

Supreme Court judgment on concluding employment agreement with pregnant woman

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Facts

Decision

Comment

In a December 6 2016 judgment (II UK 439/15), the Supreme Court stated that the actual and real performance of an employment relationship is decisive for determining whether the parties actually concluded an employment contract. Entitling a document 'employment agreement' and having it signed by the parties does not determine its legal status – rather, it is crucial that work is performed on the basis provided for in the employment contract.

Facts

The case concerned a pregnant woman who was employed by her father as an office specialist. The employer did not employ anybody in such a position before concluding the employment agreement in question – previously, the employer himself had performed the obligations entrusted to his daughter under the employment contract. Before concluding the employment agreement, the woman was registered as an unemployed person without the right to an unemployment benefit. The Social Security Agency challenged the woman's employment, stating that its sole purpose was to allow her to obtain social security benefits and not to require her to perform work. In the authority's opinion, the employment agreement in question had been concluded for the sake of appearance. The employee appealed to the court.

The first-instance court ruled that that the employee's claim was unjustified and dismissed it. The court supported the Social Security Agency's arguments that the employment agreement had been concluded only to obtain social security benefits. The second-instance court reversed that judgment. In the court's opinion, if it is proven that an employee actually performed the work in question, then it is unjustified to determine the employment agreement as invalid. The court also indicated that statutory law does not prohibit a person from hiring his or her own children. The Social Security Agency appealed to the Supreme Court.

Decision

The Supreme Court ruled that subordination is an essential characteristic of an employment relationship. However, it stressed that the term 'subordination' is evolving due to the development of social relationships. Replacing the former system of strict hierarchical subordination of employees and their obligation to follow their employer's instructions is the concept of 'independent subordination', under which an employer only determines the tasks to be undertaken and the employee may freely decide on the manner of their performance. Subordination is not excluded by family ties or flexible working hours, which may also occur outside of the family business.

The Supreme Court also stated that it is impossible to determine that an employment agreement has been concluded only for the sake of appearance (and is thus invalid) if the employee performs work which the employer accepts. Further, the agreement cannot be determined to be invalid even if the parties indicated false motives or facts, including the date or place of conclusion of the contract, an improper name of the agreement or rights and obligations.

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Comment

Pregnant women entering into employment relationships with their relatives or acquaintances in order to obtain maternity benefits financed by the state is a key issue in Poland. The Social Security Agency is vigorously counteracting such practices and seems to hold the rather unusual opinion that a pregnant woman cannot (by definition) enter into a valid employment agreement. The Polish courts usually take a more balanced approach to this issue, stating that, irrespective of the motives, if an employment relationship is genuine (ie, work is performed), the validity of the contract is not to be questioned and the employee is eligible for maternity benefits.

The above judgment follows the Supreme Court's established case law, that concluding an employment agreement with a pregnant woman may not be a reason in itself to cause its annulment (which will result in the denial of sickness and maternity benefits).

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