

SUMMARY

Case C-258/17. Discrimination and pension

Does Article 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation 1 ('the Directive') preclude the maintenance in being of the new legal position created by an administrative decision that has become final under national law, in the area of law governing disciplinary action in the civil service (disciplinary decision), compulsorily retiring and reducing the pension benefits of a civil servant, where that administrative decision was not yet subject to provisions of EU law, in particular the Directive, at the time when it was adopted, but a (notional) decision to the same effect would infringe the Directive if it were adopted within the temporal scope of the Directive?

If the first question is answered in the affirmative, is it, for the purposes of creating a non-discriminatory situation,

- necessary under EU law, for the purposes of determining the civil servant's pension, to treat him as if, in the period between the entry into force of the administrative decision and his reaching statutory pensionable age, he had not been retired but working, or is it
- sufficient for these purposes to recognise as due the unreduced pension accruing in consequence of compulsory retirement at the time specified in the administrative decision?

Does the answer to Question 2 depend on whether the civil servant did in fact proactively seek active employment in the federal civil service before reaching retirement age?

If it is considered sufficient to annul the percentage reduction of pension entitlement (and depending also, if necessary, on the circumstances referred to in Question 3):

Can the principle of non-discrimination contained in the Directive support a primacy of application over conflicting national law which a national court must observe, when

calculating pension entitlement, even in respect of periods before the Directive became directly applicable in national law?

If Question 4 is answered in the affirmative, to which point in time does such 'retroactive effect' extend?

Creator: European Court of Justice (ECJ)

Verdict at: 2017-05-15

Case number: C-258/17