

SUMMARY

ECJ 17 July 2014, case C-173/13 (Maurice and Blandine Leone - v - Garde des Sceaux, ministre de la Justice and Caisse nationale de retraite des agents des collectivités locales), Gender discrimination, Pension

Facts

Mr Leone was a civil servant. He and his wife have three children. In 2005, Mr Leone applied for early retirement benefits as provided in Article L. 24 (I)(3) of the French Pensions Code. Briefly, and inasmuch as relevant for the purposes of this summary, this provision, in combination with several other provisions of French law, (i) entitles a civil servant to early retirement with immediate payment of pension and (ii) extra retirement benefits (service credits) equal to four trimesters for each child born before 2004, provided the civil servant has taken an unpaid “career break” of at least two months in the form of maternity leave or parental leave immediately before or shortly after each birth (with similar provisions for adopted and foster children).

National proceedings

Mr Leone’s application was refused on the ground that he had not taken any career breaks, and an appeal against this refusal was turned down. Mr and Mrs Leone then began proceedings against the French government and the national pension fund for local civil servants CNRACL, claiming loss suffered as a result of failure by France to comply with EU law. The *Tribunal administratif de Lyon* dismissed their claim. They appealed to the *Cour administrative d’appel de Lyon*, which referred three questions to the ECJ on the interpretation

of Article 157 TFEU.

ECJ's findings

The ECJ (Fourth Chamber) turns down the request to reassign the case to the Grand Chamber and to reopen the oral procedure (§ 16-27).

The ECJ also turns down the French government's request to declare the request for a preliminary ruling inadmissible (§ 28-34).

The ECJ observes that, as the rejection of Mr Leone's application for early retirement and service credits predates 1 December 2009, the date on which the Lisbon Treaty entered into force, the questions referred to the ECJ should be addressed in the light of Article 141 EC, the (similar) predecessor of Article 157 TFEU (§ 35).

The ECJ also observes that the French provisions on service credits were adopted after the ECJ's judgment in Griesmar (C-366/99). In that judgment, the ECJ held that, in reserving service credits for female civil servants, the French legislator had breached Article 141 EC (§ 36-37).

The possibility of taking a career break is open to civil servants of both sexes. However, the criterion of having taken at least two months maternity or parental leave benefits many more women than men, given that maternity leave is mandatory, whereas other types of leave, such as parental leave, are optional. Moreover, parental leave is unpaid, does not qualify for the accumulation of pension rights and leads to loss of career advancement rights. Thus, the legislation at issue is indirectly sex-discriminatory (§ 38-51).

The purpose of the service credit is to compensate for the career-related disadvantages resulting from career breaks for reason of birth. This constitutes a legitimate social policy aim. However, Mr and Mrs Leone, as well as the Commission, submit that the French Republic substituted a new mechanism for the earlier one that was declared in breach of EU law in Griesmar, under the guise of measures which are ostensibly gender-neutral but in reality uphold the earlier mechanism and ensure that the actual effects of those earlier measures will be maintained and perpetuated. The ECJ points out a number of inconsistencies in the legislation that seem to cast doubt on whether it genuinely aims to provide financial compensation for the financial impact of taking career breaks (§ 52-79).

The same considerations hold true with respect to the early retirement provision (§ 80-98). The service credit provisions and the early retirement provisions are not covered by subsection 4 of Article 141 EC, which allow Member States to adopt measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers (§ 99-103).

Ruling

Article 141 EC must be interpreted as meaning that a scheme for early retirement with immediate payment of pension such as that at issue in the main proceedings gives rise to indirect discrimination in terms of pay as between female workers and male workers, contrary to that article, unless it can be justified by objective factors unrelated to any discrimination on grounds of sex, such as a legitimate social policy aim, and is appropriate to achieve that aim and necessary in order to do so. This requires that it genuinely reflect a concern to attain that aim and be pursued in a consistent and systematic manner.

Article 141 EC must be interpreted as meaning that a service credit scheme for pension purposes, such as the one at issue in the main proceedings, gives rise to indirect discrimination in terms of pay as between female workers and male workers, contrary to that article, unless it can be justified by objective factors unrelated to any discrimination on grounds of sex, such as a legitimate social policy aim, and is appropriate to achieve that aim and necessary in order to do so. This requires that it genuinely reflect a concern to attain that aim and be pursued in a consistent and systematic manner.

Article 141(4) EC must be interpreted as meaning that the measures referred to in that provision do not cover national measures such as those at issue in the main proceedings, which merely allow the workers concerned to take early retirement with immediate payment of pension and to grant them a service credit upon their retirement, without providing a remedy for the problems which they may encounter in the course of their professional career.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-07-17

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