



## Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

26 February 2015\*

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(1) and (2)(a) — Article 6(1) — Difference of treatment on grounds of age — National legislation providing for severance allowance not to be paid to workers entitled on the date of termination of the employment relationship to a State retirement pension)

In Case C-515/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (Denmark), made by decision of 17 September 2013, received at the Court on 25 September 2013, in the proceedings

**Ingeniørforeningen i Danmark**, acting on behalf of Poul Landin

v

**Tekniq**, acting on behalf of ENCO A/S — VVS,

THE COURT (Seventh Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Arabadjiev (Rapporteur) and J.L. da Cruz Vilaça, Judges,

Advocate General: P. Cruz Villalón,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 2 October 2014,

after considering the observations submitted on behalf of:

- Ingeniørforeningen i Danmark, acting on behalf of Mr Landin, by K. Schioldann, advokat,
- Tekniq, acting on behalf of ENCO A/S — VVS, by C. Ketelsen, and T. Lind-Larsen, advokaterne,
- the Danish Government, by M. Wolff, and C. Thorning and U. Melgaard, acting as Agents,
- the European Commission, by M. Clausen and D. Martin, acting as Agents,

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

gives the following

\* Language of the case: Danish.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 2(2)(a) and 6(1) 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 Ingeniørforeningen i Danmark, acting for Mr Landin, and Tekniq, acting for ENCO A/S — VVS, concerning the Tekniq's rejection of Mr Landin's claim for severance allowance.

### Legal context

#### *Directive 2000/78*

- 3 Under Article 1 of Directive 2000/78, '[t]he purpose of [the 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 the directive states:
  - '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:
    - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;
    - ...
- 5 Article 6 of the directive states:
  - '1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.Such differences of treatment may include, among others:
  - (a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
  - (b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
  - ...

2. 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, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.’

*Danish law*

6 In relation to severance allowance upon dismissal, Paragraph 2a of the Law on salaried employees (lov om retsforholdet mellem arbejdsgivere og funktionærer (funktionærloven); ‘Law on salaried employees’) provides as follows:

‘1. In the event of dismissal of a salaried employee who has been continuously employed in the same undertaking for 12, 15 or 18 years, the employer shall, on termination of the employment relationship, pay a sum to the employee corresponding to, respectively, one, two or three months’ salary.

2. The provisions of subparagraph (1) shall not apply if the employee is entitled to a State retirement pension on termination of the employment relationship.

3. No severance allowance shall be payable, if the employee will — on termination of the employment relationship — receive an old-age pension from the employer and the employee has joined the pension scheme in question before attaining the age of 50 years.

4. The provisions of subparagraph (3) shall not apply if, on 1 July 1996, a collective agreement governed the reduction or withdrawal of severance allowance on account of the employer’s payment of an old-age pension.

5. In the case of unfair dismissal, the provisions of subparagraph (1) shall apply *mutatis mutandis*.’

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

7 Mr Landin was born on 24 November 1944 and was recruited on 11 January 1999 as an engineer under the provisions of the Law on salaried employees.

8 With effect from his 65th birthday, on 24 November 2009, Mr Landin applied to have payment of his State retirement pension postponed to a later time so as to increase his pension entitlement.

9 On 30 November 2011, the defendant in the main proceedings notified Mr Landin, then aged 67, of its decision to dismiss him after the expiry of six months, with effect from the end of May 2012. The period in question was calculated having regard to his seniority, according to the Law on salaried employees.

10 As Mr Landin was over the age of 65 and entitled to a State retirement pension, the defendant in the main proceedings did not pay him severance allowance under Paragraph 2a(1) of the Law on salaried employees. It took the view that under Paragraph 2a(2) of the Law on salaried employees a salaried employee who is entitled to a State retirement pension loses his claim to severance allowance under Paragraph 2a(1), even if he continues to be in active employment and even though he has asked for payment of his State retirement pension to be postponed.

- 11 Mr Landin worked the entire notice period and, upon its expiry, commenced in another post as a sprinkler engineer with a new employer on general market terms and under the provisions of the Law on salaried employees.
- 12 He then brought an action, claiming severance allowance under Paragraph 2a(1) of the Law on salaried employees on the basis that the refusal of its payment is contrary to EU law.
- 13 In those circumstances the Østre Landsret decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is the prohibition of direct discrimination on grounds of age contained in Articles 2 and 6 of Directive [2000/78] to be interpreted as precluding a Member State from maintaining a legal situation whereby an employer, upon dismissal of a salaried employee who has been continuously employed in the same undertaking for 12, 15 or 18 years, must, upon termination of the salaried employee’s employment, pay an allowance equivalent to one, two or three months’ salary respectively, while this allowance is not to be paid where the salaried employee, upon termination of employment, is entitled to receive a State retirement pension?’

### **Consideration of the question referred**

- 14 In order to provide an answer to the question referred, it should, first of all, be ascertained whether Paragraph 2a(2) of Law on salaried employees amounts to a difference of treatment for the purposes of Article 2(1) of Directive 2000/78.
- 15 In the present case, Paragraph 2a(2) of the Law on salaried employees deprives certain workers of their right to severance allowance on the sole ground that they are entitled to draw on a State retirement pension scheme at the termination of their employment relationship. The documents before the court state that the entitlement to such a pension is subject to a minimum age requirement of 65 for workers born before 1954. The provision is thus based upon a criterion which is inextricably linked to the age of the employee (see, by analogy, judgment in *Ingeniørforeningen i Danmark*, C-499/08, EU:C:2010:600, paragraph 23).
- 16 It follows that the national legislation at issue in the main proceedings provides for a difference of treatment based directly on grounds of age for the purposes of Articles 1 and Article 2(2)(a) of Directive 2000/78.
- 17 It is necessary to examine whether that difference of treatment may be justified.
- 18 The first subparagraph of Article 6(1) of Directive 2000/78 states in effect that Member States may provide that a difference of treatment on grounds of age does not constitute discrimination if, within the context of national law, it is objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary (judgment in *Schmitzer*, C-530/13, EU:C:2014:2359, paragraph 37).
- 19 It is settled case-law of the Court of Justice that the Member States enjoy a broad discretion 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 (judgements in *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C 541/12, EU:C:2014:2005, paragraph 46 and the case-law cited, and *Schmitzer* EU:C:2014:2359, paragraph 38)

- 20 In order to assess whether the aim pursued by the disposition at issue in the main proceedings is legitimate, it should be noted, first, that the severance allowance aims, as the national court points out by referring to the explanatory notes to the draft law on salaried employees, to facilitate the move to new employment for older workers who have many years of service with the same employer. Secondly, although the legislature intended to restrict the benefit of that allowance to those workers who, on termination of the employment relationship, are not eligible for a State retirement pension, the preparatory documents relating to that law, cited by the national court, show that the restriction is based on the premiss that those who are eligible for a State retirement pension will generally decide to leave the labour market (see, to that effect, judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 27).
- 21 According to the documents before the Court, the restriction in Paragraph 2a(2) of the Law on salaried employees is intended to guarantee, in a simple and rational manner, that employers do not pay compensation twice to long-serving employees who have been dismissed, as this would not serve any employment policy objective.
- 22 The aim pursued by severance allowance of protecting workers with many years of service in an undertaking and helping them to find new employment falls within the category of legitimate employment policy and labour market objectives provided for in Article 6(1) of Directive 2000/78 (judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 29).
- 23 According to that provision, those objectives may justify, by way of derogation from the prohibition of discrimination on grounds of age, differences of treatment related, inter alia, to ‘the setting of special conditions on ... employment and occupation, including dismissal and remuneration conditions, for ... older workers ... in order to promote their vocational integration or ensure their protection’.
- 24 Consequently, objectives of the kind pursued by the provision of national law at issue in the main proceedings must, in principle, be considered, ‘objectively and reasonably’ as well as ‘within the context of national law,’ to justify a difference of treatment on grounds of age as provided for in the first subparagraph of Article 6(1) of Directive 2000/78 (judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 31).
- 25 It is nevertheless necessary to ascertain, according to the actual wording of the provision, whether the means used to achieve those aims are ‘appropriate and necessary’. In the present case, it must be examined whether Paragraph 2a(2) of the Law on salaried employees enables the employment policy objectives pursued by the legislature to be attained without unduly prejudicing the legitimate interests of workers who, as a result of that provision, find themselves deprived of the severance allowance on the ground that they are entitled to a State retirement pension to which the employer has contributed (see, to that effect, judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 32).
- 26 In that regard, it should be recalled that the Member States enjoy a broad discretion in the choice of the measures capable of achieving their objectives in the field of social and employment policy. However, that discretion cannot have the effect of frustrating the implementation of the principle of non-discrimination on grounds of age (judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 33 and the case-law cited).
- 27 Restricting severance allowance to only those workers who, on termination of the employment relationship, are not entitled to a State retirement pension does not appear unreasonable in the light of the objective pursued by the legislature of providing increased protection for workers for whom it is difficult to find new employment as a result of their length of service in an undertaking. Paragraph 2a(2) of the Law on salaried employees also makes it possible to limit the scope for abuse by preventing workers who intend to retire from claiming a severance allowance which is intended to support them while seeking new employment (see, to that effect, judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 34).



- 28 Therefore, it must be considered that a provision such as Paragraph 2a(2) of the Law on salaried employees does not appear to be manifestly inappropriate for attaining the legitimate employment policy objective pursued by the EU legislature.
- 29 It must nevertheless be ascertained whether that measure goes beyond what is necessary to attain the objective pursued by the legislature.
- 30 The documents before the court show that the legislature weighed the protection of workers who, because of their length of service in an undertaking, are generally among the oldest workers, against the protection of younger workers who are not entitled to severance allowance. The preparatory documents relating to Law No 1417 of 22 December 2004, which transposed Directive 2000/78, as cited by the national court, show, in that regard, that the legislature took account of the fact that severance allowance, as an instrument for giving greater protection to a category of workers defined in relation to their length of service, constitutes a form of difference of treatment to the detriment of younger workers. The Danish Government thus submits that the restriction of the scope of the severance allowance provided for in Paragraph 2a(2) of the Law on salaried employees makes it possible not to extend a social protection measure which is not intended to apply to younger workers beyond what is necessary.
- 31 Furthermore, the Danish Government maintains that the measure thus aims to ensure, in accordance with the principle of proportionality and the need to counter abuse, that severance allowance is paid only to those for whom it is intended, namely those who intend to continue to work but, because of their age, generally encounter more difficulties in finding new employment. The provision thus prevents the severance allowance from being paid to workers who will in any event be eligible for the State retirement pension.
- 32 It is apparent from the foregoing that Paragraph 2a(2) of the Law on salaried employees does not go beyond what is necessary to attain the objectives which it pursues in so far as it excludes workers who will, on termination of the employment relationship, receive a State retirement pension from entitlement to severance allowance (see, to that effect, judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 40).
- 33 It should, however, be ascertained whether this finding is put into question by the fact that the provision treats those who will actually receive a State retirement pension from their employer in the same way as those who are eligible for such a pension (see, by analogy, judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 41).
- 34 Paragraph 2a(2) of the Law on salaried employees excludes all workers from entitlement to the severance allowance who, upon termination of their employment relationship, are eligible for a State retirement pension. It must therefore be examined whether such an exclusion does not go beyond what is necessary to achieve the objectives pursued (see, to that effect, judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 43).
- 35 It is apparent from the explanations provided by the national court and the Danish Government that that exclusion is based on the idea that, generally speaking, employees leave the labour market if they are eligible for a State retirement pension. As a result of that age-based assessment, a worker who satisfies the criteria for eligibility for a State retirement pension yet wishes to waive his pension rights temporarily and to continue in his career will not be able to claim severance allowance even though it is intended to protect him. Thus, in pursuing the legitimate aim of preventing the allowance from being claimed by persons who are not seeking new employment but will receive a replacement income in the form of a State retirement pension, the measure at issue deprives workers who have been made redundant and who wish to remain in the labour market of entitlement to the severance allowance merely because they could, inter alia because of their age, draw such a pension (see judgment in *Ingeniørforeningen i Danmark*, EU:C:2010:600, paragraph 44).

- 36 In paragraph 45 of the judgment in *Ingeniørforeningen i Danmark* (EU:C:2010:600), the Court considered the exclusion of severance allowance, as provided for in Paragraph 2a(3) of the Law on salaried employees, where the salaried employee was entitled to receive an old-age pension from the employer upon termination of his employment relationship. It held that that provision made it more difficult for such a worker subsequently to exercise his right to work because he was not entitled to severance allowance whilst seeking new employment. At paragraph 46 of that judgment, the Court found that there was a risk that those workers concerned would thus be forced to accept a reduced pension entitlement leading to a significant reduction in their income in the long term.
- 37 However, the facts in the main proceedings can be distinguished from those giving rise to the judgment in *Ingeniørforeningen i Danmark* (EU:C:2010:600).
- 38 Given that the pension at issue in those proceedings was paid from the age of 60, any employee of that age would be entitled upon termination of the employment relationship only to a pension of an amount smaller than that which the employee would otherwise have been entitled to, had he continued to work until the requisite age before retiring. As a consequence, such an employee would risk receiving a reduction in pension entitlement on the ground of taking early retirement.
- 39 This is not the case in the main proceedings, which concern the exclusion of severance allowance where the salaried employee is entitled to receive a State retirement pension upon termination of the employment relationship. The documents before the Court state that that provides for the needs of a dismissed employee having already reached the national age of retirement. From 1999 to 2023, the minimum age for a State retirement pension was 65, which will be progressively increased to 67 by 2027.
- 40 The risk of incurring a reduction in pension entitlement on the ground of early retirement does not, in principle, concern employees who are entitled to a State retirement pension upon termination of employment, such as Mr Landin who was 67 years old at the time.
- 41 Moreover, to the extent that the severance allowance is a lump sum payment corresponding to one, two or three months' salary, a provision such as the one at issue in the main proceedings does not appear capable of causing a significant loss of income to the departing employee in the long term.
- 42 In that regard, the main proceedings may equally be distinguished from the facts arising in the judgment in *Dansk Jurist- og Økonomforbund* (C-546/11, EU:C:2013:603), which concerned the exclusion of those officials who were entitled to a pension at the age of 65 from entitlement to retain their current salary for three years post termination of the employment relationship.
- 43 These findings are not called into question by the fact that, as is the case with Mr Landin, an employee can increase his pension entitlement by continuing to work beyond the normal age of retirement. As indicated by the Danish government's response to a question asked at the hearing, it is possible to receive the State retirement pension whilst continuing to work. Payment of that pension can also be postponed with a view to continuing in employment and thus eventually increase the employee's pension entitlement.
- 44 In such circumstances and having regard to the matters set out in paragraphs 40 and 41 of the present judgment, which it is a matter for the national court to verify, a provision such as the one laid down in Paragraph 2a(2) of the Law on salaried employees does not appear unduly to prejudice the legitimate interests of workers who have reached the ordinary age of retirement.
- 45 In the light of the foregoing, the answer to the question referred is that Article 2(1) and (2)(a) and Article 6(1) of Directive 2000/78 must be interpreted as meaning that they do not preclude national legislation, such as the one at issue in the main proceedings, from providing that an employer must, upon the termination of the employment relationship of a salaried employee who has been

continuously employed in the same undertaking for 12, 15 or 18 years, pay an amount equivalent to one, two or three months' salary respectively, unless the salaried employee is entitled to receive a State retirement pension upon termination of employment to the extent that that legislation is both objectively and reasonably justified by a legitimate aim relating to employment and labour market policy as well as constituting an appropriate and necessary means of achieving that aim. It is for the national court to satisfy itself that this is the case.

### Costs

- <sup>46</sup> 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 (Seventh Chamber) hereby rules:

**Article 2(1) and (2)(a) 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 meaning that they do not preclude national legislation, such as the legislation at issue in the main proceedings, from providing that an employer must, upon termination of the employment relationship of a salaried employee who has been continuously employed in the same undertaking for 12, 15 or 18 years, pay an amount equivalent to one, two or three months' salary respectively, unless the salaried employee is entitled to receive a State retirement pension upon termination of employment to the extent that that legislation is both objectively and reasonably justified by a legitimate aim relating to employment and labour market policy as well as constituting an appropriate and necessary means of achieving that aim. It is for the national court to satisfy itself that this is the case.**

[Signatures]