

SUMMARY

<p>ECJ 26 February 2015, case C-515/13 (Igneni & oslash; rforeninge n i Danmark & ndash; v & ndash; Tekniq), Age discrimination</p>

Facts

Mr Landin was employed by Enco. At his request, payment of his State retirement pension, which would normally have started at age 65, was postponed until age 67. In November 2011 he turned 67. Enco dismissed him giving six months' notice. He was not paid a severance allowance. This was in accordance with the Danish Law on salaried employees, which provides that an employee who has been continuously employed for 12, 15 or 18 years is eligible for a severance award upon termination of his employment equal to one, two or three months' salary, respectively, but which also provides (in paragraph 2a(2)) that this does not apply if the employee is entitled to a State retirement pension upon termination of his employment. Mr Landin worked during his notice period (until he was 67½ years old) and then found a new job with another company.

National proceedings

Mr Landin brought an action seeking payment of a severance allowance. He argued that the exception for retirees to entitlement to a severance allowance is contrary to EU law. The court referred a question to the ECJ.

ECJ's findings

The national legislation at issue provides for a difference of treatment based directly on grounds of age. It is necessary to examine whether that difference may be justified (§ 14-17). The severance allowance aims to facilitate the move to new employment for older employees

who have many years of service with the same employer. The restriction of the benefit of the allowance to workers who are not eligible for a State retirement pension is based on the premise that those who are eligible for a State retirement pension will generally decide to leave the labour market. This is a legitimate aim (§18-22).

Restricting severance allowance to only those workers who, on termination of the employment relationship, are not entitled to a State retirement pension does not appear unreasonable in the light of the objective pursued by the legislature of providing increased protection for workers for whom it is difficult to find new employment as a result of their length of service in an undertaking. Paragraph 2a(2) also makes it possible to limit the scope for abuse by preventing workers who intend to retire from claiming a severance allowance which is intended to support them while seeking new employment (§ 27-29).

The Danish legislature balanced the protection of workers who, because of their length of service in an undertaking, are generally among the oldest workers, against the protection of younger workers who are not entitled to severance allowance. It took account of the fact that severance allowance, as an instrument for giving greater protection to a category of workers defined in relation to their length of service, constitutes a form of difference of treatment to the detriment of younger workers. The measure thus aims to ensure, in accordance with the principle of proportionality and the need to counter abuse, that severance allowance is payable only to those for whom it is intended, namely those who intend to continue to work but, because of their age, generally encounter more difficulties in finding new employment. The provision thus prevents the severance allowance from being paid to workers who will in any event be eligible for a State retirement pension. It is apparent from the foregoing that Paragraph 2a(2) does not go beyond what is necessary to attain the objectives which it pursues insofar as it excludes from entitlement to severance allowance workers who will, on termination of the employment relationship, receive a State retirement pension. It should, however, be ascertained whether this finding is put into question by the fact that the provision treats those who will actually receive a State retirement pension in the same way as those who are eligible for such a pension (§ 30-33).

Paragraph 2a(2) of the Law on salaried employees excludes all workers from entitlement to the severance allowance who, upon termination of their employment relationship are eligible for a State retirement pension. It must therefore be examined whether such an exclusion does not go beyond what is necessary to achieve the objectives pursued. The exclusion is based on the idea that, generally speaking, employees leave the labour market if they are eligible for a State retirement pension. As a result of that age-based assessment, a worker who satisfies the criteria for eligibility for a State retirement pension, yet wishes to waive his pension rights temporarily and to continue in his career, will not be able to claim a severance allowance even though this is intended to protect him. Thus, in pursuing the legitimate aim of preventing the

allowance from being claimed by persons who are not seeking new employment but will receive a replacement income in the form of a State retirement pension, the measure at issue deprives workers who have been made redundant and who wish to remain in the labour market of entitlement to the severance allowance merely because they could, because of their age, draw such a pension (§ 34-35).

The facts in this case can be distinguished from those in *Andersen* (ECJ 12 October 2010, case C-499/08). That case concerned, not Article 2a(2), but Article 2a(3) of the Law on salaried employees, which provides that no severance shall be payable, if the employee will – on termination of the employment relationship – receive an old-age pension from the employer. The ECJ held that said Article 2a(3) made it more difficult for such a worker subsequently to exercise his right to work because he was not entitled to severance allowance whilst seeking new employment. The ECJ found that there was a risk that those workers would thus be forced to accept a reduced pension entitlement, leading to a significant reduction in their income in the long term (§ 36-37).

Given that the pension at issue in *Andersen* was paid from the age of 60, any employee of that age would be entitled upon termination of the employment relationship to a smaller pension than that which the employee would otherwise have been entitled to, had he continued to work until the requisite age before retiring. As a consequence, such an employee would risk receiving a reduction in pension entitlement on the grounds of taking early retirement. This is not the case in the main proceedings, which concern the exclusion of severance allowance where the salaried employee is entitled to receive a State retirement pension upon termination of the employment relationship (§38-39).

The risk of incurring a reduction in pension entitlement on the grounds of early retirement does not, in principle, concern employees who are entitled to a State retirement pension upon termination of employment, such as Mr Landin, who was 67 years old at the time. Moreover, to the extent that the severance allowance is a lump sum payment corresponding to one, two or three months' salary, a provision such as the one at issue in the main proceedings does not appear capable of causing a significant loss of income to the departing employee in the long term. In that regard, the main proceedings may equally be distinguished from the facts arising in *Toftgaard* (C-546/11), which concerned the exclusion of those officials who were entitled to a pension at the age of 65 from entitlement to retain their current salary for three years post termination of the employment relationship. These findings are not called into question by the fact that, as is the case with Mr Landin, an employee can increase his pension entitlement by continuing to work beyond the normal age of retirement (§40-43).

Ruling

Articles 2(1), 2(a) and 6(1) of Council Directive 2000/78 must be interpreted as meaning that

they do not preclude national legislation, such as the legislation at issue in the main proceedings, from providing that an employer must, upon termination of the employment relationship of a salaried employee who has been continuously employed in the same undertaking for 12, 15 or 18 years, pay an amount equivalent to one, two or three months' salary, unless the salaried employee is entitled to receive a State retirement pension upon termination of employment to the extent that legislation is both objectively and reasonably justified by a legitimate aim relating to employment and labour market policy as well as constituting an appropriate and necessary means of achieving that aim. It is for the national court to satisfy itself that this is the case.

Creator: European Court of Justice (ECJ)

Verdict at: 2015-02-26

Case number: C-515/13