

SUMMARY

ECJ 11 April 2013, case C-401/11 (Blanka Soukupová - v - Ministerstvo zemědělství), Gender discrimination

Facts

The age at which Czech citizens become eligible for state retirement benefits differs for men and women and, for women, on the number of children they have raised. This difference is not in breach of Directive 79/7 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, because Article 7(1) of that Directive allows Member States to exclude from its scope (i) “the determination of pensionable age for the purposes of granting old-age and retirement pensions” and (ii) “advantages in respect of old-age pension schemes granted to persons who have raised children”.

Ms Soukupová was a farmer. Having raised two children, she became eligible for state retirement benefits at age 57 and 4 months. In 2006, by which time she had reached the age of 59, she applied for benefits under the Czech support scheme for early retirement. This scheme is basically the transposition of Regulation (EC) 1257/1000 on support for rural development. Article 10 of this Regulation provides: “Support for early retirement from farming shall contribute to the following objectives: to provide an income for elderly farmers who decide to stop farming, to encourage the replacement of such elderly farmers by farmers able to improve, where necessary, the economic viability of the remaining agricultural holdings, to reassign agricultural land to non-agricultural uses where it cannot be farmed under satisfactory conditions of economic viability”. Article 11 sets out the conditions under which a farmer who stops farming is eligible for early retirement benefits. One of these conditions is that the farmer is not less than 55 years old “but not yet of normal

retirement age”.

Ms Soukupová’s application for early retirement benefits was turned down because the Czech law implementing Regulation 1257/99 required applicants to have reached the age of 55 but not yet the age for entitlement to a state pension. Given that Ms Soukupová was already in receipt of a state pension at the time she filed her application, she was ineligible under Czech law.

National proceedings

Ms Soukupová challenged the rejection of her application for early retirement benefits, arguing that the requirement under Czech law that an applicant be below the age for entitlement to a state pension was (i) in conflict with the requirement under Regulation 1257/1999 that an applicant be “not yet of normal retirement age” and (ii) discriminatory on the basis of gender, given that, under Czech law, women who have raised more children enjoy a shorter period in which to apply for early retirement from farming than that granted to men or women who have raised fewer children.

The court of first instance turned down Ms Soukupová’s claim. On appeal, this judgment was overturned. The government (Ministry of Agriculture) appealed to the Supreme Administrative Court. It referred three questions to the ECJ.

ECJ’s findings

1. With its first two questions, the referring court asked, in essence, whether it is compatible with EU law for “normal retirement age” in Regulation 1257/1999 to be determined differently depending on gender and, in the case of female applicants, on the number of children raised (§ 22).
2. Early retirement support under Regulation 1257/1999 acts as an economic incentive which seeks to encourage elderly farmers to stop farming, earlier than they would do under normal circumstances and, thus, to facilitate structural change in the agricultural sector. It is an instrument of the Common Agricultural Policy and not a social security benefit falling within the scope of Directive 97/7. Therefore, Member States may not rely on the difference in treatment that Article 7(1) of that Directive authorises them to retain when defining retirement age in the field of social security (§ 23-26).
3. In implementing Regulation 1257/1999, the Member States must respect the principle of equal treatment and non-discrimination enshrined in Articles 20, 21 and 23 of the

Charter of Fundamental Rights of the EU (§ 27-28).

4. According to settled case-law, those principles require that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified. It is clear that elderly female farmers and elderly male farmers are in comparable situations, in the light of the purpose of Regulation 1257/1999. In those circumstances, it would be contrary to EU law and the general principles of equal treatment and non-discrimination for those situations be treated differently, without objective justification (§29-33).

5. Contrary to the submissions of the Czech and Polish governments, the difference in treatment at issue cannot be justified (§ 34).

3. Where discrimination contrary to EU law has been established, observance of the principle of equality can be ensured only by granting to persons within the disadvantaged category the same advantages as those within the favoured category (see ECJ case C-18/95 Terhoeve and C-399/09 Landtová) (§ 35).

Ruling

It is incompatible with EU law and the general principles of equal treatment and non-discrimination for “normal retirement age” in Regulation 1257/1999 to be determined differently depending on gender and, in the case of female applicants, on the number of children raised.

Creator: European Court of Justice (ECJ)

Verdict at: 2013-04-11

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