



NEWS REPORT

Date: 22 April 2009
Expert: Neža Kogovšek, ll.m.
Title: Age Discrimination in Employment
Country: Slovenia

Context

Issue at stake: Termination of employment contract and offer of a new employment contract on the grounds of upcoming retirement constitutes age discrimination.

Ground of age discrimination:

Source: Higher Labor and Social Court, Judgment No. Pdp 402/2007 of 19 March 2008

Field: employment

Legislative provisions: Articles 6 and 89 of the Employment Relations Act

Content

Case: The employer decided for redundancy reasons to terminate the employment contract of a few employees (dentists), including the plaintiff, who was at the same time offered a new, but less favorable employment contract. The number of these employees was smaller than ten, the number specified in the Employment Relations Act, for which special rules for selection of employees whose contract will be terminated apply. According to these rules, the employer with 20 to 100 employees who plans to terminate the contracts of at least 10 employees has to prepare a program of termination of the contracts of redundant workers. This program should include criteria for the selection of redundant workers, such as education of employees, work experience, performance evaluation, total number of years of employment, health condition, social condition and whether the employee is parent of at least three minor children or that is the sole provider in the family. While the Employment Relations Act does not specify conditions for selection of a smaller number of employees whose employment contract will be terminated, the plaintiff claimed that the employer should have taken into account the Collective Agreement for doctors and dentists (collective agreements are concluded between workers' and employers' organizations), which defines such conditions. However, the employer decided to terminate the contract of the plaintiff due to her upcoming retirement. The first instance Labor and Social Court found that since the

Employment Relations Act does not specify rules for selection of employees whose employment contract would be terminated, the employer was free to choose these employees. The court rejected the lawsuit of the plaintiff and confirmed the lawfulness of termination of the contract, as well as the lawfulness of the new, however, less favorable contract that the plaintiff was offered. The plaintiff disagreed and filed a complaint to the Higher Labor and Social Court.

Decision of the Court: The Higher Labor and Social Court found that the first instance court wrongfully assessed that the selection of the plaintiff for termination of the employment contract due to upcoming retirement does not constitute discrimination. The court namely found that the assessment of the plaintiff as an employee that would soon retire puts the plaintiff in an unequal position due to her age. Consequently, the termination of employment with an offer of a new contract is unlawful due to the breach of the prohibition of discrimination. However, this does not mean that the new contract, signed by the plaintiff, is also unlawful, since the plaintiff did not specifically requested in his lawsuit the review of the new contract. Following this reasoning the Higher Court declared unlawful the part of judgment of the first instance court concerning the termination of employment and, while the second part of the case (alleged unlawfulness of the new employment contract) was returned to the first instance court for a new trial.