Court of Justice of the European Union
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Press and Information

Judgment in Case C-511/19
AB v Olympiako Athlitiko Kentro Athinon – Spyros Louis

Public-sector workers placed, in certain circumstances, under the labour reserve system: the Greek legislation is not contrary to EU law

The difference in treatment on grounds of age established by that system pursues a legitimate labour-policy objective and the means of achieving that objective are appropriate and necessary

In 1982, AB was recruited by the Olympiako Athlitiko Kentro Athinon – Spyros Louis (Athens Olympic Athletic Centre – Spyros Louis, Greece; 'OAKA'), a legal person governed by private law within the Greek public sector, under a contract of indefinite duration. In 1998, he was assigned the duties of technical adviser. On 1 January 2012, pursuant to Law 4024/2011, [1] AB was placed under the labour reserve system prior to his retirement, which resulted in his pay being reduced to 60% of his basic salary. [2] On 30 April 2013, OAKA terminated AB's contract without giving him the severance pay provided for in the event of termination. That refusal was based on the legislation referred to above, which provides that the severance pay which is payable may be offset against the remuneration paid to the employee during his or her assignment to the labour reserve.

AB challenged, inter alia, the validity of his placement under the labour reserve system before the Greek courts, claiming that Greek law established a difference in treatment on grounds of age that is contrary to the directive on equal treatment in employment and occupation. [3] He submitted that OAKA should be ordered to pay him the difference between the salary of which he was in receipt before and after his placement, as well as a sum by way of severance pay.

The case was referred at final instance to the Areios Pagos (Court of Cassation, Greece), which submitted questions to the Court of Justice concerning the interpretation of the directive. It asks, inter alia, whether that system involves indirect discrimination on grounds of age, in that it is reserved for employees who are close to full retirement, which presupposes that they have completed 35 years of contributions and have reached the age of 58, those conditions having had to be met during the period from 1 January 2012 to 31 December 2013, and, if so, whether such discrimination can be justified.

By its judgment delivered today, the Court rules that **national legislation which pursues a legitimate employment-policy objective and provides for appropriate and necessary means by which to achieve that objective is not contrary to EU law.**

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[1] Article 34, entitled 'Abolition of vacant, private-law posts and labour reserve', of Law 4024/2011 on pension arrangements, uniform pay scales/employment grades, the labour reserve and other provisions implementing the Medium-Term Fiscal Strategy Framework 2012-2015 of 27 October 2011, as amended by the decree-law of 16 December 2011 converted into law by Article 1 of Law 4047/2012 of 23 February 2012. In the context of the Greek financial crisis, that legislation puts into effect the undertakings given by that Member State to its creditors, consisting in an immediate reduction in wage costs in the public sector in order to achieve savings of EUR 300 million in respect of 2012, as the labour reserve system was to be applied to 30 000 workers in the broader public sector.

[2] Staff placed under the labour reserve system are included in the selection lists by the ASEP (Higher Council for Civil Personnel Selection, Greece) on the basis of objective and merit-based criteria (such as qualifications or diplomas, experience, age, etc.). Those staff members continue to receive for 12 months, or, where envisaged by more specific provisions, 24 months, 60% of the basic salary which they received at the time when they were placed under the system. Inclusion on those lists enables them to find other public-sector positions. Any selection for positions suspends the remuneration paid under the labour reserve.

[3] 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).

It first confirms that the legislation at issue comes within the scope of the directive, which also applies to employees of legal persons governed by private law in the broader public sector in relation, in particular, to the conditions governing dismissals and pay. [4]

The Court goes on to observe that placement under the labour reserve system was laid down for workers in the broader public sector who satisfied, during the period in question, the conditions for receiving a full retirement pension. The fact that the worker has reached the minimum age of 58 is an essential requirement for eligibility for a full retirement pension and, consequently, for placement under the labour reserve system. Thus, **the application of that system is based on a criterion which is inextricably linked to the age of the workers concerned.** Notwithstanding the fact that the other condition, namely that of having completed 35 years of contributions, must be regarded as an apparently neutral criterion, the Court concludes that **the Greek legislation contains a difference in treatment that is directly based on age.**

However, pursuant to the directive, a difference in treatment on grounds of age can be justified, under national law, by legitimate objectives, including social- and employment-policy objectives.

The Court considers that the immediate need to reduce wage costs in the public sector in order to deal with the Greek financial crisis cannot, in itself, constitute a legitimate objective justifying a difference in treatment on grounds of age within the meaning of the directive. Nevertheless, **the labour reserve system addresses legitimate employment-policy objectives.** On the one hand, it contributes to **promoting a high level of employment**, which is one of the objectives pursued by the European Union. On the other hand, it allows for the establishment of **an age structure that balances young and older civil servants**.

The Court consequently examines whether the means of achieving the employment-policy objectives referred to above are appropriate and necessary. It finds that the **labour reserve system** constitutes an **appropriate** means by which to achieve those **objectives.**

As to the necessary nature of the measures taken, the Court recalls that it is for the Member States to find the right balance between the different interests involved, that is to say, maintaining a high level of employment for the benefit of younger workers and respecting the right to engage in work. In that respect, the workers affected by placement under that system are subject to it for a relatively brief period, namely a maximum of 24 months. Moreover, given that, at the end of that period, they benefit from a full retirement pension, the abolition of severance pay does **not** appear to be **unreasonable.**

The Court also notes that workers placed under that system **enjoy measures for their protection which have the effect of mitigating the adverse effects.** These include, moreover, the possibility, under certain conditions, of finding alternative occupation (in the private sector) or of pursuing a freelance activity without losing the right to receive the remuneration relating to the system, but also exemptions from the system for vulnerable social groups requiring protection.

The Court consequently holds that the legislation **does not unreasonably prejudice** the interests of the workers placed under that system and **therefore does not go beyond what is necessary** to achieve the employment-policy objectives.

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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[4] Article 3(1)(c) of the directive.

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