013, the parties amended the contract and E.K. became the manager of "Rīgas mākslas telpa" (Riga Art Space). On 30 January 2015, the employer took a decision on the reorganisation and terminated E.K.'s position and two other manager positions. On 28 May 2015, the employer issued a decision on E.K.'s work stoppage as it claimed that there were no suitable vacancies on offer to E.K. The Labour Law (Article 109.2) prohibits the dismissal by an employer of an employee with a disability except for specific cases determined by the law. In June 2015, the employer sent a letter requesting explanations from E.K. regarding complaints she had submitted concerning her treatment, and subsequently drafted a (disciplinary) act on non-provision of explanations by E.K.

In August 2015, the employer lodged an application in civil procedure before the court asking to terminate labour relations with E.K. The defendant filed a counterclaim asking the court to impose an obligation on the employer to propose suitable alternative positions to her, in accordance with her qualifications and capabilities, to admit the breach of the principle of prohibition of discrimination and victimisation [on grounds of disability] and to grant compensation for moral (non-pecuniary) damage. E.K. claimed that after the transfer of the Riga Art Space to the City Council, her working conditions had, due to her physical disability, deliberately been made worse, and she was subject to offensive statements and that the employer's request for explanations regarding her complaints amounted to victimisation.

Decision of the Court: In its decision of 22 December 2016, the Riga Regional Court rejected the employer's claim and partly satisfied E.K.'s counterclaim, finding a violation of the prohibition of discrimination and victimisation and obligated the company to provide E.K. with work according to her capabilities and qualifications. The court awarded 1,000 EUR for non-pecuniary damages. The employer subsequently appealed the decision, however on 30 June 2017, the Supreme Court dismissed the complaint. On 31 July 2017, the employer submitted a petition before the Riga Regional Court requesting the suspension of the enforcement of the part of the judgment obligating the company to provide E.K. with work according to her qualifications and capabilities. In its decision on 17 August 2017, the Court rejected the claim of the company.

The Court noted that the Plaintiff had terminated the labour relations based on Article 101.1.9 (the number of employees is being reduced) and Article 101.5 (on an exceptional basis with the good cause) of the Labour Law. The Court however noted that the Defendant is a person with established disabilities (of which the Plaintiff had been informed well before the court hearing), and the aforementioned articles are not mentioned in Article 109.2 of the Labour Law, which provides an exhaustive list of the legal grounds for the termination of labour relations with persons with disabilities. The Court reiterated that the list of grounds in Article 109.2 should be considered as exhaustive, and no one, including the court, is entitled to interpret it in a broader way. Regarding possible discrimination on grounds of disability the Court applied Article 20 of the Labour Law which provides for the shift of the burden of proof to the employer, i.e., the Plaintiff. The Court stated that "Rīgas Nami" had not submitted any evidence against the Defendant's statements concerning her discrimination, including demeaning working conditions and offensive statements (that the employer does not need such workers). The Court also established that the Plaintiff's decision to request explanations from the Defendant about her complaints to officials and institutions concerning her case were strictly connected to the fact that the employee had exercised her rights in a permissible manner. This led to the termination of the contract and the Court found that it amounted to victimisation. The Court also found contradictions in the Plaintiff's statement regarding vacancies during the Defendant's work stoppage and that the employer had at least one appropriate vacancy for the Defendant.

Key points of analysis: There remain few discrimination cases on ground of disability before courts in Latvia. The first instance court did not establish discrimination and victimisation on grounds of disability.

Internet link source: Court decisions are not publicly available:

Riga District Court Jūrmala Court House (*Rīgas rajona tiesa Jūrmalas tiesu nams*), Judgment of 27 May 2016, Case Nr C33533415, C-3147-16/24

Riga Regional Court Civil Cases Court Collegium (*Rīgas apgabaltiesas Civillietu tiesas kolēģija*), Judgment of 22 December 2016, Case Nr. C33533415,

Supreme Court, Assignments Sitting Decision of the Civil Case Department, Case nr. SKC – 1097/2017

Riga Regional Court Civil Cases Court Collegium (*Rīgas apgabaltiesas Civillietu tiesas kolēģija*), Decision of 17 August 2017, Case Nr. C33533415, CA-3489-16

Media:

<http://www.lsm.lv/raksts/zinas/latvija/rigas-nami-zaude-tiesu-par-diskriminaciju-invaliditates-del-bet-spriedumu-pilda-daleji.a247703/>.