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FLASH REPORT

Country:	Greece
Title:	Sanctions against private company for discrimination on ground of disability
Date:	18 March 2019
Expert:	Athanasios Theodoridis
<u>Context</u>	
Issue at stake:	A discriminatory practice of dismissal of an employee who suffered from multiple sclerosis
Grounds of discrimination:	Disability
Field of application:	Employment
Source:	National equality body
Applicable law:	National anti-discrimination Law 4443/2016 (Articles 2, 5, 7, 11 and 20)

Content

Case development: A private employee, having a contract of part-time employment for an indefinite period, was dismissed on 22 June 2018 by Leroy Merlin company. On 26 June 2018, she submitted a complaint with the local department of the Labour Inspectorate Body, mentioning that she was informed by the company that the dismissal was caused by her (lack of) efficiency and highlighted that, although she had a case of recrudescing multiple sclerosis - a fact that the company was aware of - her disease did not affect her work performance at all during all her working years. She added that due to the treatment she endured in her workplace, which was described in her complaint, a crisis of her disease took place and that there was a need of transferring her to hospital with an ambulance. She also stated that the incident was proved by adduced medical certificate.

The claimant employee, via her lawyer, declared that since her disease had occurred, in 2011, in spite of the fact that she repeatedly asked for shifting place and work in a different office with different duties - in which she had already been successfully working before her disease appeared - the company did not take into consideration this solution, not even on a test basis. On 06 August 2018, the company deposited a statement before the Labour Inspectorate Body, mentioning among others that: *"the employee was not treated unfavourably because of her alleged chronic disease ... the company made for a long time all the necessary efforts in order to maintain the employee in her workplace, despite her inefficiency...and therefore it would not be possible to rehire her"*.

The Ombudsman who also received a relevant complaint from the employee asked from the company to reconsider its decision to dismiss her. Indeed, as equality body monitoring and promoting implementation of the principle of equal treatment on different grounds of discrimination, including disability and chronic disease as well in private, public or broader public sector, the Ombudsman declared that he was at the disposal of the employer if the implementation of Article 5 of anti-discrimination Law 4443/2016, which refers to

reasonable accommodation for people who suffer from disability or chronic disease, would be regarded as appropriate by the company. The latter refused to reconsider its decision.

Therefore, the Ombudsman with its Opinion 246643/51899/2018 recalled what legislation stipulates in Article 5 of Law 4443/2016 by stating that an employer is obliged to take all necessary measures individually, so that people with disabilities could have the possibility for access to a workplace, to practice and to get evolved, as well as being able to participate in job training, while these measures do not entail disproportionate burden for employee (Article 5 of Law 4443/2016). Also, the Ombudsman emphasised that taking or preserving special measures aiming to prevent or counterbalance disadvantages of disability or chronic disease does not constitute an act of discrimination.

Actually, especially as far as people who suffer from disability or chronic disease are concerned, constituting or preserving orders about health protection and safety in workplaces or measures aspiring to create or maintain prerequisites or facilitations to ensure or encourage their integration in employment and work does not constitute an act of discrimination (Article 7 of Law 4443/2016). Thus, the Ombudsman deemed that the denouncement of the employment contract on behalf of the employer infringed Article 2 of Law 4443/2016 and was therefore invalid. Bearing in consideration the aforementioned, the Ombudsman transmitted its official Opinion to the local department of the Labour Inspectorate Body and proposed imposition of provisioned administrative sanctions, based on Article 11 paragraph 2 and Article 20 paragraph 4, Law 4443/2016.

Finally, on 05 February 2019, the Labour Inspectorate Body imposed a fine of EUR 8 000 to the company. The employee who was dismissed filed also a relevant case in court which is pending.

Key points of analysis: In this case the Greek Ombudsman makes greater effort than usual to convince a private company that dismissal of an employee who suffers from multiple sclerosis falls clearly with the scope of discrimination according to Law 4443/2016. The Ombudsman also analyses the issue of reasonable accommodation and insists that the employee who had been fired could be transferred in another position and continue to provide her work to the employer.

Internet link source: <https://left.gr/news/gia-tin-apolysi-ergazomenis-me-skliyrnsi-kata-plakas-prostimo-toy-sepe-sta-leroy-merlin>.