

SUMMARY

Case C-27/16. Sex discrimination

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Must Article [14](1)(c) of Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) and Article 3(1)(c) of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation be interpreted as being sufficiently precise and clear and, accordingly, applicable to the legal position of a dismissed public-sector worker, employed under a civil service employment relationship, in a case where:

- a dismissal took place because of a reduction in a number of identical posts (functions) occupied by the dismissed person and by other civil servants, including both men and women;
- the dismissal was based on a neutral provision of national law;
- under the circumstances of the dismissal in question, national legislation does not lay down any criteria or obligations for assessment in relation to every individual who might be affected by dismissal, nor does it lay down obligations to give reasons for the dismissal of a specific individual?

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Must Article [14](1)(c) of Directive 2006/54/EC and Article 3(1)(c) of Directive 2000/78/EC, in conjunction with Articles 30, 47 and 52(1) of the Charter of Fundamental Rights, be interpreted as permitting a national measure such as Article 21 of the Law on protection against discrimination (Zakon za zashtita ot diskriminatsia), read in conjunction with Article 106(1)(2) of the Civil Service Law (Zakon za darzhavnja sluzhitel), pursuant to Article 157(3) of the Treaty on the Functioning of the European Union, where the provisions of this (i.e. in the

circumstances described in the first question concerning the dismissal of a person employed in the public sector under a civil service employment relationship, owing to the abolition of a post on account of a reduction in a number of identical posts occupied by both men and women) do not expressly lay down any selection obligations or criteria as part of the right to dismiss staff, which both administrative and legal practice permit only if the authority responsible for the dismissal made a discretionary decision to specify a procedure and criteria, in contrast to identical circumstances involving the dismissal of a public sector worker employed under an employment law relationship, for which selection obligations and criteria in respect of the dismissal are laid down by law as part of that authority's right to dismiss staff?

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Must Article [14](1)(c) of Directive 2006/54/EC and Article 3(1)(c) of Directive 2000/78/EC, in conjunction with Articles 30, 47 and 52(1) of the Charter of Fundamental Rights, be interpreted as meaning that the dismissal of a person employed in the public sector under a civil service employment relationship will be unjustified and contrary to those provisions, only because the administrative authority did not carry out a selection and apply objective criteria, or give reasons for its choice to dismiss a particular person, where that person occupied a post identical to that occupied by other persons, both men and women, and the dismissal took place on the basis of a neutral provision?

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Must Articles 18 and 25 of Directive 2006/54/EC, read in conjunction with Article 30 of the Charter of Fundamental Rights, be interpreted as meaning that the requirement of proportionality has been met and that those provisions allow for relevant national legislation which provides for compensation in the case of unlawful dismissal, applicable also in the event of infringement of the principle of equal treatment in matters of employment and occupation under EU law, specifying a maximum compensation period of six months and a fixed payment — based on the basic salary for the post occupied, but only insofar as the person remains unemployed or receives lower pay, where the right of that person to be reinstated in the post is separate and not part of his right to compensation under the national law of the Member State?

Creator: European Court of Justice (ECJ)

Verdict at: 2016-01-18

Case number: C-27/16