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Court of Justice of the European Union

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Judgment in Case C-45/09

Gisela Rosenblatt v Oellerking Gebäudereinigungsges. mbH

## **Automatic termination of an employment contract on reaching retirement age is not necessarily discriminatory**

In Germany, the Law on equal treatment (Allgemeines Gleichbehandlungsgesetz) provides that clauses on automatic termination of employment contracts on the ground that an employee has reached retirement age may escape the prohibition on discrimination on grounds of age. Under the German legislation, the power to adopt such clauses may be entrusted to the social partners and implemented by a collective agreement.

Gisela Rosenblatt worked as a cleaner for 39 years. Her employment contract, in accordance with the collective agreement for the commercial cleaning sector, ends at the end of the calendar month in which she may claim a retirement pension, or, at the latest, at the end of the month in which she reaches the age of 65. When she reached the age of 65, which was retirement age, her employer gave her notice of the termination of her employment contract. Ms Rosenblatt brought an action before the Arbeitsgericht Hamburg (Hamburg Labour Court), claiming that the termination of her employment contract constituted discrimination on grounds of age.

The referring court asks, essentially, whether the automatic termination of an employment contract at normal retirement age is consistent with the prohibition on discrimination on grounds of age laid down by Directive 2000/78/EC<sup>1</sup>.

In today's judgment the Court finds, first, that a clause on automatic termination of an employment contract on the ground that an employee is eligible to retire creates a difference of treatment based directly on age. The Court then considers whether there is any justification for that difference of treatment.

In that regard, the Court considers that such a measure does not establish a regime of compulsory retirement but allows employers and employees to agree, by individual or collective agreements, on a means, other than resignation or dismissal, of ending employment relationships on the basis of the age of eligibility for a retirement pension.

As regards the aim of the legislation at issue, the Court observes that the mechanism is based on the balance to be struck between political, economic, social, demographic and/or budgetary considerations and the choice to be made between prolonging people's working lives or, conversely, providing for their early retirement.

The Court notes that such clauses on automatic termination have been part of the employment law of many Member States for a long time and are in widespread use in employment relationships. By guaranteeing workers a certain stability of employment and, in the long term, the promise of foreseeable retirement, while offering employers a certain flexibility in the management of their staff, the clause on automatic termination of employment contracts is thus the reflection of a balance between diverging but legitimate interests, against a complex background of employment relationships closely linked to political choices in the area of retirement and employment. Those aims must, in principle, be considered to justify 'objectively and reasonably', 'within the context of

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<sup>1</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).

national law', as provided in Directive 2000/78, a difference in treatment on the ground of age prescribed by Member States.

Next, the Court holds that it does not appear unreasonable for the authorities or the social partners of a Member State to take the view that clauses on automatic termination of employment contracts may be appropriate and necessary in order to achieve those legitimate aims. In that regard the Court points out that the clause applicable to Ms Rosenbladt is not based solely on a specific age but also takes account of the fact that the persons concerned are entitled to financial compensation in the form of a retirement pension, and does not authorise employers to terminate an employment relationship unilaterally. Moreover, the fact that it is based on an agreement makes for considerable flexibility in the use of the mechanism, allowing the social partners to take account of the overall situation in the labour market concerned and of the specific features of the jobs in question. In addition, the German legislation contains a further limitation in that it requires employers to obtain or confirm the consent of workers to any clause on automatic termination of an employment contract on the ground that the employee has reached the age at which he is eligible for a pension, where that age is less than the normal retirement age. Finally, the Court observes that the German Law prevents a person who intends to continue to work beyond retirement age from being refused employment, either by his former employer or by a third party, on a ground related to his age.

Consequently, the Court holds that **Directive 2000/78 does not preclude clauses on automatic termination of employment contracts on the ground that the employee has reached the age of retirement such as that laid down in Germany by the collective agreement for employees in the commercial cleaning sector.**

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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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