

CROATIA

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Discrimination based on age

- **Judgment of the County Court in Rijeka No Gž R-345/2017-2 of 20 September 2017**
- **Judgment of the County Court in Osijek No Gž R-699/2016-2 of 31 August 2017**
- **Decision of the Constitutional Court of the Republic of Croatia No U-III-1095/2017 of 21 September 2017**

Judgment of the County Court in Rijeka No Gž R-345/2017-2 of 20 September 2017

- The victim applied for a job of a sport products salesman with the tortfeasor, a global company specialised in sport products.
- The tortfeasor informed the victim by an e-mail that they opted for a younger person.
- The victim sued the tortfeasor claiming that the tortfeasor violated his right to equal treatment since it gave the job to a younger person, notwithstanding the victim's competences, by which the tortfeasor discriminated him based on age

Judgment of the County Court in Rijeka No Gž R-345/2017-2 of 20 September 2017

- The first instance court established that the victim was discriminated based on age and awarded him compensation for non-material damage in an amount of HRK 7,000 (approx. € 945)
- The County Court in Rijeka affirmed the first instance decision

Judgment of the County Court in Rijeka No Gž R-345/2017-2 of 20 September 2017

- The County Court in Rijeka reasoned
 - although discrimination based on age is forbidden, Directive 2000/78/EC permits for the possibility that an unequal treatment be assessed permissible, if objectively and reasonably justified with legitimate goal, and if the means of achieving the goal are appropriate and necessary
 - differences in treatment based on age were not clearly stated in the job contest
 - the tortfeasor failed to explain how exactly is the age of the salesman related to the tortfeasor's targeted group of customers

Judgment of the County Court in Osijek No Gž R-699/2016-2 of 31 August 2017

- The victim, at age of 61, was employed with the tortfeasor as an expert for more than a decade.
- The victim filed a claim against the tortfeasor for discrimination based on age and education.
 - his superior informed him at the meeting that the firm does not count on him anymore,
 - the use of abusive language, like “you cannot possibly expect us to carry you in a wheelchair from the office to the graveyard”
 - rumours were spread within the firm that there was no place for the victim anymore
 - the employer’s attitude towards the victim became cold, distrustful, and sarcastic
 - victim has been left out from decision making, although he acted as a senior expert in the firm
 - victim has not been assigned a single task in 33 months

Judgment of the County Court in Osijek No GŽ R-699/2016-2 of 31 August 2017

- The first instance court issued an injunction prohibiting the tortfeasor taking any further actions which infringe or may infringe the victim's right to equal treatment and awarded the victim compensation for non-material damage in an amount of HRK 30,000.00 (approx. € 4,054)
- The County Court in Osijek affirmed

Judgment of the County Court in Osijek No Gž R-699/2016-2 of 31 August 2017

- The County Court in Osijek reasoned
 - discrimination can also take a form of indirect discrimination, which consists in harassment based on some grounds of discrimination (age, gender, education, religion, nationality, etc.) causing hostile, humiliating and insulting environment.
 - spreading rumours about the victim, not assigning any tasks to the victim in a longer period of time, the use of inappropriate language, **all represented impermissible behaviour** aimed at creating hostile, humiliating and insulting environment for the victim, by which the victim was put in an unequal position in comparison to other employees

Decision of the Constitutional Court of the Republic of Croatia) No U-III-1095/2017 of 21 September 2017

- The victim, in the age of 12, went with his father to a shopping mall and as he was passing through the theft detector, the alarm was activated.
- The victim was detained for search by the private security officer and the employees of the shopping mall.
- During the search, undertaken in the presence of other customers, nothing suspicious was found with the victim.
- The victim was considerably frightened and disturbed with the whole event.

Decision of the Constitutional Court of the Republic of Croatia) No U-III-1095/2017 of 21 September 2017

- In the first instance proceedings the claim was sustained, notwithstanding the testimony of two expert witnesses for psychology who established that a sense of personal honour and dignity is not yet developed with the 12-years old child
- The County Court in Karlovac reversed the first instance decision and denied the victim compensation for non-material damage, with the reasoning that the first instance court failed to appropriately take into consideration the expert witnesses' opinion
- The Supreme Court dismissed the victims' petition for extraordinary revision on procedural grounds
- The Constitutional Court accepted the constitutional claim, revoked the County Court's and the Supreme Court's decisions and remitted the case to the County Court in Karlovac for re-examination

Decision of the Constitutional Court of the Republic of Croatia) No U-III-1095/2017 of 21 September 2017

- The Constitutional Court reasoned
 - The Charter of Fundamental Rights of the European Union, the Convention of the Rights of the Child, and the Constitution of the Republic of Croatia **lend no support** for a conclusion that a child's right to honour and dignity should be conditioned with the child's cognitive capabilities and the child's personal perception of their own identity.
 - No legal basis for treating minors any differently from any other group of persons when their right to honour and dignity is concerned.

Conclusions

- Any age group can be subjected to discrimination
- Discrimination on any level, by any person, organisation or entity is forbidden (e.g. in the course of recruitment, at work, before the courts)
- Discrimination can take a direct or indirect form (e.g. harassment based on age causing hostile, humiliating or insulting environment)
- Different treatment can be exceptionally permitted, for legitimate goal, providing that the means used are appropriate and necessary
- However, any invocation of this exception must be well substantiated in each particular case
- No discrimination whatsoever is permissible when human rights are concerned
- Zero tolerance policy for discrimination based on age

Thank you for your attention

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