



NEWS REPORT

Date: 22 April 2009
Expert: Neža Kogovšek, ll.m.
Title: Discrimination in terminal leave payment
Country: Slovenia

Context

Issue at stake: Retirement payments based on different legal bases without any justified reason constitute discrimination

Ground of discrimination: of all grounds

Source: Higher Labor and Social Court, Judgment No. Pdp 1193/2007 of 2 April 2008

Field: employment

Legislative provisions: Article 6 of the Employment Relations Act

Content

Case: In the dispute the plaintiff stated that when he retired he obtained a retirement payment on the basis of a collective agreement (collective agreements are acts concluded among workers' and employers' organizations, and may stipulate additional rights not defined with the Employment Relations Act), while other employees of the defendant that retired received the payment in the amount as stipulated in the Government "Decree on the reimbursement of expenses in relation to employment that do not count towards tax base", which was more beneficial for the workers. Since the retirement payment which the plaintiff received was consequently lower comparing to the payments received by other employees, the plaintiff claimed he was discriminated. His claims were confirmed by two employees who retired at the same time and received the payment in accordance with the Decree. The plaintiff did not specify what the grounds of discrimination were.

Decision of the Court: In accordance with the rule of the shift of burden of proof the court found that the employer did not provide any justification for the fact that the payments to the plaintiff were calculated on another legal basis that in the case of other employees. The court stated that it is wrongful for the employer to claim that retirement payments on a different legal basis without a justified reason do not constitute discrimination in the meaning of Article 6 of the Employment

Relations Act. Unequal treatment without any legal basis constitutes discrimination; consequently, arbitrary decisions on which some employees will be paid their retirement payments on the basis of the Collective Agreement that stipulates the minimum workers' rights, and which some employees will receive their retirement payments on the basis of the Decree that stipulates the maximum payments that are excluded from tax base, constitute discrimination.