



Press and Information

Court of Justice of the European Union

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Judgment in Case C-555/07

Seda Küçükdeveci v Swedex GmbH & Co. KG

## **The Court of Justice confirms the existence of the principle of non-discrimination on grounds of age and the role of national courts in its application**

*German legislation under which periods of employment completed before the age of 25 are not taken into account for calculating the notice period is contrary to the principle of non-discrimination on grounds of age, as expressed by Directive 2000/78, and must be disapplied if need be by the national court, even in proceedings between individuals*

In the *Mangold* judgment of 2005<sup>1</sup>, the Court of Justice acknowledged the existence of a principle of non-discrimination on grounds of age which must be regarded as a general principle of European Union law. Directive 2000/78 on equal treatment in employment and occupation<sup>2</sup> gives expression to that principle. While prohibiting discrimination on grounds of age, the directive allows the national legislature to provide that in certain cases a difference of treatment, although based on age, does not constitute discrimination, and is therefore not prohibited. In particular, a difference of treatment on grounds of age is permissible if it is justified by a legitimate aim of employment, labour market or vocational training policy, and the means of achieving that aim are appropriate and necessary. The Charter of Fundamental Rights of the European Union, which since the entry into force of the Treaty of Lisbon has the same legal value as the Treaties, also prohibits all discrimination based on age<sup>3</sup>,

Under German employment law, the notice periods which an employer must comply with in the case of dismissal increase progressively according to the length of the employment relationship. However, periods of employment completed by an employee before reaching the age of 25 are not taken into account for calculating the period.

Ms Küçükdeveci had been employed by Swedex since the age of 18. At the age of 28, she was dismissed by that company, with one month's notice. The company calculated the notice period as if she had three years' length of service, although she had worked for it for ten years: in accordance with the German legislation, no account was taken of the periods of employment completed before Ms Küçükdeveci was 25. She brought proceedings to challenge her dismissal, claiming that the legislation constituted discrimination on grounds of age, prohibited by European Union law. In her view, the notice period should have been four months, corresponding to ten years' service.

The Higher Labour Court, Düsseldorf, hearing the case on appeal, put questions to the Court of Justice on the compatibility of such a rule on dismissal with European Union law, and the consequences of any incompatibility.

The Court of Justice examines those questions on the basis of the general principle of European Union law prohibiting all discrimination on grounds of age, as given expression by Directive 2000/78. As the dismissal of Ms Küçükdeveci took place after the date on which Germany had to transpose the directive into national law, the directive had the effect of bringing the German rule on dismissal within the scope of European Union law.

<sup>1</sup> Case [C-144/04](#) *Mangold*.

<sup>2</sup> 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).

<sup>3</sup> Article 21(1) of the Charter.

The Court finds that the rule on dismissal contains a difference of treatment based on age. The rule gives less favourable treatment to employees who have entered the employer's service before the age of 25. It thus introduces a difference of treatment between persons with the same length of service, depending on the age at which they joined the undertaking.

While the aims of the rule clearly belong to employment and labour market policy, and are therefore legitimate objectives, the rule is not appropriate or necessary for achieving them.

In particular, as regards the objective mentioned by the national court of giving employers greater flexibility of personnel management by alleviating the burden on them in respect of the dismissal of young workers, from whom it is reasonable to expect a greater degree of personal or occupational mobility, the Court states that the rule in question is not appropriate for achieving that aim, because it applies to all employees who joined the undertaking before the age of 25, whatever their age at the time of dismissal.

The Court therefore concludes that European Union law, more particularly the principle of non-discrimination on grounds of age as given expression by Directive 2000/78, precludes national legislation such as the German rule which provides that periods of employment completed by an employee before reaching the age of 25 are not taken into account in calculating the notice period for dismissal.

The Court then points out that a directive cannot of itself impose obligations on an individual, and cannot therefore be relied on as such against an individual. However, Directive 2000/78 merely gives expression to the principle of equal treatment in employment and occupation. Moreover, the principle of non-discrimination on grounds of age is a general principle of European Union law. It is therefore for the national court, hearing a dispute involving the principle of non-discrimination on grounds of age as given expression in Directive 2000/78 to provide, within the limits of its jurisdiction, the legal protection which individuals derive from European Union law and to ensure the full effectiveness of that law, disapplying if need be any provision of national legislation contrary to that principle.

Finally, after referring to the national court's entitlement to make a reference to the Court for a preliminary ruling on the interpretation of European Union law, the Court states that the national court, hearing proceedings between individuals, must ensure that the principle of non-discrimination on grounds of age as given expression in Directive 2000/78 is complied with, disapplying if need be any contrary provision of national legislation, independently of whether it makes use of its entitlement to ask the Court for a preliminary ruling on the interpretation of that principle.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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Press contact: Christopher Fretwell ☎ (+352) 4303 3355

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