SUMMARY

ECJ 5 July 2012, case C-141/11 (Torsten Hörnfeldt - v - Posten Meddelande AB), Age discrimination

Facts

Torsten Hörnfeldt was a postal worker. When he turned 67, his contract ended pursuant to the "67-year rule" under Swedish law. This rule provides that (i) all employees have the right to remain employed until the end of the month in which they reach the age of 67 and that (ii) employment contracts terminate automatically at that age, provided the employer gives one month's notice. Mr Hörnfeldt, who had worked part-time for many years, received monthly retirement benefits that were lower than he considered sufficient. He brought proceedings seeking to annul the termination of his contract on the ground that the 67-year rule constitutes unlawful age discrimination.

National proceedings

The court, basing its findings on, inter alia, Mangold, took the view that the 67-year rule was age discriminatory and referred to the ECJ the question of whether the difference of treatment could be regarded as objectively justified, noting that no explanation of specific grounds for the unconditional right given to an employer to dismiss an employee at age 67 is to be found in the preparatory documents relating to the 67-year rule and that that right is independent of the amount of pension to which the employee is eligible.

ECJ's findings

1. It cannot be inferred from Article 6(1) of Directive 2000/78 that a lack of precision in the national legislation as regards the aim pursued has the effect of automatically excluding the possibility that that legislation may be justified. In the absence of such precision, it is important that other elements, derived from the general context of the measure concerned,

should make it possible to identify the underlying aim of the measure and whether the means put in place to achieve it are appropriate and necessary (§ 24).

2. As for the aim of the 67-year rule, the Swedish government argued that that rule seeks (i) to avoid termination of employment contracts in situations which are humiliating for workers by reason of their advanced age; (ii) to enable retirement pension regimes to be adjusted to rules that came into effect in 1996; (iii) to reduce obstacles for those who wish to work beyond age 65; (iv) to adapt to demographic developments and to anticipate the risk of labour shortages; (v) to establish a right, and not an obligation, to work until age 67; and (vi) to make it easier for young people to enter the labour market (§ 26).

3. The ECJ has held that the automatic termination of the employment contracts of employees who meet the conditions as regards age and pension contributions has, for a long time, been a feature of employment law in many Member States. It is a mechanism based on the balance to be struck between political, economic, social, demographic and/or budgetary considerations and the choice to be made between prolonging people's working lives or, conversely, providing for early retirement (§ 28).

4. Encouragement of recruitment undoubtedly constitutes a legitimate aim of Member States' social or employment policy, in particular when the promotion of access of young people to a profession is involved (§ 29).

5. Therefore, aims such as those described by the Swedish Government must, in principle, be regarded as objectively and reasonably justifying a difference in treatment on the grounds of age such as that provided by the 67-year rule (§ 30).

6. In the light of the broad discretion granted to Member States to choose to pursue a particular aim and to define measures to implement it, it does not appear unreasonable to take the view that a measure such as the 67-year rule may be appropriate for achieving the aims set out above (§ 32).

7. In order to examine whether the 67-year rule goes beyond what is necessary for achieving its objective, it must be viewed against its legislative background and account must be taken both of the hardship that it may cause to the persons concerned and of the benefits derived from it by society in general. Relevant factors in this regard are the fact that in Sweden (i) employees have the unconditional right to continue in their profession until age 65; (ii) the 67-year rule does not establish a mandatory scheme of automatic retirement, in

that the parties may agree to continue their relationship beyond age 67, if so desired on the basis of a fixed-term contract; (iii) the 67 year rule takes account of the fact that the worker is entitled to a pension; and (iv) persons who cannot obtain an adequate pension are eligible for basic benefits (§ 38-44).

8. In Rosenbladt the ECJ accepted a lower retirement age and Ms Rosenbladt's retirement pension was significantly lower than that of Mr Hörnfeldt (§ 45)

Ruling

The second subparagraph of Article 6 (1) of Council Directive 2000/78 [...] must be interpreted as not precluding a national measure, such as that at issue in the main proceedings, which allows an employer to terminate an employee's employment contract on the sole ground that the employee has reached the age of 67 and which does not take account of the level of the retirement pension which the person concerned will receive, as that measure is objectively and reasonably justified by a legitimate aim relating to employment policy and labour-market policy and constitutes an appropriate and necessary means by which to achieve that aim.

Creator: European Court of Justice (ECJ)
Verdict at: 2012-07-05
Case number: C-141/11