



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

14 February 2019*

(Reference for a preliminary ruling — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 2(2)(b) — Indirect discrimination on grounds of age — Newly recruited teachers — Date of recruitment — Salary scale and classification on that scale upon recruitment less advantageous than that applicable to teachers already employed as such)

In Case C-154/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Labour Court (Ireland), made by decision of 23 February 2018, received at the Court on 27 February 2018, in the proceedings

Tomás Horgan,

Claire Keegan

v

Minister for Education & Skills,

Minister for Finance,

Minister for Public Expenditure & Reform,

Ireland,

Attorney General,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, E. Levits, M. Berger, C. Vajda and P.G. Xuereb, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Mr Horgan and Ms Keegan, by A.M. Lyne, solicitor,

* Language of the case: English.

- the Minister for Education & Skills, the Minister for Finance, the Minister for Public Expenditure & Reform, Ireland and the Attorney General, by M. Browne, L. Williams and A. Joyce, acting as Agents,
- the European Commission, by J. Tomkin and D. Martin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(2)(b) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).
- 2 The request has been made in proceedings between, on the one hand, Tomás Horgan and Claire Keegan and, on the other, the Minister for Education & Skills (Ireland), the Minister for Finance (Ireland), the Minister for Public Expenditure & Reform (Ireland), Ireland, and the Attorney General (Ireland) concerning the lawfulness of a national measure applicable since 1 January 2011 to newly recruited public servants, including teachers in national schools, which provides for a salary scale and classification on that salary scale upon recruitment which are less advantageous than that applicable to teachers already employed as such.

Legal context

European Union law

- 3 Article 1 of Directive 2000/78 provides:

‘The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.’

- 4 Article 2 of that directive provides as follows:

‘1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

...

- (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

- (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, ...

...’

Irish law

- 5 Circular 0040/2011, entitled ‘New Pay Scales for New Appointees to Teaching in 2011’, provides as follows, in points 1 to 4 thereof:

‘Introduction

1. The Minister for Education and Skills wishes to inform vocational education committees, management bodies and teachers of the application of revised rates of salary and allowances for new appointees to teaching from 1 January 2011 onwards.
2. As part of Budget 2011 the Government has applied a 10% reduction in the pay of new entrants to the public service (referred to in this Circular as “new appointees”) and all new appointees to the entry grades of the public service must start at the first point of the relevant pay scale with effect from 1 January 2011.

Application of new pay rates

3. The 10% reduction in pay applies to basic pay, allowances and the supervision and substitution payment.

(a) Basic Pay

The 10% reduction applies to basic pay on all points of the incremental salary scale. Daily and hourly rates for casual and non-casual teachers in the primary sector and hourly rates for casual and non-casual part-time teachers in the post-primary sector have also been reduced. The revised rates are set out in an Appendix to this Circular ...

(b) Allowances

The 10% reduction also applies to all allowances with the exception of promotional allowances; i.e. special duties, assistant principal, deputy principal and principal allowances.

New Appointee to teaching

4. The new pay rates apply to all teachers who are new appointees appointed on or after 1 January 2011.

...’

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 6 In 2011, Mr Horgan and Ms Keegan qualified as school teachers. As of that autumn, they commenced employment as teachers in an Irish State primary school.
- 7 The new salary scales for newly recruited teachers, contained in Circular 0040/2011, reduce, as of 1 January 2011, the salaries by 10% at each point of the salary scale in relation to the salaries of public servants recruited before that date.
- 8 In addition, under that Circular, all newly recruited teachers were classified at the first point of the applicable salary scale, in contrast to previous practice consisting in classifying new teachers at the second or third point of that scale.

- 9 Those measures were adopted in order to meet the need to achieve a medium-term structural reduction in the cost of the public service at a time of significant budgetary restraints, and to correct a significant deficit in the public finances.
- 10 Mr Horgan and Ms Keegan challenged those measures before the Equality Tribunal (Ireland), claiming a difference in treatment on grounds of age. Since that court dismissed their action, Mr Horgan and Ms Keegan appealed before the referring court.
- 11 The latter court states that the measures at issue in the main proceedings have resulted in the coexistence of two groups of workers engaged in work of equal value but who are remunerated differently, there being a clear difference in age between those two categories.
- 12 Approximately 70% of teachers who commenced employment in 2011 were 25 years of age or under. Thus, at the time of their recruitment, the teachers who commenced employment in that year, including Mr Horgan and Ms Keegan, are generally younger than teachers recruited before that year, the latter group being considered to be the better remunerated group of persons.
- 13 The referring court however observes that the factor determining which salary scale teachers are placed on is the year in which they commenced employment and that all teachers recruited after 1 January 2011, irrespective of their age at the date of recruitment, were placed on the less advantageous salary scale. Conversely, all teachers recruited before that year were placed on the old salary scale, and remained on that scale, regardless of their age at the date of recruitment. Thus, the date of recruitment is at first sight a neutral criterion from the age perspective.
- 14 The referring court also notes that the parties to the main proceedings do not dispute that the age profile of teachers recruited after 1 January 2011 is no different to that of teachers recruited before that date, irrespective of the year of recruitment. That court therefore raises the issue of whether there has been any indirect discrimination on grounds of age, as claimed by Mr Horgan and Ms Keegan.
- 15 As regards the justification for any indirect discrimination, the referring court observes that two justifications have been put forward, namely, first, the need for Ireland to respond to an economic crisis and, secondly, the obligation to adhere to a collective agreement prohibiting any further reduction in the remuneration of public servants recruited before 2011.
- 16 That court takes the view that, taken individually, those grounds do not constitute valid justifications, but that they might provide a justification in combination.
- 17 In those circumstances, the Labour Court (Ireland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - ‘(1) Does it constitute indirect discrimination on grounds of age, within the meaning of Article 2(b) of Directive 2000/78/EC, for a Member State, in its capacity as an employer, to introduce lower salary scales for new entrants to the profession of national teacher while leaving unaltered the pay of those teachers already in employment, where:
 - (a) the revised salary scales and the existing salary scales apply to all teachers in the respective categories regardless of their age;
 - (b) at the point at which they were recruited and placed on the respective scales there was no difference in the age profile of those in the higher paid group and those in the lower paid group;
 - (c) the introduction of the revised scales has resulted in a substantial difference in pay as between two groups of teachers who are engaged in work of equal value;
 - (d) the average age of those placed on the reduced salary scales is lower than that of the average age of those on the original salary scales;

- (e) at the point at which the lower salary scales were introduced, the State's statistics showed that 70% of teachers appointed were 25 years of age or under and it was acknowledged that this was typical of the age profile of entrants to national teaching in any given year; and
 - (f) national teachers who entered the profession in 2011 and later suffer a clear financial disadvantage in comparison to their teaching colleagues appointed prior to 2011.
- (2) If the answer to question 1 is in the affirmative, can the introduction of the lower salary scales be objectively justified by a requirement to achieve a medium- to long-term structural reduction in the cost of the public service, having regard to budgetary constraints facing the State and/or the importance of maintaining good industrial relations with existing civil and public servants?
- (3) Would the answer to question 2 be different if the State could have achieved equivalent savings by reducing the pay of all teachers by a significantly lesser amount than the reduction applied only to newly recruited teachers?
- (4) Would the answer to questions 2 or 3 be different if the decision not to reduce the salary scales applicable to teachers already in employment was taken in compliance with a collective agreement between the Government as an employer and the trade unions representing public service workers whereby the Government committed not to further reduce the pay of existing public servants who had already been subject to pay cuts and the industrial relations consequences that would flow from a failure to comply with that agreement, having regard to the fact that the new pay scale introduced in 2011 did not form part of such a collective agreement?

Consideration of the questions referred

The first question

- 18 By its first question, the referring court asks, in essence, whether Article 2(2)(b) of Directive 2000/78 must be interpreted to the effect that a measure such as that at issue in the main proceedings which, as of a specific date, provides for the application on the recruitment of new teachers of a salary scale and classification on that scale which are less advantageous than that applied, under the rules previous to that measure, to teachers recruited before that date constitutes indirect discrimination on the grounds of age, within the meaning of that provision.
- 19 First of all, it must be recalled that it follows from Article 2(1) of Directive 2000/78, read in conjunction with Article 1 thereof, that for the purposes of that directive the principle of equal treatment means that there must be no direct or indirect discrimination whatsoever on the grounds, *inter alia*, of age. It is clear moreover from Article 2(2)(b) of that directive that, for the purposes of that directive, indirect discrimination on grounds of age occurs where an apparently neutral provision, criterion or practice would put persons having a particular age at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- 20 Therefore, in order to determine whether Mr Horgan and Ms Keegan may rely on the principle set out in the previous paragraph, it is necessary to ascertain whether teachers recruited after 1 January 2011 are treated differently from those recruited before that date on account of their age at the date of their recruitment.
- 21 In that regard, it is apparent from the file before the Court that Ireland chose to amend the remuneration conditions for newly recruited public servants, including teachers, as of 1 January 2011, by providing for a 10% reduction in remuneration and classification at the first point on the salary scale instead of classification at the second or third point.

- 22 Those new conditions are applicable to the situation of Mr Horgan and Ms Keegan and to that of the other teachers recruited after that date and it is common ground that those persons are engaged in work comparable to that of the teachers recruited before that date.
- 23 On the other hand, the teachers recruited before 1 January 2011 were necessarily classified on the scale in accordance with the conditions in force at the date of their recruitment, that classification determining the amount of their remuneration.
- 24 That difference in treatment therefore results from the date of recruitment of the respective group of teachers, since that date determines whether the former or the new rules on the salary scale and classification on that scale are applicable.
- 25 Thus the only relevant criterion for the purposes of applying the new rules on the salary scale and classification on that scale is whether the person concerned is a ‘new entrant to the public service as of 1 January 2011’, regardless of the age of the public servant at the date at which he or she was recruited. Accordingly, that criterion, which renders the application of the new rules dependant exclusively on the date of recruitment as an objective and neutral factor, is manifestly unconnected to any taking into account of the age of the persons recruited (see, to that effect, judgment of 22 December 2008, *Centeno Mediavilla and Others v Commission*, C-443/07 P, EU:C:2008:767, paragraphs 81 and 83).
- 26 In addition, the referring court stated that although, at the time of their recruitment, Mr Horgan, Ms Keegan and the majority of the other teachers recruited after 1 January 2011 were younger than the teachers recruited before that date, inasmuch as at that date approximately 70% of them were 25 years of age or under, it is also common ground that irrespective of the year of recruitment, both the teachers recruited after 1 January 2011 and those recruited before that date were on average 25 years of age or under.
- 27 It follows from the foregoing that the new remuneration conditions introduced by Ireland are not based on a criterion which is inextricably or indirectly linked to the age of the teachers, so that it cannot be considered that the new rules establish a difference of treatment on grounds of age (see, to that effect, judgment of 7 June 2012, *Tyrolean Airways Tiroler Luftfahrt Gesellschaft*, C-132/11, EU:C:2012:329, paragraphs 29 and 30).
- 28 Having regard to those considerations, the answer to the first question is that Article 2(2)(b) of Directive 2000/78 must be interpreted to the effect that a measure such as that at issue in the main proceedings which, as of a specific date, provides for the application on the recruitment of new teachers of a salary scale and classification on that scale which are less advantageous than that applied, under the rules previous to that measure, to teachers recruited before that date does not constitute indirect discrimination on the grounds of age within the meaning of that provision.

The second to fourth questions

- 29 In view of the answer given to the first question, there is no need to answer the second to fourth questions.

Costs

- 30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 2(2)(b) of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted to the effect that a measure such as that at issue in the main proceedings which, as of a specific date, provides for the application on the recruitment of new teachers of a salary scale and classification on that scale which are less advantageous than that applied, under the rules previous to that measure, to teachers recruited before that date does not constitute indirect discrimination on the grounds of age within the meaning of that provision.

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Levits

Berger

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Delivered in open court in Luxembourg on 14 February 2019.

A. Calot Escobar
Registrar

A. Arabadjiev
President of the Second Chamber