



Press and Information

Court of Justice of the European Union

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Judgment in Case C-152/11

Dr Johann Odar v Baxter Deutschland GmbH

## **A social plan may provide for a reduction in redundancy compensation paid to workers approaching retirement age**

*However, taking account of possible early retirement due to disability in the calculation of that reduction constitutes discrimination prohibited by EU law*

The social plan concluded by the German undertaking Baxter and its works council provides that the amount of compensation paid to workers made redundant on operational grounds is contingent, inter alia, on the length of service in the undertaking (standard formula compensation).

However, the plan also provides that, for workers over 54 years of age, the amount of compensation is calculated according to the earliest possible beginning of pension (special formula compensation). The amount to be paid to those workers is lower than the amount obtained using the standard formula, although it must be equal to at least half of that amount.

Dr Odar, who was employed by Baxter for over 30 years, is recognised as being severely disabled. When his employment relationship with Baxter ended, he received compensation on termination under the social plan.

As he was over the age of 54, he received an amount lower than that to which he would have been entitled if he had not been older than 54. The calculation method provided for in the social plan in the event of termination of employment on operational grounds does, therefore, give rise to a difference in treatment on the basis of age.

The social plan further provides that when the worker has the possibility of receiving an early retirement pension on grounds of disability, that date is the one taken into account for the calculation under the special formula.

Taking the view that the calculation of the compensation placed him at a disadvantage because of both his age and his disability, Dr Odar brought an action against Baxter before the Arbeitsgericht München (Employment Court, Munich, Germany). That court decided to make a reference to the Court of Justice concerning the compatibility of any unequal treatment stemming from the social plan with EU law<sup>1</sup>, which prohibits any discrimination on grounds of age or disability.

By its judgment today, the Court holds that **the prohibition**, provided for by EU law, **against any discrimination on grounds of age does not preclude rules under a social plan, such as those in the present case, which provide for differentiation in the calculation of the compensation according to age.**

Such a difference in treatment may be justified by the objective of granting compensation for the future, protecting younger workers and facilitating their reintegration into employment, whilst taking account of the need to achieve a fair distribution of limited financial resources in a social plan. Moreover, the aim of preventing compensation on termination from being claimed by persons who are not seeking new employment but will receive a replacement income in the form of an occupational old-age pension must be considered to be legitimate.

<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).

Rules such as those in the present case do not appear to be manifestly inappropriate and do not go beyond what is required to achieve the objective pursued. The Court observes that the social plan provides for a reduction in the amount of the compensation on termination but that that amount varies according to age and must be at least equal to one half of the amount obtained using the standard formula. The Court further notes that the rules in question are the result of an agreement negotiated between employees' and employers' representatives exercising their right to bargain collectively which is recognised as a fundamental right. The fact that the task of striking a balance between their respective interests is entrusted to the social partners offers considerable flexibility, as each of the parties may, where appropriate, opt not to adopt the agreement.

**However, the Court holds that the prohibition, provided for by EU law, against any discrimination on grounds of disability precludes the rules in question in so far as they take account, in the use of the special calculation formula, of the possibility of receiving an early retirement pension on grounds of disability.**

That difference in treatment of non-disabled and disabled workers disregards the risks faced by severely disabled people, who generally face greater difficulties in finding new employment, as well as the fact that those risks tend to become exacerbated as they approach retirement age. Severely disabled people have specific needs stemming both from the protection their condition requires and from the need to anticipate possible worsening of their condition. Regard must therefore be had to the risk that disabled workers may throughout their lives have financial requirements arising from their disability which cannot be adjusted and/or that, with advancing age, those financial requirements may increase

It follows that, in ultimately paying a severely disabled worker compensation on termination on operational grounds which is lower than the amount paid to a non-disabled worker, the rules in question have an excessive adverse effect on the legitimate interests of severely disabled workers and therefore go beyond what is necessary to achieve the social policy objectives they pursue.

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

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