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Press and Information

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Judgment of the Court of Justice in Case C-559/07

Commission v Greece

DIFFERENCES BETWEEN MEN AND WOMEN AS REGARDS PENSIONABLE AGE AND MINIMUM LENGTH OF SERVICE REQUIRED UNDER THE GREEK CIVIL AND MILITARY PENSIONS CODE ARE INCOMPATIBLE WITH COMMUNITY LAW

Those rules merely apply more favourable conditions to women, particularly to mothers, than to men, without remedying the problems which women encounter in the course of their professional careers

The EC Treaty¹ prohibits any discrimination in respect of pay as between male and female workers, whatever the mechanism determining such inequality.

The Commission sought a declaration from the Court of Justice that the provisions of the Greek Civil and Military Pensions Code² providing for differences between male and female workers with regard to pensionable age and minimum length of service required infringe the principle of equal treatment. It takes the view that that system lays down retirement conditions which are less favourable to men than to women.

Greece has not disputed the fact that there are differences in treatment, but submitted that the Greek pension system, as a statutory social security scheme, does not fall within the scope of the Treaty but under Directive 79/7³. In any event, those differences correspond to the respective social roles of men and women and constitute measures which compensate for the disadvantages suffered by women because of the shorter duration of their working life.

First of all, the Court notes that, according to the EC Treaty, each Member State is to ensure that the principle of equal pay for male and female workers for equal work is applied. ‘Pay’ means the wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from the employer. The concept of pay does not encompass social security schemes directly governed by legislation, but does

¹ Article 141EC.

² Presidential Decree No 166/2000 of 3 July 2000.

³ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24), which permits Member States to exclude from its scope the determination of pensionable age.

include benefits paid under a pension scheme, which essentially relates to the employment of the person concerned.

It points out that among the criteria applied in its case-law in order to classify a pension scheme, only the criterion of employment (the fact that a pension is paid to the worker by reason of the employment relationship between him and his former employer) can be decisive, the means of financing and management of the scheme not constituting decisive factors.

The Court notes that the pension paid under the Greek Code complies with the three criteria defined by the Court's case-law enabling it to be classified as pay within the meaning of the Treaty:

- it is applied to a wide and varied **group of workers** which, although made up of disparate categories with tasks and employment relationships which are entirely dissimilar, can be distinguished by particular characteristics governing the **employment relationship with the State or other public employers**;
- it is calculated **on the basis of the length of service completed**; and, finally,
- it is calculated **on the basis of the final salary**.

The Court then points out that it **is contrary to the principle of equal treatment to impose** for the grant of a retirement pension paid in relation to employment **age conditions** and rules on **minimum periods of service required** which differ according to sex for workers in identical or comparable situations.

That principle does not preclude a Member State from applying measures providing for specific advantages intended to facilitate the exercise of a professional activity by the under-represented sex or from preventing or compensating for disadvantages in professional careers. Furthermore, national measures covered by the principle of equal treatment must, **in any event, contribute to helping women conduct their professional life on an equal footing with men.**

The Court holds that the provisions of the Greek Civil and Military Pensions Code are not of a nature to offset the disadvantages to which the careers of female civil servants and military personnel are exposed by helping them in their professional life.

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Languages available: EL EN ES FR

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-559/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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