

SUMMARY

ECJ 3 September 2014, case C-318/13 (X - v - Finland), Gender discrimination, Social security

Facts

X was injured in an accident at work in 1991. In 2005, the Finnish Insurance Court held that he was entitled to a lump sum payment of compensation for long-term disability. Following this decision, the competent insurance company paid X € 4,197.98. This sum represented X's annual loss multiplied by the number of years he was estimated to continue living based on actuarial statistics. X appealed against this decision, because what he was paid was less than he would have been awarded had he been a woman, given the longer life-expectancy of women. His appeal was rejected in 2008. X then wrote to the Ministry of Social affairs and Health, claiming payment of € 278.89. This sum corresponds to the difference between what X was paid and what he would have been paid had he been a woman.

National proceedings

The Helsinki Administrative Court declared X's action inadmissible on the ground that it lacked jurisdiction. X appealed to the Supreme Administrative Court, which referred questions to the ECJ relating to Article 4(1) of Directive 79/7 on equal treatment for men and women in matters of social security.

ECJ's findings

The Finnish government argued that the ECJ lacked jurisdiction, given that the accident occurred before Finland joined the EU. The ECJ rejected this argument, because the legal act in question – the rejection of X's appeal in 2008 – postdated Finland's accession. Thus the subject matter of the proceedings in the main case "is not a situation which had produced all

its effects” before Finland’s accession to the EU (§ 21-24).

Although the compensation at issue is paid by a private insurance company, the accident insurance of employees in Finland and the criteria for compensation form part of the “statutory” schemes within the meaning of Directive 79/7. Consequently, the compensation at issue falls within the scope of that directive (§ 25).

The Finnish government argues that X is not comparable to a (hypothetical) woman of the same age as X who suffered an identical accident on the same day as he did. Since women have a statistically longer life expectancy than men, the lump-sum compensation to remedy the harm suffered for the remainder of the injured person’s life must be higher for women than for men. Consequently, men and women are not comparable in this respect. This argument is not valid. It could, at most justify the unequal treatment, but it does not mean that there is no comparator (§ 29-33).

Directive 79/7 does not allow for any relevant derogation from the principle of equal treatment (§ 34-36).

The calculation of compensation for an accident at work cannot be made on the basis of a generalisation of average life expectancy. Such a generalisation is likely to lead to discrimination. Therefore, the national scheme at issue cannot be justified and is at odds with directive 79/7 (§ 37-40).

Do the provisions of Finnish law at issue constitute a “sufficiently serious” infringement, within the meaning of *Brasserie du Pêcheur* (C-46/93) and *Factortame* (C-48/93), for the Republic of Finland to be liable for X’s loss resulting from that Member State’s failure to transpose Directive 79/7 fully? As regards the present case, three factors must be taken into account. First, the scope of the principle of equal treatment set out in Article 4(1) of Directive 79/7 and its interpretation have not, to date, been dealt with in an ECJ judgment. Secondly, no national legislation has, to date, been the subject of an action for infringement of Article 4(1) of Directive 79/7. Thirdly, Article 5(2) of Directive 2004/113 allowed Member States until 21 December 2007 to permit proportionate differences in individuals’ premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. Admittedly, the ECJ in *Test-Achats* (EU:C:2011:100) held this provision to be invalid. However, the fact remains that the provision was there. Moreover, Article 9(1)(h) of Directive 2006/54 allows the use of sex-based actuarial factors, in derogation from the principle of gender equality (§ 41-51).

Ruling

Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as precluding national legislation on the basis of which the

different life expectancies of men and women are applied as an actuarial factor for the calculation of a statutory social benefit payable upon an accident at work, when, by applying this factor, the lump-sum compensation paid to a man is less than that which would be paid to a woman of the same age and in a similar situation.

It is for the referring court to assess whether the conditions for the Member State to be deemed liable are met. Similarly, as regards whether the national legislation at issue in the main proceedings constitutes a 'sufficiently serious' infringement of EU law, that court will have to take into consideration, inter alia, the fact that the Court has not yet ruled on the legality of taking into account a factor based on average life expectancy according to sex in the determination of a benefit paid under a statutory social security system falling within the scope of Directive 79/7. The national court will also have to take into account the right granted to Member States by the EU legislature, set out in Article 5(2) of Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, and Article 9(1)(h) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. In addition, that court should bear in mind that the Court held, on 1 March 2011 (C-236/09, EU:C:2011:100), that the first of those provisions was invalid, since it infringed the principle of equal treatment between men and women.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-09-03

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