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Press and Information

PRESS RELEASE No 73/07

16 October 2007

Judgment of the Court of Justice in Case C-411/05

Félix Palacios de la Villa v Cortefiel Servicios SA

THE COURT SPECIFIES THE CONDITIONS UNDER WHICH MEMBER STATES MAY PROVIDE FOR A DIFFERENCE IN TREATMENT ON GROUNDS OF AGE

In the general context of national legislation the aim of promoting access to employment by means of better distribution of work between the generations may, in principle, be regarded as 'objectively and reasonably' justifying 'within the context of national law' a difference in treatment on grounds of age laid down by the Member States.

A directive adopted in 2000¹ aims to lay down a general framework for combating certain kinds of discrimination, as regards employment and occupation, including discrimination on grounds of age. A difference in treatment based directly on age constitutes, in principle, discrimination prohibited by Community law. However, the directive allows Member States to provide for such difference in treatment and regard it as non-discriminatory where it is objectively and reasonably justified, within the context of national law, by a legitimate aim, inter alia, by legitimate employment policy and labour market objectives. Furthermore, the means of achieving that aim must be appropriate and necessary.

Spanish legislation treats compulsory retirement clauses in collective agreements as lawful where those clauses provide as sole requirements that workers must have reached retirement age – set at 65 years – and must fulfil other social security conditions for entitlement to a contributory retirement pension.

Felix Palacios de la Villa worked for Cortefiel from 1981 as organisational manager. In 2005, Cortefiel notified him of the termination of his contract of employment on the ground that he had reached the compulsory retirement age. At the date of notification, Mr Palacios de la Villa had completed the periods of employment necessary to draw a retirement pension under the social security scheme amounting to 100% of his contribution base.

Taking the view that that notification amounted to dismissal, Mr Palacios de la Villa brought an action before the Spanish courts which referred a number of questions to the Court of Justice of the European Communities for a preliminary ruling on the interpretation of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation.

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)

First, the Court states that national legislation, according to which the fact that a worker has reached the age fixed for compulsory retirement leads automatically to the termination of his employment relationship, affects the duration of the employment relationship between the worker and his employer and, more generally, the engagement of the worker concerned in an occupation by preventing his future participation in the labour force. Such national legislation thus establishes rules relating to 'employment and working conditions, including dismissals and pay' within the meaning of Directive 2000/78 and, therefore falls within its scope.

The Court goes on to state that national legislation of that kind must be regarded as directly imposing less favourable treatment for workers who have reached that age as compared with all other persons in the labour force. Therefore, such legislation establishes a difference in treatment directly based on age.

Next, the Court examines possible justification for that difference in treatment.

The Court states that the Spanish legislation was adopted at the instigation of the social partners as part of **a national policy aiming to promote better access to employment by means of better distribution of work between the generations. The fact that the legislation does not formally refer to an aim of that kind does not automatically exclude the possibility that it may be justified.**

The Court considers that other elements, taken from the general context of the measure concerned, may enable its underlying aim to be identified for the purposes of judicial review as regards its justification.

The Court infers from the context in which the Spanish legislation was adopted that it was aimed at regulating the national labour market, in particular for the purposes of checking unemployment. The legitimacy of such an aim of public interest cannot reasonably be called into question with regard to Directive 2000/78 and the EU and EC Treaties, since the promotion of a high level of employment constitutes one of the ends pursued both by the European Union and the European Community.

Such an aim must therefore, in principle, be regarded as 'objectively and reasonably' justifying, 'within the context of national law', as provided for by Directive 2000/78, a difference in treatment on grounds of age laid down by the Member States.

Finally, the Court recalls that, as Community law stands at present, the Member States and, where appropriate, the social partners at national level enjoy broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it. However, the national measures laid down in that context may not go beyond what is 'appropriate and necessary' to achieve the aim pursued by the Member State concerned.

It does not appear unreasonable for the authorities of a Member State to take the view that compulsory retirement, because the worker has reached the age-limit provided for, may be appropriate and necessary in order to achieve a legitimate aim in the context of national employment policy consisting in promoting full employment by facilitating access to the labour market.

Furthermore, the measure cannot be regarded as unduly prejudicing legitimate claims of workers subject to compulsory retirement because they have reached the age limit provided for; the relevant national legislation is not based only on a specific age, but also takes account of the fact

that the persons concerned are entitled to financial compensation by way of a retirement pension at the end of their working life, such as that provided for by the Spanish scheme, the level of which cannot be regarded as unreasonable.

Accordingly, the Court considers that such legislation is not incompatible with the requirements of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation.

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Languages available: BG, CS, DE, EN, ES, EL, FR, HU, IT, NL, PL, PT, RO, SK, SL

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-411/05>

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

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