



Reports of Cases

Case C-38/13

Małgorzata Nierodzik

v

Samodzielny Publiczny Psychiatryczny Zakład Opieki Zdrowotnej im. dr Stanisława Deresza w Choroszczy

(Request for a preliminary ruling from the Sąd Rejonowy w Białymstoku)

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Concept of ‘employment conditions’ — Notice period for the termination of a fixed-term employment contract — Difference in treatment between workers on contracts of indefinite duration)

Summary — Judgment of the Court (Eighth Chamber), 13 March 2014

1. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Conditions of employment — Concept — Notice period of termination of a fixed-term contract of employment — Included*

(Council Directive 1999/70, Annex, clause 4(1))

2. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Workers doing the same work — Same work — Concept — Workers in a similar situation — Criteria for assessment — Nature of the work, training requirements and working conditions — Determination by the national court*

(Council Directive 1999/70, Annex, clauses 3(2) and 4(1))

3. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Prohibition on discrimination against fixed-term workers — National legislation providing for the application of different notice periods for the termination of fixed-term and permanent employment contracts — Failure to take account of the worker’s length of service — Justification based on the length and stability of the employment relationship — Unlawful*

(Council Directive 1999/70, Annex, clause 4(1))

1. The decisive criterion for determining whether a measure falls within the scope of ‘employment conditions’ within the meaning of clause 4(1) of the Framework Agreement on fixed-term work, which is annexed to Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP is the criterion of employment, that is to say the employment relationship between a worker and his employer. An interpretation of that clause which excludes from

the definition of ‘employment conditions’ conditions relating to termination of a contract of employment, such as the notice period, would limit the scope of the protection granted to fixed-term workers against discrimination, in disregard of the objective assigned to that provision.

(see paras 25, 27)

2. See the text of the decision.

(see paras 31-33)

3. Clause 4(1) of the Framework Agreement on fixed-term work, which is annexed to Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding national legislation 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.

A difference in treatment with regard to employment conditions as between fixed-term workers and permanent workers cannot be justified on the basis of a criterion which, in a general and abstract manner, refers precisely to the term of the employment. If the mere temporary nature of an employment relationship were held to be sufficient to justify a difference in treatment, the objectives of Directive 1999/70 and the Framework Agreement would be negated and recourse to such a criterion would perpetuate a situation unfavourable to fixed-term workers. Similarly, the stability of the employment relationship that a fixed-term contract is supposed to promote cannot constitute an objective ground within the meaning of clause 4(1) of the Framework Agreement.

(see paras 38-40, operative part)