



NEWS REPORT

Date: 14 October 2010
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Title: The Belgian Constitutional Court rejects a claim alleging that the law on employment contracts creates age discrimination
Country: Belgium

Context

Issue at stake: Judgment of 30 September 2010 of the Belgian Constitutional Court, judging that the Belgian Employment Contract Law, establishing different advance notice periods depending on the employees age, does not infringe the principles of equality and non-discrimination on the grounds of age.

Ground of discrimination: Age

Source: Belgian Constitutional Court (<http://www.const-court.be/>), judgment of 30 September 2010 2010/107, nr 4810

Field: Employment, social protection, social advantages.
Legislative provisions: Art. 83, §1 of the Act of 3 July 1978 on employment contracts¹

Content

Case: In 1981, K. Goots was hired by a non-profit organisation (ASBL “Maatschappij van Kristelijke Liefdadigheid”) as a director under a permanent contract. However, in 2005, the non-profit organisation decided to put an end to Goots’ employment contract, giving him a six-month advance notice pursuant to Article 83 of the law on employment contracts.

Article 82 of the Act of 3 July 1978 on employment contracts stipulates that in case of the termination of a permanent contract by the employer, a three-month advance notice must be granted. A further three-months is added to

¹ *Loi du 3 juillet 1978 relative aux contrats de travail, Moniteur belge*, 22 August.1978 (Act of 3 July 1978 on employment contracts).

the initial notice requirement at the beginning of each new five-year period of service under the same employer and if the employee's remuneration exceeds a certain annual amount, the notice period must be fixed by the judge or by an agreement between employer and employee. However, by derogation to Article 82, Article 83 provides that an employer who ends a permanent employment contract from the first day of the month following the one during which the employee has reached 65 years old, must give a six-months advance notice period.

K. Goots alleged that Article 83, §1 of the Act of 3 July 1978 on employment contracts, providing for distinct notice period regimes following the employees' age, infringed the principles of equality and non-discrimination of Articles 10 and 11 of the Belgian Constitution. K. Goots therefore decided to sue his employer in order to get a longer advance notice period. At this occasion, the Labour Court of Antwerp asks the Belgian Constitutional Court for a preliminary ruling on the issue.

Decision of the Court: The Constitutional Court noted that the difference of treatment in Article 83 was based on an objective criterion (the fact that the dismissed employee reaches 65) and was founded on legitimate aims of a social nature. As a matter of fact, the regime of shorter advance notice periods for employees reaching 65 is closely linked to retirement age being reached. Belgian legislation envisaged the nullity of termination clauses ending employment contracts when employees reach 65, so to protect them as they are close to the retirement age. In fact, if the employer had to use the general advance notice periods of Article 82 for employees reaching the retirement age, he/she would have to take such a decision several years in advance, due to the total length the advance notice period would require. Thereby, with shorter notice periods, the dismissal of employees who anyway can aspire to retirement benefits is simpler. For this reason, Article 83 is reasonably justified.

Furthermore, under Article 6, §1st, al. 1 of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation "Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim [...] and if the means of achieving that aim are appropriate and necessary". According to the Constitutional Court, this provision allows regimes as those established by Article 83 of the Belgian Act on employment contracts.



For all these reasons, the Constitutional Court concluded that Article 83 does not infringe the principles of equality and non-discrimination of Articles 10 and 11 of the Constitution.

Internet link source and additional information: <http://www.const-court.be/>