

Employment & Benefits - Poland

Breach of equal treatment in employment principle

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In a September 18 2014 judgment (III PK 136/13), the Supreme Court ruled that in order to assess whether a subsidiary had breached the principle of equal treatment in employment, the circumstances of its employees could be compared to those of employees of its parent company. Such a comparison is possible if there is an abuse of the structure of the parent company's legal capacity (ie, legal personality).

Facts

The plaintiff was employed by the defendant (the parent company) from September 1 1972 until November 30 1999. On December 1 1999 the plaintiff was transferred to the defendant's subsidiary on the basis of a transfer of undertakings. On April 13 2010 the parent company executed an agreement with a trade union on a voluntary redundancy programme for employees who were entitled to early retirement or pre-retirement allowance. Subsequently, the subsidiary implemented a similar programme. However, the programme implemented by the subsidiary provided for less favourable benefits than those granted by the parent company. Employees of the subsidiary who participated in the programme were referred to the human resources department of the parent company to finalise the termination of their employment contracts.

On February 23 2011 the plaintiff executed a termination agreement with the employer, pursuant to which the employment contract was terminated as of March 1 2011 and the plaintiff received severance pay of 18 months' remuneration. The plaintiff was aware that this was lower than the amounts received by employees of the parent company under comparable circumstances.

Subsequently, the plaintiff initiated court proceedings against the parent company and claimed for payment of the difference between the amount of severance pay received and the amount of respective severance pay paid to employees of the parent company. The statement of claim was filed not against the employer, but against the parent company, as in the meantime (following termination of the plaintiff's employment contract) there had been a transfer of undertakings from the subsidiary to the parent company.

The district court ruled in favour of the defendant and explained that the plaintiff had not been treated less favourably than other employees of the employer (ie, the subsidiary). The fact that there had been more favourable internal regulations in the parent company concerning the amount of severance pay that had been paid under a voluntary redundancy programme did not justify the claim. Further, the fact that the plaintiff had received lower severance pay than the defendant's employees did not mean that the subsidiary had breached the principle of equal treatment in employment. The plaintiff had been treated in the same way as other employees of the subsidiary.

The regional court subsequently upheld this decision. It emphasised that the defendant and the subsidiary had been (at the time the plaintiff's employment contract was terminated) two independent legal entities and two separate employers. Thus, they had been entitled to introduce employment conditions at their own discretion, as long as they complied with the law.

The plaintiff appealed to the Supreme Court.

Decision

The crucial issue analysed by the Supreme Court was whether, for the purpose of an assessment of whether the principle of equal treatment had been breached, the plaintiff's circumstances could be compared to those of an employee of the parent company who, under a similar voluntary redundancy programme, had received a higher amount of severance pay.

The court confirmed that in general, in determining whether the principle of equal treatment has been breached, the circumstances of employees of one employer only should be analysed. However, in

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this particular case the Supreme Court resolved that the structure of the parent company's legal capacity had been abused and consequently the employee had the right to compare her situation to that of employees of the parent company. The parent company and its subsidiary were closely tied in terms of economic and organisational relations. In particular, the human resources department of the parent company had offered termination agreements to employees of the subsidiary who participated in the voluntary redundancy programme and the parent company had financed the severance pay paid by the subsidiary. Consequently, the court deemed that the equal treatment principle had been violated with regard to employees of the subsidiary.

With this judgment, the Supreme Court also confirmed its position concerning the distinction between unequal treatment and discrimination in employment. Unequal treatment does not always constitute discrimination. Discrimination occurs when an employee was or could have been treated, in a comparable situation, less favourably than other employees due to one or several prohibited criteria (eg, gender, age or sexual orientation). Therefore, if an employee raises claims based on discrimination, he or she should indicate the reason for this. The employer may breach the principle of equal treatment in employment, but where such reasons are lacking, unequal treatment will not be deemed discriminatory. If this is the case, the employee is still entitled to pursue claims on the basis of unequal treatment.

Comment

The Supreme Court judgment concerned the important issue of piercing the corporate veil in Polish employment law. Under Polish commercial law, the general rule is that a shareholder is not responsible for a company's liabilities. However, exceptionally and depending on the case, the Supreme Court will recognise this responsibility if a shareholder which is the parent company of a subsidiary has abused its legal capacity (legal personality). In the case in question, despite formal independence resulting in differences between the employment conditions of employees of the two entities, in practice their economic and organisational dependence made it impossible for the subsidiary to run its own remuneration policy.

If such a position is upheld in subsequent Supreme Court judgments, the existing practice of employers operating in similar structures should be amended. In light of the judgment, it is doubtful whether (and if so, how) the rule issued by the court should also be applied to a group of companies from different countries, where the differences in legal provisions and remuneration policies between them may be significant.

With regard to the definition of 'discrimination', the judgment confirmed the prevailing view of legal commentators and clarified doubts over the understanding of the definitions of 'unequal treatment' and 'discrimination' and the differences between these terms.

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