SUMMARY

ECJ 18 December 2014, case C-523/13 (Walter Larcher – v – Deutsche Rentenversicherung Bayern Süd), Social security

Facts

Mr Larcher is an Austrian citizen. He was employed in Germany for over 29 years. In 2000 he moved back to Austria, where he worked full time. From 1 March 2004 (at age 58), he reduced his working week to 40% of full time with a less than proportionate reduction in pay and he continued to pay social insurance contributions as if he worked full time. This pre-retirement arrangement (part-time work scheme for older employees) pursuant to Austrian legislation was aimed at (i) ensuring a smooth transition to retirement and (ii) encouraging the recruitment of apprentices or unemployed persons. Mr Larcher retired fully on 1 October 2006, at age 60½ .

In February 2006, Mr Larcher applied to the relevant German social insurance agency *(Deutsche Rentenversicherung Bayern Süd)* for a “retirement pension following participation in a part-time work scheme for older employees” *(Altersrente nach Altersteilzeitarbeit)*. This is a scheme similar to that under Austrian legislation, but with some differences. The main difference between the German and Austrian versions of the scheme is that under Austrian legislation a condition for entitlement to the early retirement benefits is that the person must have reduced their working time to between 40% and 60% of full-time, whereas under German legislation the reduction must be 50%.

National proceedings

Mr Larcher’s application for a German “retirement pension following participation in a part-time work scheme for older employees” was refused on the grounds that he had not

participated in such a scheme under the provisions of German law. He appealed before an administrative court. His action was dismissed in two instances. He appealed to the *Bundessozialgericht*, arguing that the German law at issue was incompatible with Article 39(2) EC (now Article 45(2) TFEU) prohibiting nationality discrimination and Article 3(1) of Regulation 1408/71 (now Regulation 883/2004) prescribing equal treatment for citizens of all Member States.

ECJ's findings

1. Unless objectively justified, and proportionate to its aim, a provision of national law must be regarded as indirectly discriminatory under Article 3(1) of Regulation 1408/71 if it is intrinsically liable to affect migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage. Insofar as the German legislation at issue requires a worker who intends to apply for an old-age pension following participation in a part-time work scheme for older employees to have participated in such a scheme exclusively under German law, it is liable to disadvantage workers who have exercised their right to freedom of movement. Therefore, it is necessary to determine whether that legislation may be justified (§ 28-38).

2.The two objectives of the legislation at issue (smooth transition and encouragement to employ young or unemployed persons) are legitimate objectives of social policy. However, the outright exclusion from consideration, for the purpose of assessing entitlement to the German benefits in question, of participation in a part-time work scheme for older employees in another Member State reflects failure to have regard to the fact that such a scheme in that other Member State may pursue identical or similar objectives to those of German law and that, accordingly, the application of that scheme is likely to obtain, in the same way, the legitimate objective(s) in question (§ 39-43).

3.Accordingly, if it is possible to construe the German law at issue as not precluding payment of the old-age pension following participation in the Austrian part-time work scheme for older employees, the referring court must adopt that interpretation (§ 44-45).

4.Although Article 3(1) of Regulation 1408/71 precludes a Member State from systematically refusing to take into account participation in another Member State's part-time work scheme for older employees, that provision does not require the former Member State to recognise automatically participation in such a scheme as equivalent to participation in a scheme under its own legislation. Any other interpretation would deprive Member States of their competence in the field of social protection. It follows that the national authorities must undertake a comparative examination of the two part-time work schemes (§ 46-52).

5.Such a comparison must be done on a case-by-case basis. Minor differences with no significant impact on the achievement of the objectives cannot be relied on as grounds for refusing to recognise equivalency. In this case, a difference between 40 to 60% and 50% is not significant enough (§ 53-58).

Ruling

1.The principle of equal treatment laid down in Article 3(1) of Regulation (EEC) No 1408/71 […] precludes legislation of a Member State under which entitlement to an old-age pension following participation in a part-time work scheme for older employees is conditional on that scheme having taken place exclusively under the laws of that Member State.

2.The principle of equal treatment laid down in Article 3(1) of Regulation No 1408/71 […] must be interpreted as meaning that, for the purposes of the recognition in a Member State of participation in a part-time work scheme for older employees which took place in accordance with the legislation of another Member State, it is necessary to undertake a comparative examination of the conditions for the application of such schemes under the legislation of those two Member States, in order to determine on a case-by-case basis whether the differences identified are liable to compromise attainment of the social policy objectives pursued by the legislation at issue in the former Member State.

Creator: European Court of Justice (ECJ)
Verdict at: 2014-12-18
Case number: C-523/13