

SUMMARY

## **ECJ 19 September 2018, C-312/17 (Bedi), Collective agreements, disability discrimination**

***&lt;p&gt;Surjit Singh Bedi &ndash; v &ndash;  
Bundesrepublik Deutschland, Bundesrepublik Deutschland in  
Prozessstandschaft f&uuml;r das Vereinigte  
K&ouml;nigreich von Gro&szlig;britannien und Nordirland,  
German case&lt;/p&gt;***

***&lt;p&gt;Bridging assistance paid to a worker who loses his or her job  
by reason of redundancy, but ceasing once the worker becomes eligible  
to receive retirement benefits, is discriminatory under Directive  
2000/78 if this moment comes earlier for disabled than non-disabled  
workers.&lt;/p&gt;***

### **Legal background**

Directive 2000/78 aims to combat discrimination as regards employment and occupation. This includes discrimination based on employment and working conditions (Article 3(1)), but this does not apply to payments made by state schemes or similar, including state social security or social protection schemes (Article 3(3)). Article 16 stipulates that Member States shall take necessary measures to ensure that any discriminatory provisions in collective agreements are declared void or amended.

The Federal Republic of Germany and several trade unions entered into a collective agreement on social security for those employed by armed forces stationed in Germany (the 'Collective Agreement'). It regulates, for example, benefits for staff who have been made redundant. They are entitled to 'bridging assistance', i.e. supplementary benefits until the date

they become eligible to early payment of retirement pension. Disabled workers become eligible at a younger age than others.

### **Facts**

Mr Bedi, born in 1954, was classified as a severely disabled person. He was engaged in Germany by the UK armed forces as a civilian employee. The Collective Agreement therefore applied to his employment relationship.

Mr Bedi was made redundant with effect from 31 December 2013. As from 1 January 2014, he received bridging assistance. As of 1 March 2014, he was engaged by a private company and has been employed full-time since 1 April 2016. In March 2015, the Federal Republic of Germany informed Mr Bedi that he would qualify for early retirement for severely disabled persons from 1 May 2015. Therefore, his right to bridging assistance would cease as from 30 April 2015. This would lead to a large drop in income. Mr Bedi felt discriminated against based on disability and started proceedings.

When the case arrived before the Higher Labour Court in Hamm, Germany, that court was uncertain about whether the Collective Agreement was compliant with Directive 2000/78. There had been a case where the Collective Agreement had been found to be compliant with the Directive, but that case predated the ECJ's judgment in the *Odar* case (C-152/11). In *Odar* the ECJ found – in short – that, under certain circumstances, it may be possible to calculate severance pay based on the earliest possible retirement date. However, this approach could conceivably discriminate against disabled workers and so it was decided in the present case to stay proceedings and ask preliminary questions of the ECJ.

### **Question**

Must Article 2(2) of Directive 2000/78 be interpreted as precluding provisions in a collective agreement under which the payment of bridging assistance – granted with the aim of ensuring a reasonable means of subsistence to a worker who has lost his or her job until that worker is entitled to a retirement pension under the statutory pension scheme – must cease once the worker becomes entitled to early payment of a retirement pension for severely disabled persons under that scheme?

### **Consideration**

As regards whether the bridging assistance qualifies as 'pay' within the meaning of Article 157 TFEU, the Court found that this concept had to be interpreted broadly. Although it is financed by taxes and paid as a social benefit, ultimately, it is current remuneration paid in cash by an

employer (in this case, the United Kingdom) to a worker in respect of his or her employment.

As there was possible indirect discrimination, the question boiled down to whether the difference in treatment was objectively justified by a legitimate aim and the means of achieving that aim were appropriate and necessary.

The Member States and social partners at national level enjoy broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also how they define measures capable of achieving it. Providing compensation for the future of workers who have been made redundant and facilitating their reintegration into employment, whilst taking account of the need to achieve a fair distribution of limited financial resources, can be deemed legitimate aims within the meaning of the Directive. Bridging assistance seemed appropriate in the Court's view (and, certainly, not manifestly inappropriate) to achieve this aim, as it provides additional and temporary support after the end of the employment relationship, until a worker obtains financial protection by his or her eligibility for a retirement pension.

While the parties enjoy the right of collective bargaining under EU law, this must be exercised in compliance with EU law. Article 16 of the Directive instructs Member States to act against discriminatory provisions. The applicable provisions of the Collective Agreement put disabled persons at a disadvantage, as the bridging assistance terminated automatically upon early retirement. Even if s/he wished to do so, a disabled worker could not elect to stay in work and also receive bridging assistance, until becoming entitled to full payment of a retirement pension, like a regular worker. It should also be noted that the worker's financial requirements may increase as a result of advancing age and possible worsening of their condition.

Consequently, the social partners failed to have regard to elements concerning severely disabled workers. The Collective Agreement had an excessive adverse effect on the legitimate interests of severely disabled workers and therefore went beyond what was necessary to achieve the social policy aims pursued by the German Social Partners.

### **Ruling**

Article 2(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding a provision in a collective agreement under which the payment of bridging assistance – granted with the aim of ensuring a reasonable means of subsistence to a worker who has lost his job until he is entitled to a retirement pension under the statutory pension scheme – must cease once that worker is entitled to early payment of a retirement pension for

severely disabled persons under that scheme.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2018-09-19

**Case number:** C-312/17