



## FLASH REPORT

**Date:** 2 February 2009  
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**Title:** Unfair dismissal of elder employees by Polish Radio S.A. - series of cases  
**Country:** Poland

### Context

**Issue at stake:** Unfair dismissal in employment - indirect discrimination  
**Ground of discrimination:** of Age, other (political beliefs)  
**Source:** National court decision  
**Field:** Employment

**Legislative provisions:** Labour Code: art. 18<sup>3A</sup>, 18<sup>3b</sup>, 18<sup>3d</sup>

### Content

#### **Case:**

Due to the change of the Polish government in 2005 the management of the Polskie Radio (Public Radio) was also changed and initiated in 2006 a preparation of the process of collective redundancies. The lists of the employees were created according to unclear criteria (however a number of them were listed under the general term of the need of "rationalization of employment structure"). The process was accompanied with statements of the members of the management declaring that radio staff is too old (additional factor behind that was that elder employees worked in the radio during communist era). A number of employees were dismissed and several of them lodged claims.

#### **1. Małgorzata K.D. v. Polskie Radio S.A.**

The labour contract of the claimant with Polish Radio was dissolved by agreement of the parties on April 10, 2007 in order to start a new job; however, according to the claimant it was forced by permanent pressure related to the fact that the claimant was included in the list of persons for dismissal. The claimant argued that the planned dismissal was in fact discriminatory because of age, political beliefs and membership in the trade unions (the claimant was active unions' leader criticizing the collective redundancies policy).



## 2. **Maria Sz. v. Polskie Radio S.A.**

The labour contract with Maria Sz. was terminated by the Polish Radio. The reasons given were as follows: Maria Sz. reached retirement age, was unable to cope with new tasks, slowing down the work and could not cope with digital editing. The claimant argued that there was no complaint about her work ever before and that periodic evaluations of employees gave her the highest scores. The complaint also stressed that given the cause of dismissal it constitutes discrimination on grounds of age.

### **Decision of the Court:**

#### **1. Małgorzata K.D. v. Polskie Radio S.A.**

District Court in Warsaw, Labour Section VII; judgement on May 21<sup>st</sup> 2008 (delivered to parties on June 19<sup>th</sup> 2008, deadline for appeal until July 2<sup>nd</sup>, not appealed) (case VII P 937/07)

Judgement: the court awarded compensation for the breach of the principle of equal treatment in employment – 1.126 zloty (minimal compensation according to the Labour Code).

The court found indirect discrimination in dismissal. According to the court, an apparently neutral provision in the regulations concerning dismissal of employees (listing several criteria for dismissal) in fact discriminated because of age, and this was apparent in the age structure of persons to be dismissed (the list of persons to be dismissed included 295 names; only 21 persons were younger than 40 years).

According to the court, the Polish Radio S.A. did not prove that the reasons indicated for the dismissal were objectively justified by a legitimate aim and that the means of achieving that aim were appropriate and necessary.

#### **2. Maria Sz. v. Polskie Radio S.A.**

A settlement of parties was reached on September 3<sup>rd</sup>, 2008, before the District Court in Warsaw (Labour Section).

The substance of the settlement was the withdrawal of the notice of termination of employment and recognition that the labour contract was dissolved with the agreement of the parties. According to the settlement, the Polish Radio agreed to pay to the claimant the sum of 19.000 zloty of the retirement compensation and 18.000 zloty for damages (1 euro = ca. 4 zloty). Additional confidential “gentlemen’s agreement” was also reached and signed as declared by the parties. The settlement closed the case lodged in May 2007.



**Short analysis:** These cases are among the first cases regarding age discrimination in Poland.

**Internet link source and additional information:** (no newspaper links)

In the first case the information about it as well as the court judgement is available on the internet site of the Helsinki Foundation for Human Rights ([www.hfhr.org.pl/precedens](http://www.hfhr.org.pl/precedens))

Two other cases of similar character have been closed by settlements which details were not made public.