the global voice of the legal profession

Discrimination and Equality Law News

Committee Update of the International Bar Association Legal Practice Division

VOLUME 21 NUMBER 1 SEPTEMBER 2017

IN THIS ISSUE

Newsletter Editors
Hironobu Tsukamoto
Nagashima Ohno & Tsunematsu, New York
hironobu_tsukamoto@noandt.com

Maria Luiza Soter da Silveira
Veirano Advogados, Rio de Janeiro
isa.soter@veirano.com.br

International Bar Association
4th Floor, 10 St Bride Street
London EC4A 4AD
Tel: +44 (0)20 7842 0090
Fax: +44 (0)20 7842 0091
www.ibanet.org

This newsletter is intended to provide general information regarding recent developments in discrimination and equality law. The views expressed are not necessarily those of the International Bar Association.

Terms and Conditions for submission of articles

1. Articles for inclusion in the newsletter should be sent to the Newsletter Editor.
2. The article must be the original work of the author, must not have been previously published, and must not currently be under consideration by another journal. If it contains material which is someone else's copyright, the unrestricted permission of the copyright owner must be obtained and evidence of this submitted with the article and the material should be clearly identified and acknowledged within the text. The article shall not, to the best of the author's knowledge, contain anything which is libellous, illegal, or infringes anyone's copyright or other rights.
3. Copyright shall be assigned to the IBA and the IBA will have the exclusive right to first publication, both to reproduce and/or distribute an article (including the abstract) ourselves throughout the world in printed, electronic or any other medium, and to authorise others (including Reproduction Rights Organisations such as the Copyright Licensing Agency and the Copyright Clearance Center) to do the same. Following first publication, such publishing rights shall be non-exclusive, except that publication in another journal will require permission from and acknowledgment of the IBA. Such permission may be obtained from the Director of Content at editor@int-bar.org.
4. The rights of the author will be respected, the name of the author will always be clearly associated with the article and, except for necessary editorial changes, no substantial alteration to the article will be made without consulting the author.

Current trends in court practice on discrimination claims in Russia

RUSSIA

Irina Anyukhina

ALRUD Law Firm, Moscow

ianyukhina@alrud.com

If an employee files a discrimination claim in Russia, what are their chances of prevailing? This is the question many employers ask when taking decisions around employees in Russia.

Looking at recent developments, one can see that international labour standards have had a notable impact on Russia's labour legislation. The general provisions of Russian law concerning prohibition of discrimination and freedoms of individuals are based on the European Convention on Human Rights, and in recent years Russia has adopted a significant number of conventions of the International Labour Organization. Although Russian law still does not stipulate any specific types of discrimination, it provides a non-exhaustive list of the different grounds upon which discrimination can be based, such as sex, race, colour, nationality, language, as well as any other circumstances not associated with the professional qualities of an employee.

The latest court practice shows that Russian courts are still hesitant to grant employees discrimination claims. A review of cases of the courts of general jurisdiction shows that in the past two years, they rarely admitted discrimination in the employers' actions either because the claimants failed to prove it, or because they chose inappropriate remedies, or because the employee's actions did not contain elements of discrimination or abuse of the right. It should be mentioned that the courts stress that any difference or preference regarding a particular work, based on its specific requirements, cannot be regarded as discrimination.

Pursuant to procedural legislation, each party to a dispute must prove all the facts upon which it relies as the grounds for its claims and objections. As concerns discrimination disputes, legislation imposes a split burden of proof: an employee must establish before a court the discriminatory grounds, while the employer, in its turn, must prove its objective and lawful reasons and that there has been no discrimination.

Any facts of labour discrimination filed to the Supreme Court of Russia in 2015-2016 were not substantiated. The Constitutional Court in 2015-2016 refused to consider all complaints concerning the constitutional nature of Article 3 of the Labour Code that contains provisions prohibiting discrimination.

One of the few interesting court rulings was adopted by St Petersburg City Court in 2016.[1] The Court confirmed that establishing worse working conditions for departing employees, which differ from the normal ones, constitutes discrimination. The case was that the employer had a bonus policy that stated that the employee is entitled to the bonus only if at the moment when the bonus is due for payment the employee remains the employee of the company. The employee achieved the targets, but at the time the bonus was due, he had already resigned. The Court found that such provision of the bonus policy is discriminatory as it sets out conditions for receiving the bonus (ie, to be the employee of the company) that discriminate one category of employee (dismissed employees) – and, moreover, such difference is not based on the business acumen of employees as, although in this case it was the employee who decided to terminate the employment, they achieved the targets to be eligible for the bonus.

This case shows that the courts are starting to 'break the ice' and sustain employees' claims. In addition, the Russian legislators as well as the professional community are also pushing the changes into the current legislation that will determine specific types of discrimination, which may give more discretion to the courts in identifying whether a specific action can be treated as discriminatory. Concluding the above, certainly there is a tendency for increasing the number of discrimination claims that could be considered in employees' favour, and this should be taken into account by companies when taking personnel-related decisions.

Note

1 In its Appellate Ruling dated 19 January 2016, No 22-1182/2016.