

SUMMARY

ECJ 18 November 2010, cases C-250/09 and C-268/09 (Vasil Ivanov Georgiev – v – Tehnicheski Universitet), Age discrimination

<p>Directive 2000/78 must be interpreted as meaning that it does not preclude national legislation [...] under which university professors are compulsorily retired when they reach the age of 68 and may continue working beyond the age of 65 only by means of fixed-term one-year contracts renewable at most twice, provided that that legislation pursues a legitimate aim linked inter alia to employment and job market policy, such as the delivery of quality teaching and the best possible allocation of posts for professors between the generations, and that it makes it possible to achieve that aim by appropriate and necessary means. It is for the national court to determine whether those conditions are satisfied.</p>

Facts

Georgiev was a lecturer, later a professor, at Sofia Technical University. In 2006, he was dismissed on the grounds that he had reached the retirement age of 65. This was pursuant to Bulgarian law, which provided that professors could not continue on a contract for an indefinite period beyond the age of 65. They could continue on one-year contracts up until the age of 68. Accordingly, Georgiev was offered a one-year contract, which was extended for two more years but was not extended any further when he turned 68. Georgiev brought two actions before the local court in Plovdiv. One action sought to reclassify his fixed-term contract as a contract of indefinite duration, the other challenged the decision to terminate his

employment relationship at the age of 68.

National proceedings

The court referred three questions to the ECJ. The third question, as interpreted by the ECJ, sought an interpretation of Bulgarian law, which is out of the ECJ's remit and which the ECJ therefore declined to answer. The ECJ reworded the first and second questions together, as asking whether Framework Directive 2000/78 ("the Directive") precludes national legislation under which university professors who have reached the age of 68 are compulsorily retired and may continue working beyond the age of 65 only by means of one-year fixed-term contracts that are renewable at most twice, and, if so, whether such national legislation must be disregarded.

ECJ's ruling

1. The Bulgarian legislation at issue falls within the scope of the Directive, as it affects "employment and working conditions" as provided in Article 3(1)(c) of the Directive (§ 27-30).
2. Compulsory retirement at the age of 68 and the imposition of a fixed-term contract beyond the age of 65 both cause employees to be treated less favourably on the grounds of age as defined in Article 2 of the Directive (§ 31-34).
3. The question to be addressed, therefore, is whether this differential treatment is objectively justified as allowed by Article 6. This question breaks down into two sub-questions: (i) does the difference of treatment have a legitimate aim and, if so, (ii) are the means of achieving that aim appropriate and necessary (§ 35-36)?
4. The example of a legitimate aim in point (c) of the second paragraph of Article 6 (maximum age for recruitment), as implemented in Bulgarian law, is not relevant (§ 37).

5. What was the Bulgarian legislator's aim when it introduced the said rules? This is not clear, and it is up to the Bulgarian courts to determine the legislator's aim. However, the ECJ does state that if the aim was to allocate the posts for professors in the best possible way between the generations, in particular by appointing young professors, or if it was to achieve a mix of generations to promote an exchange of experiences and innovation with a view to enhancing the quality of teaching and research, then that is a legitimate aim. On the other hand, if it is true, as submitted by Georgiev, that the average age of university professors in Bulgaria is 58 because young people are not interested in pursuing a career as a professor, then such aims would not be aligned to the reality of the job market (§ 38-48).

6. Supposing the aim pursued by the Bulgarian legislator is legitimate, are the means adopted to achieve that aim appropriate and necessary? This, again, is for the referring court to determine. The ECJ does, however, point out that the Member States enjoy broad discretion in their choice of aims to pursue and of the means to achieve those aims. Also, if the Bulgarian legislator's aims were to encourage the recruitment of younger professors and/or to enhance educational quality as hypothetically set out above, then the means to achieve those aims are appropriate and necessary, given that (i) 68 is five years higher than the Bulgarian statutory age at which men normally acquire the right to a pension, thus offering professors a relatively long period to pursue their careers and (ii) the relevant legislation is not based only on a specific age, but also takes account of the financial compensation by way of a retirement pension (§ 49-55).

7. "It follows", so the ECJ continues, "that the setting of an age limit for the termination of a contract of employment does not exceed what is necessary to attain employment policy aims such as *[encouragement of recruitment of younger people and developing the quality of teaching]*, provided that that national legislation reflects those aims in a consistent and systematic manner. It is for the national court to ascertain whether such an age limit genuinely reflects a concern to attain the aims pursued in a consistent and systematic manner. [...] In particular, it is for that court to examine whether the legislation at issue in the main proceedings distinguishes between, on the one hand, lecturers and university professors and, on the other hand, other university teaching staff by not providing for the compulsory retirement of the latter, as Mr Georgiev claims. It would thus be necessary to ascertain whether such a distinction corresponds to a necessity in the light of the aims pursued and the particular

characteristics of the teaching staff at issue or whether, on the contrary, it indicates an inconsistency in the legislation, which does not therefore satisfy the conditions set out in Article 6(1) of Directive 2000/78” (§ 55-56).

8. As for the appropriateness and the necessity of the conclusion of fixed-term contracts from the age of 65, the ECJ distinguished the case of Georgiev from that of *Mangold* (ECJ 22 November 2005, case C-144/04). The application of one-year contracts that are renewable at most twice may be appropriate and necessary in the case of Bulgarian professors, if it encourages the promotion of younger teaching staff, because (i) the decisive factor is that the professor has acquired a right to a retirement pension in addition to reaching a certain age, (ii) that age is 68, which is much higher than the age of 52 at issue in *Mangold* and (iii) the fixed-term contracts at issue are limited to a period of one year and renewable at most twice, thus meeting the requirements of the Framework Agreement on Fixed-Term Work (Directive 1999/70) (§ 57-67).

9. Given that the Technical University of Sofia is a public institution, directives can be relied on against it (direct vertical effect), and the national courts must therefore not apply any national law that is contrary to a directive.

Ruling

Directive 2000/78 must be interpreted as meaning that it does not preclude national legislation [...] under which university professors are compulsorily retired when they reach the age of 68 and may continue working beyond the age of 65 only by means of fixed-term one-year contracts renewable at most twice, provided that that legislation pursues a legitimate aim linked inter alia to employment and job market policy, such as the delivery of quality teaching and the best possible allocation of posts for professors between the generations, and that it makes it possible to achieve that aim by appropriate and necessary means. It is for the national court to determine whether those conditions are satisfied.

Creator: European Court of Justice (ECJ)

Verdict at: 2010-11-18

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