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NEWS REPORT

Country:	Finland
Title:	Supreme Administrative Court decision of 13 January 2015, taking into account preliminary ruling by the CJEU in Case C-318/13 <i>Proceedings brought by X</i> .
Date:	13 April 2015
Expert:	Kevät Nousiainen
<u>Context</u>	
Issue at stake:	Decision by Supreme Administrative Court on a case concerning lump sum employment accident compensation paid for a man, calculated on the basis of life expectancy that is lower than that for a similarly situated woman of same age; violation of Directive 79/7/EEC; State compensation on the basis of violation of EU law
Ground of discrimination:	Sex
Source:	National court decision
Field:	Statutory social security
Applicable law:	Finnish: Employment Accidents Act (608/1948) Section 14 (1) (192/1987) and Section 18(b)(1) and 18(b)(3) (1642/12992); decision by the Ministry of Social Affairs and Health (1662/453/82); EU: Directive 79/7/EEC Article 3(1)(a) and Article 4(1)

Content

Case: X, a male who had suffered an employment accident in 1991, received a lump sum compensation for the accident on the basis of his life expectancy, as applied by the Employment Accidents Act. This amounted to less than what would be afforded to a woman of the same age and in a similar situation. He requested before the Finnish Insurance Court to be paid according to the calculation of life expectancy used for a comparable woman. The Insurance Court dismissed the request, and X exhausted all available remedies.

In a letter to the Ministry of Social Affairs and Health in 2009, X stated that the Finnish authorities had not applied Directive 79/7/EEC correctly. The Ministry replied that there was no case law on how the Directive should be applied in the situation at hand. X applied to the Helsinki Administrative Court claiming EUR 278.89 as compensation for the loss sustained due to unequal treatment. The Helsinki Administrative Court dismissed the case. X applied to the Supreme Administrative Court demanding that the decision of the Helsinki Administrative Court be reversed. He claimed that Directive 79/7/EEC has direct effect, and presented a claim of reparation of his loss to the Finnish State. The

Supreme Administrative Court reversed the decision of the Helsinki Administrative Court and referred the case to the Court of Justice of the EU.¹

In Case C-318/13, the EU Court interpreted Article 4(1) of Directive 79/7/ to preclude national regulation of employment accident insurance that uses sex-segregated life expectancy calculations as an actuarial factor, if in identical circumstances the provisions result in different compensation amounts. It was for the Finnish Supreme Administrative Court to decide whether Finnish legislation violated EU law, in which case X would be entitled to compensation by the State.

Decision of the Court: In case no. KHO:2015:8, the Finnish Supreme Administrative Court noted that the EU founding treaties do not contain an express binding provision on the duty of the Member States to compensate damage resulting from breaches of EU law. Relevant EU law is found in the case law of the CJEU, which stipulates that in order to consider an EU provision (that aims to afford rights to individuals) breached, the damage sustained by an individual is a) caused by the violation; and b) the violation of EU law is evident. The Supreme Administrative Court refers to cases C-46/93, C-424/97, C-392/93, C-5/94, C-127/95, C-318/13, and C-524/04 concerning the obligation of the Member State to compensate damage to individuals by breaches of EU law. The Supreme Administrative Court found that the aim of Article 4(1) of Directive 79/7/EEC is to give a right to an individual, and in addition that Article 4(1) precludes national regulation that would result in a man being afforded a lower benefit than a comparable woman. The damage suffered by X was therefore causally related to the non-fulfilment of national the Member State's duty.

The Supreme Administrative Court did not find that the violation of EU law was evident. When Member State liability is being determined, the case law of the CJEU requires that all circumstances of the case are to be taken into account. This includes the clarity and precision of the violated provision, the margin of discretion afforded to the authorities, and the intention of the act that caused the damage.

The Supreme Administrative Court found that Article 4(1) of Directive 79/7/EEC does not make an exception to the principle of equal treatment of men and women on the basis of differences in life expectancy, whereas Directives 2004/113 EC and 2006/54/EC allow Member States alternatives in implementing the principle of equality in the context of using actuarial factors in insurance. While the latter two Directives do not explicitly cover damage compensation from employment accidents, the actuarial factors mentioned in the Directives are in fact similar to those used to calculate employment accident compensation. The CJEU has no case law that precedes Case C-318/13 on the use of actuarial factors based on sex in mandatory national social security systems. Moreover, there has been no infringement procedure against Finland concerning Article 4(1) of the Directive regarding the use of life expectancy.

In *Test-Achats* (C-236/09) the CJEU held Article 5(2) of Directive 2004/113 EC invalid, as it violates the principle of equality between men and women. Directives 2004/113 EC and 2006/54/EC had entered into force before the Finnish Insurance Court reached the decision to dismiss X's compensation claim. The present Finnish provisions on how damages for employment accidents are to be calculated were amended by Act no. 1639/2009, which came into force on 1 January 2010. The preparatory works for the Act assumed that sex segregated actuarial factors could be used in mandatory social security. However, the preparatory works also referred to the legal uncertainty in the matter. When the exception concerning actuarial factors under Directive 2004/113/EC was used during the implementation of the Directive, uncertainty was also expressed in the preparatory works. In *Test-Achats* (2011) the Court of Justice found the exception concerning actuarial factors to violate the principle of equal treatment of men and

¹ Supreme Administrative Court decision KHO 2013:105.

women. The judgment is of later date than the decision of the Finnish Insurance court which dismissed the claim presented by X. Thus, the judgment of the CJEU did not make the violation of EU law sufficiently evident to incur duty to compensate the loss to an individual. The fact that the European Commission had not started an infringement process against Finland also influenced the national situation. The breach of EU law by national legislation, according to the Supreme Administrative Court, was neither intentional nor based on an inexcusable legal mistake, and therefore not sufficiently evident to warrant compensation. The Supreme Administrative Court dismissed the case.

Under Finnish administrative procedural law, a party in a court case will pay the costs of the other party if it is considered unjust that the party has to cover his or her costs. The Supreme Administrative Court decided that the State is to compensate reasonable court costs to X, to the extent they exceed the free legal aid he received.

Key points of analysis: The Finnish Supreme Administrative Court found that using sex-segregated life expectancy data to calculate lump sum compensation payments under the Employment Accidents Act amounted to a breach of EU law, and that X had suffered a loss due to the relevant provisions of this Act. However, the breach was not sufficiently evident to warrant reparation by the State, as the decisive EU case law (*Test-Achats*, Case C-236/09) appeared after the Finnish decisions on X's right to benefit. In addition, the EU Commission had not initiated an infringement procedure.

Internet link source:

<http://www.kho.fi/fi/index/paatoksia/vuosikirjapaatokset/vuosikirjapaatos/1421044016960.html> accessed 4.3.2015.