



Press and Information

Court of Justice of the European Union

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Judgment in Case C-499/08

Ingeniørforeningen i Danmark acting on behalf of Ole Andersen v Region Syddanmark

Depriving a worker of a severance allowance on the ground that he may draw an old-age pension constitutes discrimination on grounds of age

Danish law grants a severance allowance to workers who have been employed in the same undertaking for at least 12 years. However, that allowance is not paid to workers who, on termination of the employment relationship, may draw an old-age pension under an occupational pension scheme even if the person concerned intends to continue working.

Ole Andersen worked for the Region Syddanmark (Region of Southern Denmark) from 1979 until his dismissal in 2006. He was aged 63 at that time and did not wish to retire and thus registered as a job seeker. He claimed payment of the severance allowance. That claim was rejected on the ground that he was entitled to draw a pension. The Ingeniørforeningen i Danmark, the trade union acting on behalf of Mr Andersen, thus brought an action before the Vestre Landsret (Western Regional Court) claiming that the legislation at issue discriminates on grounds of age, which is prohibited by Directive 2000/78/EC¹.

In today's judgment the Court finds, first of all, that the legislation at issue operates a difference of treatment based directly on grounds of age. It deprives certain workers of entitlement to the severance allowance on the sole ground that they may draw an old-age pension. Next, the Court examines whether that difference of treatment may be justified.

First, the Court notes that the severance allowance aims to facilitate the move to new employment for workers who have many years of service with the same employer. Next, the Court points out that the restriction at issue is based on the finding that, as a general rule, persons entitled to draw an old-age pension leave the labour market. Finally, that restriction ensures that employees do not claim both the severance allowance and an old-age pension. The objectives pursued by the allowance of protecting workers with many years of service in an undertaking and assisting them in finding new employment are legitimate employment policy and labour market objectives. In principle, that measure must therefore be regarded as justified 'objectively and reasonably', 'within the context of national law', as provided for in Directive 2000/78.

As regards the question whether the restriction at issue is proportionate to the objectives which it pursues, the Court finds that the exclusion from the severance allowance of workers who will receive an old-age pension from their employer is not manifestly inappropriate to achieve the above cited objectives.

However, the Court considers that that restriction goes beyond what is necessary to achieve those objectives. It excludes from the severance allowance not only all workers who will actually receive an old-age pension from their employer, but also all those who are eligible for such a pension but who intend to continue to work. **By precluding payment of the severance allowance to workers who, although eligible for an old-age pension from their employer, none the less intend to waive their right to such a pension temporarily in order to continue to work, the legislation goes beyond what is necessary to achieve the social policy objectives pursued by that provision, and is not justified.**

¹ 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).

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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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