

SUMMARY

ECJ 13 March 2014, case C-38/13 (Malgorzata Nierodzik - v - Samodzielny Publiczny Psychiatryczny Zaklad Opieki Zdrowotnej), Fixed-term work

Facts

The plaintiff in the main proceedings was Ms Nierodzik. She was employed by the defendant, a psychiatric hospital, on a full-time basis. Her employment contract was for an indefinite duration (permanent contract). At her request, the contract was terminated by mutual agreement with effect from 15 February 2010, because she wished to take early retirement. Subsequently, the parties entered into a fixed-term contract for part-time employment for the five year period 16 February 2010 - 3 February 2015. This fixed-term contract was governed by Article 33 of the Polish Labour Code, which provides that “Where a fixed-term employment contract is concluded for a period exceeding six months, the parties may provide for the contract to be terminated on two weeks’ notice.” Accordingly, Ms Nierodzik’s new contract provided that the hospital could terminate it at two weeks’ notice. The hospital made use of this provision in 2012, when it terminated Ms Nierodzik’s contract with effect from 21 April 2012.

Ms Nierodzik brought proceedings before the local court (Sad Rejonowy) in Bialystok, seeking reclassification of her fixed-term contract as a permanent contract and a declaration that she was entitled to the notice period of three months that would have applied had she continued to be employed on the basis of a permanent contract. She argued that the conclusion of a fixed-term contract for a period of five years was unlawful, as it was intended to circumvent national law and deprive her of the rights she could have relied upon if she had had a permanent contract.

National proceedings

The court was unsure whether said Article 33 is compatible with the Framework Agreement annexed to Directive 1999/70, the purpose of which is to “improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination”. Does Article 33 discriminate against fixed-term employees?

ECJ’s findings

1. Clause 4(1) of the Framework Agreement prohibits treating fixed-term workers less favourably than comparable permanent workers “in respect of employment conditions”. Does the length of a notice period fall within the definition of “employment conditions”? Based on the objective of Clause 4(1), the ECJ replies affirmatively (§ 20-29).
2. It is for the referring court to determine whether Ms Nierodzik was in a situation comparable to that of other workers employed on a permanent basis by the hospital for the same period. If the referring court finds that Ms Nierodzik did work similar or identical to that of a permanent worker (which may be deduced from the fact that until 15 February 2010 she occupied the same post as such a permanent worker and then continued to do similar work), then it should be found that her situation was comparable. In that case, the application of a two week notice periods constitutes different treatment in respect of employment conditions (§ 30-35).
3. As the ECJ has previously held, reliance on the mere temporary nature of employment is not capable of constituting an objective justification (§ 36-39).

Ruling

Clause 4(1) of the Framework Agreement on fixed-term work [...] annexed to Council Directive 1999/70 [...] must be interpreted as precluding a national rule, such as that at issue in the main proceedings, which provides that, for the termination of fixed-term contracts of more than six months, a fixed notice period of two weeks may be applied regardless of the length of service of the worker concerned, whereas the length of the notice period for contracts of indefinite duration is fixed in accordance with the length of service of the worker concerned and may vary from two weeks to three months, where those two categories of workers are in comparable situations.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-03-13

Case number: C-38/13