



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Estonia
<b>Title:</b>	Dismissal of untrusted manager
<b>Date:</b>	29 April 2020
<b>Expert:</b>	Anu Laas
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Sexual harassment and assault in the workplace
<b>Grounds of discrimination:</b>	Gender
<b>Field of application:</b>	Violence against women
<b>Source:</b>	National court decision
<b>Applicable law:</b>	Employment Contracts Act; Labour Dispute Resolution Act

### **Content**

**Case development:** *University of Tartu v. Hallik (civil proceedings)*. On 29 August 2018, the employment contract of the director of the Library of the University of Tartu was terminated due to loss of trust.

**Decision of the court:** In its decision No. 4-1/1857/18 of 29 September 2018, the Labour Dispute Committee ordered compensation to the dismissed employee in the sum of EUR 118 000.<sup>1</sup> The University of Tartu appealed the decision. In September 2019, the Tartu County Court found the extraordinary cancellation of the director's contract wrong. On appeal in the second instance, on 20 February 2020, the Tartu Circuit Court found the employer's decision to terminate the employment contract due to loss of trust rightful. The decision of the Circuit Court is not yet in force, and there is a possibility for cassation proceedings before the *Supreme Court*.

**Key points of analysis:** On 29 August 2018, the (male) director (Hallik) of the library of the University of Tartu was dismissed due to 'inadequate behaviour' and was asked to leave immediately. An employer may extraordinarily cancel an employment contract with good reason arising from the employee. In this case, the dismissal on the basis of loss of trust was based on claims by female library employees, who made accusations of sexual harassment against the director. The employer found that the director had breached Articles 3(1)(3) and 3(1)(5) of the Gender Equality Act and had lost the university's trust. The fired director claimed that the employer had no right to extraordinarily cancel the employment contract according to Articles 88(1)(3)<sup>1</sup> and 88(1)(5)<sup>1</sup> of the Employment Contracts Act.

This analysis is based to large extent on media coverage. Interviews with former female colleagues from the university library were published.

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<sup>1</sup>

[https://www.ti.ee/fileadmin/user\\_upload/failid/dokumendid/Meedia\\_ja\\_statistika/Tooevaidlused/TVK\\_men\\_etluses\\_olnud\\_diskrimineerimisvaidlused\\_2018.pdf](https://www.ti.ee/fileadmin/user_upload/failid/dokumendid/Meedia_ja_statistika/Tooevaidlused/TVK_men_etluses_olnud_diskrimineerimisvaidlused_2018.pdf).

Hallik has been active on social media and gave numerous media comments to journalists. In the first months after the dismissal, Hallik presented himself as a perfect manager and denied any cases of sexual misconduct:

*"I have been an employee of good standing at the university since 1999. During this lengthy period, not one single complaint had been lodged against me by my employer. So my dismissal came as a shock."*

Discretion and delicacy have been important keywords in this process. The hearings of the court case were declared closed.

The Labor Dispute Committee (LDC) does not resolve criminal cases, nor does it evaluate the commission of a criminal offense in misdemeanour proceedings. Decision No. 4-1/1857/18 of 29 September 2018 found that the employer was in the wrong and the Committee ordered compensation to the director according to Article 100(3) of the Employment Contracts Act in the sum of EUR 118 000. The University of Tartu challenged the LDC decision in court. The new law, the Labour Dispute Resolution Act entered into force on 1 March 2018.<sup>2</sup> This Act abolished the limit of the financial claim submitted to the labour dispute committee. Mr. Hallik was the first person to apply for compensation in this legal framework.

In September 2019, the Tartu County Court ruled that monetary compensation of EUR 90 568 (EUR 30 568 compensation and EUR 60 000 for non-pecuniary damage) should be paid by the University of Tartu to the Mr. Hallik. The County Court found that terminating the contract of employment with an emergency notice of dismissal without warning was inappropriate and that the contract was wrongfully terminated, due to lack of warning of the employee. In the court's view, it would have been sufficient to draw attention to the inappropriate conduct. The court also acknowledged that there was no case law to the extent that damages of such an amount are awarded and that the claimed amount of non-pecuniary damage may seem excessive. The court explained that the compensation must be based on the fact that the choice of the basis for termination of the contract and its disclosure (Tartu University issued a press release immediately after the dismissal of the library director in August 2018) would obviously mean the loss of the applicant's reputation and his career prospects for years.

On 20 February 2020, the Tartu Circuit Court upheld the appeal of the University of Tartu and overturned the decision of the Tartu County Court to uphold the action of the former director of the Tartu University Library, Mr. Hallik, in a labour dispute.<sup>3</sup> The Tartu Circuit Court found that in this labour dispute, the necessity of the warning is precluded both by the gravity and nature of the acts alleged against the employee and by the fact that Mr. Hallik violated the duties of the head of the structural unit of the University of Tartu arising from the employment contract and the library statutes.<sup>4</sup>

The decision of the Circuit Court is not yet in force, so there is a possibility for cassation proceedings before the *Supreme Court*.

**Internet link sources:** News.err.ee, 30 August 2018, University of Tartu terminates contract with library director Martin Hallik, <https://news.err.ee/857428/university-of-tartu-terminates-contract-with-library-director-martin-hallik>.

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<sup>2</sup> <https://www.riigiteataja.ee/en/eli/506022018004/consolide>.

<sup>3</sup> <https://www.delfi.ee/news/paevauudised/krimi/ringkonnakohus-jattis-martin-halliku-hagi-tartu-ulikooli-vastu-rahuldamata?id=88990103>.

<sup>4</sup> According to the Employment Contracts Act, an employer may generally terminate an employment contract due to a breach of an employee's obligation if the termination has been preceded by a warning from the employer. However, prior notice is not required as a precondition for cancellation if the employee cannot expect it from the employer in good faith due to the special gravity of the breach of the obligation or for any other reason.

Tööinspektsioon (2019). Töövaidluskomisjoni menetluses olnud ebavõrdse kohtlemisega seotud töövaidlusasjad perioodil 01.01.2018 – 31.12.2018 (*Labour dispute cases related to unequal treatment solved by the Labour Dispute Committee 01.01.2018 - 31.12.2018*),

[https://www.ti.ee/fileadmin/user\\_upload/failid/dokumendid/Meedia\\_ja\\_statistika/Toeoevaidlused/TVK\\_menetluses\\_olnud\\_diskrimineerimisvaidlused\\_2018.pdf](https://www.ti.ee/fileadmin/user_upload/failid/dokumendid/Meedia_ja_statistika/Toeoevaidlused/TVK_menetluses_olnud_diskrimineerimisvaidlused_2018.pdf).

Delfi.ee, 20 February 2020, Ringkonnakohus jättis Martin Halliku hagi Tartu Ülikooli vastu rahuldamata (*The Circuit Court dismissed Martin Hallik's action against the University of Tartu*), <https://www.delfi.ee/news/paevauudised/krimi/ringkonnakohus-jattis-martin-halliku-hagi-tartu-ulikooli-vastu-rahuldamata?id=88990103>.