SUMMARY

ECJ 13 July 2017, case C-354/16 (Kleinsteuber), Part-time work and sex discrimination

<p>Distinctions made for part-time workers in calculating occupational pension can be acceptable, as long as the calculations are based on legitimate objectives in accordance with law.</p>

Summary

Distinctions made for part-time workers in calculating occupational pension can be acceptable, as long as the calculations are based on legitimate objectives in accordance with law.

Facts

Ms Kleinsteuber, born on 3 April 1965, was employed by Mars and its predecessor in law between 1 October 1990 and 31 May 2014, in various positions. She worked both full-time and part-time, with rates of activity of between 50% and 75% of a full-time employee. Ms Kleinsteuber had the right to receive an occupational pension upon reaching 55.

According to the pension plan, in the case of a worker who is not employed full-time, the relevant annual salary of the worker who is entitled to a pension is calculated. Then, that salary is reduced by the average rate of activity during the whole of the period of employment. Finally, the different rates relating to the salary's components are applied to the resulting amount. The amount of the occupational pension is calculated according to a so-called 'split pension' formula. In this connection, a distinction is drawn between the income earned falling below the ceiling for calculating contributions to the statutory pension scheme and income exceeding that ceiling. Under German social security law, the ceiling for calculating contributions is the amount up to which the salary of a person, benefiting from statutory cover, is used for social insurance. As a result of this provision, Ms Kleinsteuber's salary

components, which were above the contributions calculation ceiling were valued at 2%, whereas the salary components under that limit were valued at 0,6%.

In the case of the early retirement of an employee, a pro rata temporis calculation would be made pursuant to paragraph 2(1) of the German Law on Pensions. First of all, the 'notional maximum entitlement' was calculated, namely the right to a pension a worker would be entitled to if he or she had not stopped work early. Then, the 'non-forfeitability quotient' would be calculated by working out the ratio between the actual length of service and the length of service remaining until the employee would have reached age if he or she had not retired early. The notional maximum entitlement would then be multiplied by the non-forfeitability quotient in order to work out the entitlement to pension.

Mars' pension scheme lays down, in addition, a ceiling for the number years of service that can be taken into account, set at 35 years. This had the effect that those employees who stopped working at Mars when they were younger received a lower pension than those who stopped working when they were older, even though both sets of employees would have worked for the same length of time. This again, disfavoured Ms Kleinsteuber.

National proceedings

Ms Kleinsteuber challenged before the Verden Labour Court (Arbeitsgericht Verden) Mars' calculation of the amount of her occupational pension, as she considered she was entitled to a larger pension than that calculated by Mars. The Bundesarbeitsgericht (Federal Labour Court, Germany) had already indicated that the rules in Paragraph 2 of the German Law on Pensions were appropriate and necessary for achieving a legitimate aim.

However, the Verden Labour Court decided to stay the proceedings and refer certain questions to the ECJ for a preliminary ruling.

Questions put to the ECJ

1. (a) Is the relevant EU law, in particular Clauses 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54/EC in conjunction with Directive 2000/78/EC, to be interpreted as precluding national statutory provisions or practices which, in determining the amount of an occupational old-age pension, distinguish between employment income falling below the ceiling for the assessment of contributions to the statutory pension scheme and employment income exceeding that ceiling (the 'split pension formula'). In so doing, should income from part-time employment be calculated in such a way that the income payable in respect of full-time employment is first determined, the proportion above and below the contribution assessment ceiling is established, and the proportion is then applied to the reduced income

from part-time employment?(b) If Question 1(a) is answered in the negative: Is the relevant EU law, in particular Clauses 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54/EC in conjunction with Directive 2000/78/EC to be interpreted as precluding national statutory provisions or practices which, in determining the amount of an occupational pension, distinguish between employment income falling below the ceiling for the assessment of contributions to the statutory pension scheme and employment income exceeding that ceiling (the 'split pension formula'). In the case of an employee who has worked on both a full-time and part-time basis, it is acceptable for no account to be taken of specific periods (e.g. individual calendar years) but for the amount to be calculated based on a uniform degree of employment for the total duration of the employment relationship and for the split pension formula to be applied only to the resulting average remuneration?2. Is the relevant EU law, in particular the principle of non-discrimination on grounds of age, enshrined in Article 21 of the Charter of Fundamental Rights of the European Union and given specific expression by Council Directive 2000/78/EC, in particular Articles 1, 2 and 6 thereof, to be interpreted as precluding national statutory provisions or practices which provide for an occupational pension in the amount corresponding to the ratio of the employee's actual length of service to the time from the beginning of his employment up to his reaching the normal retirement age under the statutory pension scheme and in so doing applying a maximum limit of reckonable years of service, with the result that employees having completed their period of service in an undertaking at a younger age receive a smaller occupational pension than their colleagues who completed their period of service at an older age, even though both sets of employees completed an equal length of service in the undertaking?

ECJ's findings

Question (1) (a)

Clause 4.1 of the Framework Agreement lays down a prohibition on treating part-term workers less favourably than full-time workers solely because they work part-time, unless this is justified on objective grounds.

In the present case, it was not in dispute that the method of calculating pension entitlement involved a distinction being drawn between salaries below the ceiling for the calculation of social contributions and those above it ('the split formula') and that this applied both to full-time and part-time employees. Ms Kleinsteuber nevertheless claimed that the calculation method resulted in too low a proportion of her annual pensionable income being allocated to the higher, 2%, rate. Mars had calculated her pensionable annual salary on the basis of full-time employment before reducing it to account for her part-time work; had then broken down the amount into a band below the ceiling for the calculation of social contributions and a band

above it and applied the different rates to them. Ms Kleinsteuber considered that the calculation for part-time workers should be carried out by calculating the notional income of a full-time employee and then applying the split formula to it. Only then should a reduction be carried out to account for part-time working.

The ECJ considered this but found that it was not apparent that Mars' calculation method resulted in discrimination against part-time workers. By taking into account the ratio between a worker's actual years of service and those of someone who has worked full-time for his or her entire career, Mars was applying the pro rata temporis principle. Mars had calculated and applied a rate of 71.5% in Ms Kleinsteuber's case. The Court noted that taking into account actual years of service throughout a person's career was a way of being objective, not discriminatory, as it allowed for the pension entitlement to be reduced proportionately (see, to that effect, Schönheit and Becker, C-4/02 and C-5/02).

The Court found that the objective of the split formula was to take account of the difference of cover needs for the pay bands below and above the ceiling for the social contributions calculation. It found that this was an objective reason, for the purposes of Clause 4.1 of the Framework Agreement and that it justified a difference in treatment. The Court found no discrimination in the legislation based on type of work and no infringement of the principle of equal opportunities and equal treatment between men and women within the meaning of Directive 2006/54.

Question 1(b)

This question involved considering, in accordance with Clause 4.1 and 4.2 of the Framework Agreement, whether part-time workers are treated less favourably than comparable full-time workers, by reason of the determination of a uniform rate of activity for reckonable years of service. Mars argued that the application of a uniform rate of activity for reckonable years of service merely reflects the various working hours in the course of employment. It said that its pension scheme included a commitment to pay a pension linked to the last remuneration, and the remuneration received in the course of the employment relationship had no effect on the calculation of the pension. The Court found no evidence that any other calculation method, such as dividing the time worked for Mars into periods, would have yielded a more appropriate and fair calculation, in the light of the pro rata temporis principle. It found that it was for the referring court to check that the calculation method used by Mars did not violate the principles espoused by Clause 4.1 and 4.2 of the Framework Agreement.

Question 2

As regards whether there exists a difference in treatment directly or indirectly based on age,

the referring court noted that the calculation method had the effect that employees who worked for Mars when they were younger received a smaller pension than those who did so when they were older, despite the time spent with Mars being the same. As noted by the German Government, neither national law nor the ceiling set by the pension scheme referred directly to the age criterion. Further, the law applied in the same way to workers of all ages. The law was therefore not directly based on age, but on years of service in the organisation.

However, this was the unintended consequence of capping reckonable years of service: if the maximum retirement age is 65 and the reckonable years of service are capped at 35, an employee retiring early who started working before the age of 30 would be disadvantaged. The Court found that there was therefore a difference in treatment resulting from the interaction between capping years of service and other factors, such as the pro rata temporis reduction method laid down in Paragraph 2(1) of the Law on Pensions.

Mars argued that when her entitlement was calculated, Ms Kleinsteuber's career length was not reduced and that the pro rata temporis rule laid down in Paragraph 2(1) of the Law on Pensions does not always result in a disadvantage to younger workers and that provision is not, in any event, set according to age, but to years of service.

The Court found that it was for the referring court to establish whether national law was likely to result in a difference in treatment indirectly based, not on years of service, but on age. It was also for the referring court to verify that the problem raised was not merely hypothetical but related to the facts.

The Court found that the national law at issue was intended both to support mobility in the jobs market and to reward employees for loyalty to an organisation. It was also intended to provide employers with certainty about their pension obligations. In this case, the law and the pension scheme in question needed to provide a way of calculating acquired rights in the event of early withdrawal from employment, which established a balance between the interests at issue. This could be considered to be a public interest objective.

The Court found that the adoption of a method of calculating a right acquired in the event of early withdrawal from the employment relationship based on the pro rata temporis duration of actual years of service compared to the possible years of service up to the normal age of retirement, and the capping of reckonable years of service, did not seem unreasonable in the light of the objective of the occupational pension scheme in the case at hand. The same was true of the national law under consideration. The Court noted that an incentive to remain in the organisation until the statutory age of retirement cannot be created without giving the employee making that choice an advantage compared to an employee who leaves early. The

Court found that there was nothing in the evidence presented to it to call into question the need for law along the lines of the German law and no other way of calculating that would make it possible to meet the objectives referred to.

Ruling

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Clause 4.1 and 4.2 of the Framework Agreement on part-time work concluded on 6 June 1997, annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, as amended, and Article 4 of 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 not precluding national legislation which, in calculating the amount of an occupational pension, distinguishes between employment income falling below the ceiling for the calculation of contributions to the statutory pension scheme and employment income above that ceiling, and which does not treat income from part-time employment by calculating first the income payable in respect of corresponding full-time employment, then determining the proportion above and below the contribution assessment ceiling and finally applying that proportion to the reduced income from part-time employment.

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Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54 must be interpreted as not precluding national legislation which, in calculating the amount of the occupational pension of an employee who has accumulated full-time and part-time employment periods, determines a uniform rate of activity for the total duration of the employment relationship, insofar as that calculation method does not violate the pro rata temporis rule. It is for the national court to satisfy itself that this is the case.

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Articles 1 and 2 and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding national legislation which provides for an occupational pension

in the amount corresponding to the ratio between (i) the employee's length of service and (ii) the length of the period between taking up employment in the undertaking and the normal retirement age under the statutory pension scheme, and in so doing applies a maximum limit of reckonable years of service.

Creator: European Court of Justice (ECJ)
Verdict at: 2017-07-13
Case number: C-354/16 (Kleinsteuber)