

Poland, District Court Wroclaw, Judgement of August 3, 2016

Deciding bodies and decisions

District Court in Wroclaw Srodmiescie, X P 20/16, 3rd August 2016

Area of law

Non-discrimination

Subject matter

Disciplinary unilateral termination of a labour agreement - pregnancy - maternity leave - discrimination on the basis of sex - judicial reinstatement decision

Summary Facts Of The Case

The plaintiff, Ms Ewa W. was employed for several years as a secretary in the defendant's office. She was assessed very well until she became pregnant with her first child. The plaintiff suffers from diabetes and hypothyroidism and because of that her pregnancy was threatened.

When the plaintiff informed the employer about her pregnancy, he refused to pay her the extra stipend attributed to pregnant employees according to the rules of the office.

Due to a risk of miscarriage, the plaintiff asked to anticipate the maternity leave; then after the birth of the child, she asked for an extension of the maternity leave with an annual leave, according to Polish Labour Code provisions 163 § 3. The employer refused because of the long absence at work. After Labour Inspection carried out a control, the employer allowed the plaintiff to take an annual leave, however the employer did not pay her remuneration for that time.

During the annual leave the plaintiff realised that she is pregnant again and that she is suffering from a ovary tumour. In that reflection she was sent for sick leave.

When the plaintiff had sent the sick leave, the defendant employer sent the information to the prosecutor office about the possibility of obtaining under false pretences.

Under the decision taken on 30 March 2016 the Public Prosecutor discontinued proceedings against the plaintiff because he did not find any false or unfair conduct in prescribing the sick leave.

Subsequently, the employer informed ZUS (Social Insurance Office) about his suspicion connected to the plaintiff's conduct and effort in failing to obtain social insurance during sick leave. After the control, ZUS did not find any false or unfair conduct in prescribing the sick leave by a doctor or exploiting its sick leave by the plaintiff.

In the meantime, the employer, controlled on his own the way how the sick leave was used by the

plaintiff and ordered several inspections of the plaintiff's absence at home. In the result of those controls the plaintiff stayed at home, however one time she was absent because she went to a hospital.

On 15 April 2016, the plaintiff obtained a unilateral decision of the employers disciplinary termination of the labour agreement. The employer clarified that the plaintiff Ewa W. was disloyal because she used several sick leaves, the employer had no contact with her, and she probably wanted to obtain unfairly social benefits.

The court held that all the evidence showed that the disciplinary dismissal of the plaintiff was connected to her pregnancy and illness. In the opinion of the court, the dismissal was prohibited direct discrimination on the grounds of gender.

Appeal from the employer has been filled. It is not final yet.

Relation to the scope of the Charter

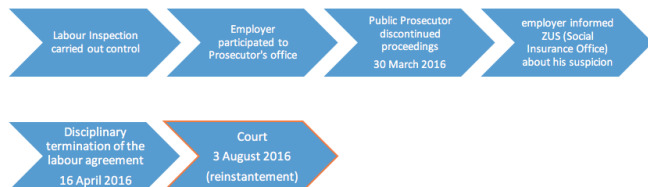
Articles 21 - Non-discrimination

Article 33 - family and professional life

The case fell within the scope of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and consequence the Charter was found applicable pursuant to Article 51(1) therein.

Diagram

Timeline representation of the case



Sources - EU and national law

Constitution of Poland, Article 18

Labour Code of Poland, Articles 45 § 3, 56 § 2, 177 § 1

Council Directive 92/85/EEC Art. 10

Charter, Articles 21 and 33

Sources - CJEU Case Law

- Dekker versus Stichting Vormingscentrum voor Jong Volwassenen, sygn. C-177/88
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