



Reports of Cases

Case C-529/13

Georg Felber

v

Bundesministerin für Unterricht, Kunst und Kultur

(Request for a preliminary ruling from the Verwaltungsgerichtshof)

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Article 2(1) and (2)(a) and Article 6(1) and (2) — Difference of treatment on grounds of age — Civil service — Pension scheme — National legislation precluding the taking into account of periods of school education completed before the age of 18)

Summary — Judgment of the Court (Second Chamber), 21 January 2015

1. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — Scope — Retirement pension — Future consideration in cash paid by the employer to civil servants in respect of their employment — Included*

(Art. 157(2) TFEU; Council Directive 2000/78, Recital 13 and Art. 3(1)(c) and (3))

2. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — National rules providing for differences in treatment on grounds of age — Exclusion of the crediting of periods of school education completed by a civil servant before the age of 18 for the purpose of the grant of pension entitlement and the calculation of the amount of his retirement pension — Justification based on the pursuit of a legitimate aim relating to employment policy and labour market policy — Appropriate and necessary means of achieving that aim*

(Council Directive 2000/78, Arts. 2(1) and (2)(a) and 6(1))

1. Directive 2000/78 establishing a general framework for equal treatment in employment and occupation must be interpreted, in the light of Article 3(1)(c) and (3), read in conjunction with recital 13 in the preamble to that directive, as excluding social security or social protection schemes, the benefits of which are not equivalent to ‘pay’ within the meaning given to that term for the application of Article 157(2) TFEU.

The concept of ‘pay’, within the meaning of Article 157(2) TFEU, comprises any consideration, whether in cash or in kind, whether immediate or future, provided that the worker receives it, albeit indirectly, in respect of his employment from his employer.

The amount of the retirement pension depends on periods of service and equivalent periods and on the salary received by the civil servant. The retirement pension constitutes a future cash payment, paid by the employer to his employees, as a direct consequence of their employment relationship.

That pension is, under national law, regarded as pay which continues to be paid in the context of an employment relationship which continues after the civil servant becomes entitled to retirement benefits. That pension constitutes, on that basis, pay within the meaning of Article 157(2) TFEU.

(see paras 20, 21, 23)

2. Article 2(1) and (2)(a) and Article 6(1) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding national legislation which excludes the crediting of periods of school education completed by a civil servant before the age of 18 for the purpose of the grant of pension entitlement and the calculation of the amount of his retirement pension, in so far as that legislation is objectively and reasonably justified by a legitimate aim relating to employment policy and labour-market policy and constitutes an appropriate and necessary means of achieving that aim.

Even if the abovementioned legislation establishes a difference in treatment directly based on the criterion of age, within the meaning of Article 2(1) and (2)(a) of Directive 2000/78, that difference of treatment may, however, be justified under Article 6(1) of that directive.

In that respect, it must be noted that the exclusion of the crediting of periods of education completed before the age of 18 is appropriate for achieving the legitimate objective of adopting an employment policy which enables all the members of the civil servants' pension scheme to begin to contribute at the same age and to acquire the right to receive a full retirement pension, and thus guaranteeing equal treatment of civil servants.

Furthermore, the national legislation cited above appears coherent in the light of the justification for the exclusion of the periods during which the person concerned does not pay contributions to the pension scheme from the calculation of the retirement pension.

In those circumstances, taking into account the broad discretion enjoyed by the Member States in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it, a measure such as that mentioned above is appropriate to achieve the objective previously referred to and does not go beyond what is necessary to achieve that objective.

(see paras 27, 28, 35, 37, 39, 40, operative part)