



## NEWS REPORT

<b>Date:</b>	29 December 2011
<b>Expert:</b>	Vadim Poleshchuk
<b>Title:</b>	Victimisation and prima facie case of discrimination
<b>Country:</b>	Estonia
<b>Context</b>	
<b>Issue at stake:</b>	Protection against victimisation and burden of proof
<b>Ground of discrimination:</b>	Race, gender
<b>Source:</b>	Decision of the Harju County Court of 23 December 2011 (case 2-11-15080)
<b>Field:</b>	Employment

### Content

**Case:** The foreign-owned Ericsson Eesti AS has extraordinarily terminated an employment contract of E.B. due to the loss of the employer's trust in the employee (Article 88 (1) 5 of the Employment Contracts Act). E.B. received, edited and translated into English a letter signed "Workers of the factory shop A". This letter included allegations of gender and racial discrimination perpetrated by a production manager. E.B. brought over this letter to a factory top manager. Factory managers found this letter unfounded, defamatory and provoking tensions and took the decision to fire E.B. without advanced notification.

E.B. claimed that he became a victim of victimization as provided for in the Gender Equality Act (Article 5 (1-1)) and Equal Treatment Act (Article 3 (6)). The latter act is adopted to transpose the "Racial Equality Directive" 2000/43 in Estonia. Both acts guaranteed protection to a person who supports another person who has submitted a discrimination related complaint.

**Decision of the Court:** The Harju County Court (the first instance court) came to the conclusion that actions by E.B. could not lead to an extraordinary termination of an employment contract under the Estonian law. However, no victimisation may be observed in the case at stake. The Court argued that principles related to shifting the burden of proof shall



also be applied to an application addressing an employer. In other words, such application shall set out the facts on the basis of which it can be presumed that discrimination has occurred. The letter signed by the “Workers of the factory shop A” did not include any facts or other concrete information. E.B. also failed to provide information about relevant incidents in the court procedure.

According to the decision by the Harju County Court an employee shall bear the burden of presenting a prima facie case of discrimination to an employer in order to claim protection against victimisation.

**Internet link source and additional information:** NA