

Recent case-law of the Court of Justice of the European Union

(1 November 2016 – 15 November 2017, in chronological order, based on case numbers)

1. Case C-258/14 *Eugenia Florescu and Others v Casa Județeană de Pensii Sibiu and Others*, ECLI:EU:C:2017:448

Final finding (with regard to discrimination):

"[...] 4. Article 2(2)(b) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not applying to national legislation, such as that at issue in the main proceedings, which is interpreted as meaning that the prohibition on the combining of a net retirement pension with income from activities carried out in public institutions, laid down by the national legislation if the amount of the pension exceeds the amount of the national gross average salary on the basis of which the State social security budget was drawn up, applies to professional judges but not to persons occupying a post whose term is laid down in the national Constitution."

2. Case C-98/15 *María Begoña Espadas Recio v Servicio Público de Empleo Estatal (SPEE)*, ECLI:EU:C:2017:833

Final finding:

"1. Clause 4(1) of the Framework Agreement on part-time work concluded on 6 June 1997, which is annexed to Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC, is not applicable to a contributory unemployment benefit such as that at issue in the main proceedings."

2. Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as precluding legislation of a Member State which, in the case of 'vertical' part-time work, excludes days not worked from the calculation of days in respect of which contributions have been paid, and therefore reduces the unemployment benefit payment period, when it is established that the majority of vertical part-time workers are women who are adversely affected by such legislation."

3. Case C-157/15 *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV*, ECLI:EU:C:2017:203

Final finding:

"Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief within the meaning of that directive."

By contrast, such an internal rule of a private undertaking may constitute indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/78 if it is established that the apparently neutral obligation it imposes results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage, unless it is objectively justified by a legitimate aim, such as the pursuit by the employer, in its relations with its customers, of a policy of political, philosophical and religious neutrality, and the means of achieving that aim are appropriate and necessary, which it is for the referring court to ascertain."

4. Case C-188/15 *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA*, ECLI:EU:C:2017:204

Final finding:

"Article 4(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision."

5. Case C-258/15 *Gorka Salaberria Sorondo v Academia Vasca de Policía y Emergencias*, ECLI:EU:C:2016:873

Final finding:

“Article 2(2) of Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, read together with Article 4(1) of that directive, must be interpreted as not precluding legislation, such as that at issue in the main proceedings, which provides that candidates for posts as police officers who are to perform all the operational duties incumbent on police officers must be under 35 years of age.”

6. Case C-395/15 *Mohamed Daouidi v Bootes Plus SL and Others*, ECLI:EU:C:2016:917

Final finding:

“Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that:

- the fact that the person concerned finds himself or herself in a situation of temporary incapacity for work, as defined in national law, for an indeterminate amount of time, as the result of an accident at work, does not mean, in itself, that the limitation of that person’s capacity can be classified as being ‘long-term’, within the meaning of the definition of ‘disability’ laid down by that directive, read in the light of the United Nations Convention on the Rights of Persons with Disabilities, which was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009;
- the evidence which makes it possible to find that such a limitation is ‘long-term’ includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered; and
- in the context of the verification of that ‘long-term’ nature, the referring court must base its decision on all of the objective evidence in its possession, in particular on documents and certificates relating to that person’s condition, established on the basis of current medical and scientific knowledge and data.”

7. Case C-443/15 *David L. Parris v Trinity College Dublin and Others*, ECLI:EU:C:2016:897

Final finding:

“1. Article 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that a national rule which, in connection with an occupational benefit scheme, makes the right of surviving civil partners of members to receive a survivor’s benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age, does not constitute discrimination on grounds of sexual orientation.

2. Articles 2 and 6(2) of Directive 2000/78 must be interpreted as meaning that a national rule, such as that at issue in the main proceedings, which, in connection with an occupational benefit scheme, makes the right of surviving civil partners of members to receive a survivor’s benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age, does not constitute discrimination on grounds of age.

3. Articles 2 and 6(2) of Directive 2000/78 must be interpreted as meaning that a national rule such as that at issue in the main proceedings is not capable of creating discrimination as a result of the combined effect of sexual orientation and age, where that rule does not constitute discrimination either on the ground of sexual orientation or on the ground of age taken in isolation.”

8. Case C-531/15 *Elda Otero Ramos v Servicio Galego de Saúde and Instituto Nacional de la Seguridad Social*, ECLI:EU:C:2017:789

Final finding:

“1. Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and

women in matters of employment and occupation must be interpreted as applying to a situation such as that at issue in the main proceedings, in which a breastfeeding worker challenges, before a court or other competent authority of the Member State concerned, the risk assessment of her work in so far as she claims that the assessment was not conducted in accordance with Article 4(1) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

2. On a proper construction of Article 19(1) of Directive 2006/54, in a situation such as that at issue in the main proceedings, it is for the worker in question to provide evidence capable of suggesting that the risk assessment of her work had not been conducted in accordance with the requirements of Article 4(1) of Directive 92/85 and from which it can therefore be presumed that there was direct discrimination on grounds of sex within the meaning of Directive 2006/54, which it is for the referring court to ascertain. It would then be for the defendant to prove that that risk assessment had been conducted in accordance with the requirements of that provision and that there had, therefore, been no breach of the principle of non-discrimination.”

9. Case C-539/15 *Bowman v Pensionsversicherungsanstalt*, ECLI:EU:C:2016:977

Final finding:

„Article 2(1) and (2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding a national collective labour agreement, such as that at issue in the main proceedings, by which an employee who benefits from account being taken of periods of school education for the purpose of his classification in the salary steps is subject to a longer period of advancement between the first and second salary step, as long as that extension applies to every employee benefiting from the inclusion of those periods, including retroactively to those having already reached the next steps.“

10. Case C-406/15 *Petya Milkova v Izpalnitelen direktor na Agentsiata za privatizatsia i sledprivatizatsionen control*, ECLI:EU:C:2017:198

Final finding:

„1. Article 7(2) of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, read in the light of the United Nations Convention on the Rights of Persons with Disabilities, approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009, and in conjunction with the general principle of equal treatment enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, must be construed as allowing legislation of a Member State, such as that at issue in the main proceedings, which confers on employees with certain disabilities specific advance protection in the event of dismissal, without conferring such protection on civil servants with the same disabilities, unless it has been established that there has been an infringement of the principle of equal treatment, that being a matter for the referring court to determine. When making that determination, the comparison of the situations must be based on an analysis focusing on all the relevant rules of national law governing the positions of employees with a particular disability, on the one hand, and the positions of civil servants with the same disability, on the other, having regard, in particular, to the purpose of the protection against dismissal at issue in the main proceedings.

2. In the event that Article 7(2) of Directive 2000/78, read in the light of the United Nations Convention on the Rights of Persons with Disabilities and in conjunction with the general principle of equal treatment, precludes legislation of a Member State such as that at issue in the main proceedings, the obligation to comply with EU law would require that the scope of the national rules protecting employees with a particular disability should be extended, so that those protective rules also benefit civil servants with the same disability.“

11. Case C-548/15 *J.J. de Lange v Staatssecretaris van Financiën*, ECLI:EU:C:2016:850

Final finding:

“1. Article 3(1)(b) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that a taxation scheme, such as that at issue in the main proceedings, which provides that the tax

treatment of vocational training costs incurred by a person differs depending on his age, comes within the material scope of that directive to the extent to which the scheme is designed to improve access to training for young people.

2. Article 6(1) of Directive 2000/78 must be interpreted as not precluding a taxation scheme, such as that at issue in the main proceedings, which allows persons who have not yet reached the age of 30 to deduct in full, under certain conditions, vocational training costs from their taxable income, whereas that right to deduct is restricted in the case of persons who have reached that age, in so far as, first, that scheme is objectively and reasonably justified by a legitimate objective relating to employment and labour market policy and, second, the means of attaining that objective are appropriate and necessary. It is for the national court to determine whether that is the case in the main proceedings."

12. Case C-668/15 *Jyske Finans A/S v Ligebehandlingsnævnet, acting on behalf of Ismar Huskic*, ECLI:EU:C:2017:278

Final finding:

"Article 2(2)(a) and (b) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is to be interpreted as not precluding the practice of a credit institution which requires a customer whose driving licence indicates a country of birth other than a Member State of the European Union or of the European Free Trade Association to produce additional identification in the form of a copy of the customer's passport or residence permit."

13. Case C-143/16 *Abercrombie & Fitch Italia Srl v Antonino Bordonaro*, ECLI:EU:C:2017:566

Final finding:

"Article 21 of the Charter of Fundamental Rights of the European Union and Article 2(1), Article 2(2)(a) and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding a provision, such as that at issue in the main proceedings, which authorises an employer to conclude an on-call contract with a worker of under 25 years of age, whatever the nature of the services to be provided, and to dismiss that worker as soon as he reaches the age of 25 years, since that provision pursues a legitimate aim of employment and labour market policy and the means laid down for the attainment of that objective are appropriate and necessary."

14. Case C-354/16 *Ute Kleinsteuber v Mars GmbH*, ECLI:EU:C:2017:539

Final finding:

"1. Clause 4.1 and 4.2 of the Framework Agreement on part-time work concluded on 6 June 1997, annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, as amended, and Article 4 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, must be interpreted as not precluding national legislation which, in calculating the amount of an occupational pension, distinguishes between employment income falling below the ceiling for the calculation of contributions to the statutory pension scheme and employment income above that ceiling, and which does not treat income from part-time employment by calculating first the income payable in respect of corresponding full-time employment, then determining the proportion above and below the contribution assessment ceiling and finally applying that proportion to the reduced income from part-time employment.

2. Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54 must be interpreted as not precluding national legislation which, in calculating the amount of the occupational pension of an employee who has accumulated full-time and part-time employment periods, determines a uniform rate of activity for the total duration of the employment relationship, in so far as that calculation method of the pension does not violate the *pro rata temporis* rule. It is for the national court to satisfy itself that this is the case.

3. Articles 1 and 2 and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be

interpreted as not precluding national legislation which provides for an occupational pension in the amount corresponding to the ratio between (i) the employee's length of service and (ii) the length of the period between taking up employment in the undertaking and the normal retirement age under the statutory pension scheme, and in so doing applies a maximum limit of reckonable years of service."

15. Case C-409/16 *Ypourgos Esoterikon and Ypourgos Ethnikis paideias kai Thriskevmaton v Maria-Eleni Kalliri*, ECLI:EU:C:2017:767

Final finding:

"The provisions of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, must be interpreted as precluding a law of a Member State, such as that at issue in the main proceedings, which makes candidates' admission to the competition for entry to the police school of that Member State subject, whatever their sex, to a requirement that they are of a physical height of at least 1.70m, since that law works to the disadvantage of a far greater number of women compared with men and that law does not appear to be either appropriate or necessary to achieve the legitimate objective that it pursues, which it is for the national court to determine."

Note also:

- **Case C-174/16 *H. v Land Berlin*, ECLI:EU:C:2017:637**

Final finding:

"Clause 5(1) and (2) of the revised Framework Agreement on parental leave set out in the Annex to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC must be interpreted as precluding rules of national law, such as those at issue in the main proceedings, which subject definitive promotion to a managerial post in the civil service to the condition that the candidate selected successfully carries out a prior two-year probationary period in that post, and by virtue of which, in a situation where such a candidate was on parental leave for most of that period and still is, that probationary period ends by operation of law after two years with no possibility of extending it and the person concerned is consequently, on return from parental leave, reinstated in the post, at a lower level both in status and in terms of remuneration, occupied before that probationary period. The infringements of that clause cannot be justified by the objective pursued by the probationary period, which is to enable the assessment of suitability for the managerial post to be assigned permanently.

2. It is for the referring court, if necessary by disapplying the rules of national law at issue in the main proceedings, to ascertain, as required by Clause 5(1) of the revised Framework Agreement on parental leave set out in the Annex to Directive 2010/18, whether, in circumstances such as those of the main proceedings, it was not objectively possible for the *Land* concerned, in its capacity as an employer, to enable the person concerned to return to her post at the end of her parental leave and, if so, to ensure that she is assigned to an equivalent or similar post consistent with her employment contract or relationship, without that assignment of a post being made conditional upon holding a new selection procedure beforehand. It is also for that court to ensure that the person concerned may, at the end of parental leave, continue, in the post thus returned to or newly assigned, a probationary period under conditions that are in compliance with the requirements of Clause 5(2) of the revised Framework Agreement."

- Case C-190/16 *Fries v Werner Fries v Lufthansa CityLine GmbH*, ECLI:EU:C:2017:513: age discrimination in a different legal context.