

SUMMARY

ECJ 12 September 2013, case C-614/11 (Niederösterreichische Landes- Landwirtschaftskammer - v - Anneliese Kuso), Gender discrimination

Facts

Ms Kuso was employed on the basis of a permanent employment contract that provided that it would terminate automatically at age 60. Her employer refused to allow her to work beyond that age. She claimed that this was discriminatory, given that her male colleagues had contracts that did not terminate until age 65.

National proceedings

Ms Kuso brought proceedings in which she contested the lawfulness of the termination of her employment relationship. The Oberlandesgericht found in her favour. Her employer appealed to the Oberster Gerichtshof (Supreme Court), which referred a question to the ECJ on the interpretation of Directive 76/207.

ECJ's findings

1. The ECJ rejected the argument that Directive 76/207 fails to apply on the ground that the Austrian legislation at issue and Ms Kuso's employment already existed at the time Austria became a Member State (1 January 1995), given that new rules apply immediately to the future effects of a situation which arose under the old rules (§ 22-31).
2. Article 3(1) of the Directive prohibits sex discrimination "*in relation to conditions for access to employment [... and] dismissals [...]*". Does this mean that national legislation, under which an employment relationship is to come to an end through lapse of time expressed in terms of an age for men and a different age for women, constitutes discrimination? (§ 33). "*Admittedly, the*

Court has held that the non-renewal of a fixed-term employment contract when it comes to the end of its specified term cannot, in principle, be regarded as a case of dismissal (see, to that effect, Case C-438/99 Jiménez Melgar [...] paragraph 45). However, it is settled case-law that, in the field of equal treatment, the term “dismissal” is broadly construed [...]. Specifically, the Court has held that, in the context of Directive 76/207, the term “dismissal” must be so construed as to cover the ending of the employment relationship between a worker and his employer, even as part of a voluntary redundancy scheme (Burton, paragraph a), and that a general policy concerning dismissal involving the dismissal of a woman solely because she has attained or passed the qualifying age for a retirement pension, that age being different under national legislation for men and for women, constitutes discrimination on grounds of sex [...]”. Therefore, the ending of Ms Kuso’s employment relationship amounts to a case of dismissal for the purposes of Article 3(1)(c) of Directive 76/207 (§ 34-39).

3. The legislation at issue creates a difference in treatment which is directly on grounds of sex. The question is whether male and female employees, in circumstances such as those at issue, are in a comparable situation. As the ECJ held in Hlozek (C-19/02) and Kleist (C-356/09), comparability must be examined in the light of the object of the legislation establishing the difference in treatment (§ 41-45).

4. In a case such as this, male and female employees are in a comparable situation because the advantage to female employees of an earlier retirement date is not directly related to the object of the different treatment and that advantage does not place female employees in a specific situation vis-à-vis male employees, given that the situations of men and women are identical so far as the conditions governing termination of the employment relationship are concerned (§ 47-49).

5. Direct sex discrimination cannot be objectively justified (§ 50-52).

Ruling

Article 3(1)(c) of Council Directive 76/207 [...] must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, consisting of a body of employment rules which form an integral part of an employment contract concluded before the Member State concerned acceded to the European Union and under which the employment relationship is to come to an end upon attainment of the fixed retirement age, which differs depending on whether the employee is a man or a woman, constitutes discrimination prohibited by that Directive where the employee concerned reaches that age after the accession.

Creator: European Court of Justice (ECJ)

Verdict at: 2013-09-12

Case number: C-614/11