

Reference for a preliminary ruling from the Oberlandesgericht Innsbruck (Austria) lodged on 28 December 2009 — Pensionsversicherungsanstalt v Andrea Schwab

(Case C-547/09)

(2010/C 100/22)

Language of the case: German

Referring court

Oberlandesgericht Innsbruck

Parties to the main proceedings

Appellant: Pensionsversicherungsanstalt

Respondent: Andrea Schwab

Questions referred

- Should Article 2(2), first indent, and Article 3(1)(c) of Directive 76/207/EEC, as amended by Directive 2002/73/EC,⁽¹⁾ and Article 2(1)(a) and (b) and Article 14(1)(c) of Directive 2006/54/EC⁽²⁾ be interpreted as meaning that direct sex discrimination (termination/dismissal of an employed doctor) by a public pension insurance fund may be justified?
- Should Article 4(1) of Directive 97/80/EEC⁽³⁾ and Article 19(1) of Directive 2006/54/EC — and possibly Article 2(2), second indent, of Directive 76/207/EEC, as amended by Directive 2002/73/EC, and Article 2(1)(b) of Directive 2006/54/EC or Article 2(2)(a) in conjunction with Article 6(1) of Directive 2000/78/EC⁽⁴⁾ — be interpreted as precluding national legislation which, in the event of actions for the annulment of terminations/dismissals *inter alia* on the grounds of sex, does not permit the consideration of social factors or interests, but only the assessment of evidence as to whether the sex discrimination was the predominant motive for the termination/dismissal or whether another reason to be substantiated by the employer predominated?

⁽¹⁾ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; OJ 1976 L, p. 40.

⁽²⁾ 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 (recast); OJ 2006 L 204, p. 23.

- ⁽³⁾ Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex; OJ 1998 L 14, p. 6.
- ⁽⁴⁾ 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.

Reference for a preliminary ruling from the Krajský soud v Brně (Czech Republic) lodged on 11 January 2010 — Toshiba Corporation, Areva T&D Holding SA, Areva T&D SA, Areva T&D AG, Mitsubishi Electric Corp., Alstom, Fuji Electric Holdings Co. Ltd, Fuji Electric Systems Co. Ltd, Siemens Transmission & Distribution SA, Siemens AG Österreich, VA TECH Transmission & Distribution GmbH & Co. KEG, Siemens AG, Hitachi Ltd, Hitachi Europe Ltd, Japan AE Power Systems Corp., Nuova Magrini Galileo SpA v Úřad pro ochranu hospodářské soutěže

(Case C-17/10)

(2010/C 100/23)

Language of the case: Czech

Referring court

Krajský soud v Brně (Regional Court, Brno)

Parties to the main proceedings

Applicants: Toshiba Corporation, Areva T&D Holding SA, Areva T&D SA, Areva T&D AG, Mitsubishi Electric Corp., Alstom, Fuji Electric Holdings Co. Ltd, Fuji Electric Systems Co. Ltd, Siemens Transmission & Distribution SA, Siemens AG Österreich, VA TECH Transmission & Distribution GmbH & Co. KEG, Siemens AG, Hitachi Ltd, Hitachi Europe Ltd, Japan AE Power Systems Corp., Nuova Magrini Galileo SpA

Defendant: Úřad pro ochranu hospodářské soutěže (The Czech Authority for the Protection of Competition)

Questions referred

- Must Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union) and Council Regulation (EC) No 1/2003⁽¹⁾ of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty be interpreted to mean that that legislation must be applied (in proceedings brought after 1.5.2004) to the whole period

of operation of the cartel, which commenced in the Czech Republic before that state's entry to the European Union (that is, before 1.5.2004) and continued and ended after the Czech Republic's entry to the European Union ?

2. Must Article 11(6) of Council Regulation (EC) No 1/2003 in conjunction with Article 3(1) thereof and recital 17 in the preamble thereto, with point 51 of the Commission Notice on cooperation within the Network of Competition Authorities,⁽²⁾ with the principle *ne bis in idem* under Article 50 of the Charter of Fundamental Rights of the European Union,⁽³⁾ and with the general principles of European law be interpreted as meaning that if the Commission brings proceedings after 1.5.2004 for infringement of Article 81 EC and makes a decision in that case:

a) the Competition Authorities of the Member States are automatically relieved of their competence to deal with that conduct from that time onwards?

b) the Competition Authorities of the Member States are relieved of their competence to apply to that conduct the provisions of domestic law containing parallel legislation to Article 81 EC (now Article 101 of the Treaty on the Functioning of the European Union)?

⁽¹⁾ OJ 2003 L 1, p. 1.

⁽²⁾ OJ 2004 C 101, p. 43.

⁽³⁾ OJ 2007 C 303, p. 1.

Action brought on 14 January 2010 — European Commission v Portuguese Republic

(Case C-23/10)

(2010/C 100/24)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: A. Caeiros, Agent)

Defendant: Portuguese Republic

Form of order sought

— A declaration that, owing to the systematic acceptance by its customs authorities of customs declarations on the release of fresh bananas into free circulation, when they knew or ought reasonably to have known that the weight declared did not correspond to the bananas true weight, and owing also to the refusal of the Portuguese authorities to make available the own resources corresponding to the loss of revenue and to default interest owed, the Portuguese Republic has failed to fulfil its obligations under Article 68 et seq. of Regulation (EEC) No 2913/92,⁽¹⁾ Article 290a of Regulation (EEC) No 2454/93⁽²⁾ and Annex 38b thereto, and under Articles 2, 6, 9, 10 and 11 of Regulations (EEC, Euratom) No 1552/89⁽³⁾ and (EC, Euratom) 1150/2000;⁽⁴⁾

— an order that the Portuguese Republic should pay the costs.

Pleas in law and main arguments

Article 290a of Regulation (EEC) No 2454/93 provides that: Examination of bananas falling within CN code 0803 00 19 for the purposes of checking the net mass on importation shall involve a minimum of 10 % of declarations per year and per customs office. Examination of bananas shall be carried out at the time of release for free circulation, in accordance with the rules laid down in Annex 38b.

Annex 38b provides: '1. For the purposes of the application of Article 290a, the customs authorities of the customs office at which the declaration for free circulation of fresh bananas is lodged shall determine the net mass, based on a sample of units of packaging for each type of packaging and for each place of origin ...'

Having regard to the Community legislation, in particular, to Article 290a of, and Annex 38b to, Regulation No 2454/93, cited above, which were, as such, the provisions applicable during the period in question, the Commission takes the view that the arguments put forward by the Portuguese authorities to explain why they had not made available the own resources and