

# GMS Flash Alert

## Employment Law

2024-047 | March 4, 2024



## European Union – Dismissal of Fixed-Term Employees Must Be Reasoned

On 20 February 2024, the Court of Justice of the European Union (CJEU) ruled<sup>1</sup> that the employer must state reasons for termination of a fixed-term employment contract with a notice period just as is required in permanent employment contracts. Fixed-term contract in this context describes a contract where the end of the contract is determined by objective conditions such as reaching a specific date, completing a specific task, etc.<sup>2</sup>

The outcome of this ruling may come as a surprise given that Advocate General Pitruzzella argued that the difference in treatment of permanent employment contracts and fixed-term employment contracts is possible between private parties and is not in breach of European Union (EU) law.<sup>3</sup>

### WHY THIS MATTERS

The outcome of this ruling means that dismissal of workers under fixed-term contracts must be motivated (that is, there must be a reason). If an employer refuses to state reasons for dismissal, an employee can take the employer to court and with this ruling have the court force the employer to provide reasons for dismissal.

More importantly, this ruling might have much wider consequences for the application of EU directives in general. In this ruling, the Court has expanded the ability of a directive to be invoked in litigation between private parties (thus, a “horizontal effect”). Further, the CJEU has reached this ruling by interpreting the EU directive for fixed-term contracts in conjunction with a fundamental right to remedy, which is new, and in principle can be applied to the interpretation and implementation of any European directive. This can lead to more extensive direct effect of EU directives in the future.

## About the Case

K.L. and a company in Poland entered into a fixed-term employment contract from 1 November 2019 to 31 July 2022. On 15 July 2020, the company notified K.L. about the termination of the employment contract by means of a statement and respected one-month notice period. Termination took effect on 31 August 2020. Reasons for termination were not stated.

K.L. claimed that dismissal was unlawful, and he claimed compensation. K.L. stated, among other things, that even though Polish law does not require that reasons for dismissal be given in fixed-term contracts, such difference of treatment is discriminatory.

According to Polish law, reasons for dismissal are required in permanent employment contracts and not in fixed-term contracts.

European Directive 1999/70 aims to put into effect the framework agreement in fixed-term contracts that stipulates the principle of non-discrimination in respect of employment conditions for fixed-term workers. Different treatment of fixed-term contracts may be justified on objective grounds.

The Advocate General argued that the non-discrimination clause in EU Directive 1999/70 is not an absolute obligation of equal treatment between permanent workers and fixed-term workers. The two types of contracts have different socio-economic functions and that non-discrimination in working conditions between permanent and fixed-term workers applies to comparable working conditions.

The CJEU disagreed with this reasoning and found that Polish implementation of Directive 1999/70 that made a distinction concerning the reason for dismissal between permanent workers and fixed-term workers was unjustified and infringing EU law. The Court mentioned, among other things, that if a fixed-term worker doubts the validity of the reasons for dismissal, for example the worker's dismissal is discriminatory, the worker is left with no other choice but to bring the employer to court and challenge the dismissal.

By not requiring that reasons for dismissal be stated in fixed-term contracts, Polish legislation deprives fixed-term workers of important information for assessing whether the dismissal is unjustified. The Court concluded that such difference in treatment of fixed-term workers compared to permanent workers was in principle depriving fixed-term workers of the right to an effective remedy that is guaranteed in the European Charter of fundamental rights.<sup>4</sup>

This ruling means that Poland's Labour Code will have to change to comply with the ruling.

## MEIJBURG & CO. INSIGHTS

The obvious consequence of this ruling is that the employer must provide a reason for dismissal where fixed-term employment contracts are concerned. Poland, and any other EU member state that has national legislation that allows employers to avoid stating a reason for dismissal in fixed-term employment contracts, will have to adapt their legislation and rules to comply with the outcome of this case.

However, this ruling might have much wider consequences concerning the ongoing issue of direct effect of EU directives. This ruling expands the ability of European directives to be invoked in litigation between private parties.

After reminding that EU directives do not have horizontal effect, the CJEU states that this case has horizontal effect to a point. If an obligation on the employer to state reasons for dismissal is an essential informative element for the worker to challenge the dismissal in court, then such measure limits the worker's fundamental right to effective remedy. Such outcome does not only affect the two private parties, but it also affects workers' access to the court system.

This interpretation of an EU directive in conjunction with a fundamental right is rather a new step in the ongoing discourse regarding direct effect of directives. In principle, this means that this approach can be applied to interpretation of any European directive and in the end could lead to extensive direct effect of such directives.

## FOOTNOTES:

- 1 Court of Justice for European Union: [Case C-715/20 K.L.](#), 20 February 2024.
- 2 Council Directive [1999/70/EC concerning framework agreement on fixed-term work](#), 28 June 1999.
- 3 Opinion of [Advocate General Pitruzzella in case C-715/20 K.L.](#), 30 March 2023.
- 4 Charter of [Fundamental Rights of the European Union](#), Article 47, 18 December 2000.

\* \* \* \*

## Contact us

For additional information or assistance, please contact your local GMS or People Services professional\* or the following professional with the KPMG International member firm in the Netherlands:



**Daida Hadzic**  
**EMA Head of Quality**  
Tel. +31 6 532 54 599 (m)  
[Hadzic.daida@kpmg.com](mailto:Hadzic.daida@kpmg.com)

*\* Please note the KPMG International member firm in the United States does not provide immigration or labour law services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

**The information contained in this newsletter was submitted by the KPMG International member firm in the Netherlands.**

© 2024 Meijburg & Co is a partnership of limited liability companies under Dutch law, is registered in the Trade Register under number 53753348 and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

[www.kpmg.com](http://www.kpmg.com)

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

Learn about us:



[kpmg.com](http://kpmg.com)

© 2024 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Printed in the U.S.A. USCS001250-2C

The KPMG name and logo are registered trademarks or trademarks of KPMG International. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG LLP is the U.S. firm of the KPMG global organization of independent professional services firms providing Audit, Tax and Advisory services. The KPMG global organization operates in 147 countries and territories and has more than 219,000 people working in member firms around the world.

Each KPMG firm is a legally distinct and separate entity and describes itself as such. KPMG International Limited is a private English company limited by guarantee. KPMG International Limited and its related entities do not provide services to clients.

*GMS Flash Alert* is a publication of the KPMG LLP Washington National Tax practice.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.