

SUMMARY

ECJ 16 June 2016, case C-159/15 (Lesar), Age discrimination

<p>National law that excludes civil servants' pre-18 service for pension purposes is not age discriminatory.</p>

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National law that excludes civil servants' pre-18 service for pension purposes is not age discriminatory.

Facts

Mr Lesar started working for the Austrian postal service at age 14, initially as an apprentice, then as an employee and from age 23 as a civil servant. He retired in 2004 aged 55. His service completed before the age of 18 was not taken into account for the purpose of calculating his retirement pension. Although he did pay contributions before age 18, those were refunded to him. He considered this arrangement to constitute age discrimination.

National proceedings

Mr Lesar applied to the Constitutional Court, which referred the case to the Administrative Court, which referred questions to the ECJ on the interpretation of Directive 2000/78. Although the referring court referenced only Articles 2 and 6(1) of the Directive, the ECJ considered the questions to include Article 6(2). It provides that:

“Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits [.....] does not constitute discrimination on the grounds of age [...].”

ECJ's findings

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National legislation such as that at issue provides for less favourable treatment for persons whose professional experience has, albeit only in part, been acquired before reaching the age of 18 as compared with those who have acquired experience of the same nature and of comparable length after reaching that age. Such legislation establishes a difference in treatment between persons that is based on the age at which they acquired their professional experience. That criterion may even lead to a difference in treatment between two persons who have pursued the same studies and acquired the same professional experience, exclusively on the basis of their respective ages. Such a provision therefore establishes a difference in treatment that is based directly on the criterion of age, within the meaning of Article 2(1) and Article 2(2)(a) of Directive 2000/78 (§ 21).

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Since Article 6(2) of Directive 2000/78 allows Member States to provide for an exception to the principle of non-discrimination on grounds of age, that provision must be interpreted restrictively. Therefore, it is necessary to examine whether the national legislation at issue is part of an occupational social security scheme which covers the risk of old age or invalidity and, if so, to examine whether the legislation comes within one of the situations covered by that provision, namely the “fixing [...] of ages for admission or entitlement to retirement or invalidity benefits” (§ 24-26).

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Directive 2000/78 does not define ‘occupational social security scheme’, but Directive 2006/54 on gender discrimination does. It defines such schemes as “schemes [...] whose purpose is to provide workers [...] with benefits intended to supplement the benefits provided by statutory social security or to replace them [...]”. The Austrian pension scheme at issue is such a scheme. Therefore, legislation such as that at issue constitutes an expression of the freedom enjoyed by the Member States under Article 6(2) of Directive 2000/78 to fix, in relation to occupational social security schemes, an age for admission to civil service retirement schemes or entitlement to retirement benefits which are paid under that scheme. The wording of that provision is such that it allows the Member States not only to fix different ages for employees or groups or categories of employees, but also to fix, within an occupational social security scheme, an age for admission or entitlement to retirement benefits (§ 27-30).

Judgment

Articles 2(1), 2(2)(a) and 6(2) of Council Directive 2000/78 [...] must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which excludes the taking into account of periods of apprenticeship and of employment completed by a civil servant before reaching the age of 18 for the purpose of granting a pension entitlement and the calculation of the amount of his retirement pension, in so far as that legislation seeks to guarantee, within a civil service retirement scheme, a uniform age for admission to that scheme and a uniform age for entitlement to the retirement benefits provided under that scheme.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-06-16

Case number: C-159/15 (Lesar)