

SUMMARY

ECJ 14 February 2019, C-154/18 (Horgan), Age discrimination

Tomás Horgan, Claire Keegan – v – Minister for Education & Skills, Minister for Finance, Minister for Public Expenditure & Reform, Ireland, Attorney General, Irish case

Summary

Reduction of teacher salaries based on recruiting date does not constitute indirect discrimination.

Legal background and facts

Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation. It aims to combat discrimination on various grounds, including age. Article 2(2)(b) stipulates *inter alia* that indirect discrimination occurs where an apparently neutral provision would put persons having a particular age at a particular disadvantage with other persons, unless that provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

In Ireland, in 2011, a circular named ‘New Pay Scales for New Appointees to Teaching in 2011’ was published. It stipulated that the Government applied a 10% reduction in the pay of new entrants to the public service and that all new appointees to the entry grades of the public service must start at the first point of the relevant pay scale with effect from 1 January 2011, such including teachers.

Two teachers who had started in 2011, Mr Horgan and Ms Keegan, claimed before the Equality Tribunal (Ireland) that this constituted discrimination on grounds of age. Initially, their claim was dismissed after they lodged an appeal with the referring court.

According to the referring court, the measures at issue have resulted in the coexistence of two groups of workers engaged in work of equal value but who are remunerated differently, there being a clear difference in age between those two categories. Approximately 70% of the teachers who had started in 2011 were 25 years of age or under. They were generally younger than teachers recruited before 2011 – the group which was better remunerated.

However, the determining factor was the date of recruitment, which at first sight is a neutral criterion from the age perspective. Moreover, the age profile of teachers recruited after 1 January 2011 is no different to that of teachers recruited before that date, irrespective the year of recruitment. The court therefore raised the issue whether there has been any indirect discrimination on grounds of age.

As regards the justification, there are two: (i) the need for Ireland to respond to an economic crisis, and (ii) the obligation to adhere to a collective agreement prohibiting any further reduction in the remuneration of public servants recruited for 2011. However, according to the court, on an individual basis, they may not constitute valid justifications. The referring court therefore asked preliminary questions.

Questions

Must Article 2(2)(b) of Directive 2000/78 be interpreted to the effect that a measure such as that at issue in the main proceedings which, as of a specific date, provides for the application on the recruitment of new teachers of a salary scale and classification on that scale which are less advantageous than that applied, under the rules previous to that measure, to teachers recruited before that date constitutes indirect discrimination on the grounds of age, within the meaning of that provision?

Considerations

First of all, there is a difference of treatment, which is based on the date of recruitment. This is the only relevant criterion, regardless of the age of the public servant at the date which he or she was recruited. Accordingly, that criterion is manifestly unconnected to any taking into account of the age of the persons recruited (*Centeno Mediavilla and Others – v – Commission*, C-443/07).

In addition, although approximately 70% of the teachers recruited after 1 January 2011 were 25 years of age or under, this also applied to teachers recruited before that date, at the time they were recruited. The new conditions are not based on a criterion which is inextricably or indirectly linked to the age of the teachers and do therefore not establish a difference of

treatment on grounds of age (*Tyrolean Airways Tiroler Luftfahrt Gesellschaft*, C-132/11).

Ruling

Article 2(2)(b) of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted to the effect that a measure such as that at issue in the main proceedings which, as of a specific date, provides for the application on the recruitment of new teachers of a salary scale and classification on that scale which are less advantageous than that applied, under the rules previous to that measure, to teachers recruited before that date does not constitute indirect discrimination on the grounds of age within the meaning of that provision.

Creator: European Court of Justice (ECJ)

Verdict at: 2019-02-14

Case number: C-154/18