

SUMMARY

# **ECJ 24 September 2020, Case C-223/19 (YS (Pensions d'entreprise de personnel cadre)), Discrimination General, Gender Discrimination, Pension**

## ***YS - v - NK AG, Austrian case***

### **Summary**

Deductions from pensions larger than a certain threshold do not necessarily constitute gender and/or age discrimination.

### **Questions**

Must Directives 79/7, 2000/78 and 2006/54 be interpreted as meaning that the scope of those directives includes provisions of the law of a Member State pursuant to which (i) part of the amount of the occupational pension which the employer is contractually bound to pay directly to its former worker must be withheld at source by that employer and (ii) the contractually agreed indexation of the amount of that benefit is ineffective?

Must Directive 2006/54 be interpreted as precluding legislation of a Member State pursuant to which recipients of a pension that a State-controlled undertaking is contractually bound to pay them directly and that exceeds certain thresholds set in that legislation are deprived of (i) an amount withheld from the part of that pension exceeding one of those thresholds and (ii) the benefit of a contractually agreed indexation of that pension, where far more male than female recipients are affected by that legislation?

Must Directive 2000/78 be interpreted as precluding legislation of a Member State pursuant to which recipients of a pension that a State-controlled undertaking is contractually bound to

pay them directly and that exceeds certain thresholds set in that legislation are deprived of (i) an amount withheld from the part of that pension exceeding one of those thresholds and (ii) the benefit of a contractually agreed indexation of that pension, where that legislation affects only recipients above a certain age?

Must Articles 16, 17, 20 and 21 of the Charter be interpreted as precluding legislation of a Member State pursuant to which recipients of a pension that a State-controlled undertaking is contractually bound to pay them directly and that exceeds certain thresholds set in that legislation are deprived of (i) an amount withheld from the part of that pension exceeding one of those thresholds and (ii) the benefit of a contractually agreed indexation of that pension?

Must Article 47 of the Charter be interpreted as precluding a Member State's failure to provide, in its legal system, for a free-standing legal remedy for, primarily, an examination of whether national provisions implementing that right are compatible with EU law?

## **Ruling**

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as meaning that the scope of those directives includes provisions of the law of a Member State pursuant to which (i) part of the amount of the occupational pension which the employer is contractually bound to pay directly to its former employee must be withheld at source by that employer and (ii) the contractually agreed indexation of the amount of that benefit is ineffective.

Article 5(c) and Article 7(1)(a)(iii) of Directive 2006/54 must be interpreted as not precluding legislation of a Member State pursuant to which the recipients of a pension that a State-controlled undertaking is contractually bound to pay them directly and that exceeds certain thresholds set in that legislation are deprived of (i) an amount withheld from the part of that pension exceeding one of those thresholds and (ii) the benefit of a contractually agreed indexation of that pension, even though the percentage of former workers the amount of whose occupational pension has been affected by that legislation is considerably higher among male former workers coming within the scope of that legislation than among female former workers coming within its scope, provided that those consequences are justified by objective factors wholly unrelated to any discrimination based on sex, which it is for the referring court to verify.

Article 2(1) and (2)(b) of Directive 2000/78 must be interpreted as not precluding legislation of a Member State pursuant to which recipients of a pension that a State-controlled

undertaking is contractually bound to pay them directly and that exceeds certain thresholds set in that legislation are deprived of (i) an amount withheld from the part of that pension exceeding one of those thresholds and (ii) the benefit of a contractually agreed indexation of that pension, on the sole ground that that legislation affects only recipients above a certain age.

Articles 16, 17, 20 and 21 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding legislation of a Member State pursuant to which recipients of a pension that a State-controlled undertaking is contractually bound to pay them directly and that exceeds certain thresholds set in that legislation are deprived of (i) an amount withheld from the part of that pension exceeding one of those thresholds and (ii) the benefit of a contractually agreed indexation of that pension.

Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding a Member State's failure to provide, in its legal system, for a free-standing legal remedy for, primarily, an examination of whether national provisions implementing that right are compatible with EU law, provided that it is possible for such examination to take place indirectly.

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

**Verdict at:** 2020-09-24

**Case number:** C-223/19