



NEWS REPORT

Date: Jan. 29th, 2009
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Title: Termination of employment because of retirement age - Supreme Court Resolution
Country: Poland

Context

Issue at stake: Whether reaching retirement age may be a sole reason for termination of the labour contract
Ground of discrimination: Age, other (sex)
Source: national court decision
Field: Employment
Legislative provisions: Labour Code: art. 45 § 1 in connection with art. 39 and art. 11³; Framework directive 2000/78/EC: art. 6

Content

Case: The jurisprudence of the Supreme Court of the Republic of Poland regarding cases in which reaching the retirement age and entitlement to a pension were the reasons of the termination of the labour contract differed. In a number of cases the Supreme Court adopted different decisions. The Ombudsman (Commissioner for Civil Rights Protection) lodged in the Supreme Court a "legal question" (this is a special procedure which may be initiated by the Ombudsman in situations where differences in the interpretation of law in Supreme Court judgements exist; the legal question is not based on any particular case). The resolution is taken by a special panel of 7 Justices. The question as formulated by the Ombudsman reads: "Whether reaching retirement age and entitlement to a pension may be the sole reason for the termination of a labour contract with employee - a woman or a man - and whether this does not imply discrimination against an employee based on sex and age (Article 11³ of the LC)". The question was lodged on October 27th, 2008 (sygn. II PZP13/08).

Decision of the Court: Resolution of the Supreme Court, Labour Law, Social Security and Public Affairs Chamber (panel of 7 justices), January 21st, 2009

The Supreme Court adopted a resolution which reads as follows: "Reaching the retirement age and entitlement to a pension may not be the sole cause of termination of the contract of employment by the employer (Article 45 § 1 of LC)". Giving oral justification to the resolution (quoting PAP press agency), the Supreme Court stressed that the termination of employment with the employee - women or

men - just because they reached a certain age, constitutes indirect discrimination. It also noted that the relevant Polish labour law does not explicitly formulate prohibition of discrimination on grounds of age, although the EU law creates the possibility of its introduction. Therefore, the interpretation of the Polish law must be based on the EU directives.

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

Supreme Court: www.sn.pl/aktual/index.html

Ombudsman: www.rpo.gov.pl