Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

11 April 2013 *

(Agriculture — EAGGF — Regulation (EC) No 1257/1999 — Support for rural development — Early retirement support — Transferor not less than 55 years old but not yet of normal retirement age at the time of transfer — Concept of 'normal retirement age' — National legislation determining a retirement age which varies depending on the sex of the applicant and, for women, on the number of children raised — General principles of equal treatment and non-discrimination)

In Case C-401/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Czech Republic), made by decision of 12 April 2011, received at the Court on 28 July 2011, in the proceedings

Blanka Soukupová

v

Ministerstvo zemědělství,

THE COURT (Third Chamber),

composed of R. Silva de Lapuerta, acting as President of the Third Chamber, K. Lenaerts, G. Arestis (Rapporteur), J. Malenovský and D. Šváby, Judges,

Advocate General: N. Jääskinen,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 28 June 2012,

after considering the observations submitted on behalf of:

— Mrs Soukupová, by J. Tomášek, advokát,

— the Czech Government, by M. Smolek, acting as Agent,

— the Polish Government, by M. Szpunar, acting as Agent,

— the European Commission, by M. van Beek, G. von Rintelen and Z. Malůšková, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 October 2012,

gives the following

* Language of the case: Czech.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 11 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80; corrigendum OJ 2000 L 302, p. 72) and the general European Union law principles of equal treatment and non-discrimination.

2 The request has been made in proceedings between Mrs Soukupová, a farmer, and the Ministerstvo zemědělství (Czech Ministry of Agriculture), concerning the refusal of her application for registration under the scheme for support for early retirement from farming.

Legal context

European Union legislation

3 Article 3(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 (OJ 1979 L 6, p. 24) provides as follows:

‘This Directive shall apply to:

(a) statutory schemes which provide protection against the following risks:

…

old age

…

(b) social assistance, in so far as it is intended to supplement or replace the schemes referred to in (a).’

4 Article 7 of that directive is worded as follows:

‘1. This Directive shall be without prejudice to the right of Member States to exclude from its scope:

(a) the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits;

(b) advantages in respect of old-age pension schemes granted to persons who have raised children; the acquisition of benefit entitlements following periods of interruption of employment due to the bringing up of children;

…

2. Member States shall periodically examine matters excluded under paragraph 1 in order to ascertain, in the light of social developments in the matter concerned, whether there is justification for maintaining the exclusions concerned.’

5 Recital 23 in the preamble to Regulation No 1257/1999 states that early retirement from farming should be encouraged in order to improve the viability of agricultural holdings.

6 According to recital 40 in the preamble to that regulation, support should be granted, inter alia, for measures to remove inequalities and to promote equal opportunities for men and women.

7 The eleventh indent of Article 2 of Regulation No 1257/1999 provides that support for rural development, related to farming activities and their conversion, may concern the removal of inequalities and the promotion of equal opportunities for men and women, in particular by supporting projects initiated and implemented by women.

8 In Chapter IV of Regulation No 1257/1999, entitled 'Early Retirement', Article 10(1) of that regulation is worded as follows:

'Support for early retirement from farming shall contribute to the following objectives:

— to provide an income for elderly farmers who decide to stop farming,

— to encourage the replacement of such elderly farmers by farmers able to improve, where necessary, the economic viability of the remaining agricultural holdings,

— to reassign agricultural land to non-agricultural uses where it cannot be farmed under satisfactory conditions of economic viability.'

9 Article 11(1) of that regulation provides as follows:

'A transferor of a farm shall:

— stop all commercial farming activity definitively; he may, however, continue non-commercial farming and retain the use of the buildings,

— be not less than 55 years old but not yet of normal retirement age at the time of transfer,

and

— have practised farming for the 10 years preceding transfer.'

10 Article 12(2) of that regulation provides as follows:

'The duration of early retirement support shall not exceed a total period of 15 years for the transferor and 10 years for the farm worker. It shall not go beyond the 75th birthday of a transferor and not go beyond the normal retirement age of a worker.

Where in the case of a transferor a normal retirement pension is paid by the Member State, early retirement support shall be granted as a supplement taking into account the amount of the national retirement pension.'

Czech legislation

11 Pursuant to Regulation No 1257/1999, on 26 January 2005 the Czech Republic adopted Government Decree No 69/2005 laying down the conditions for granting subsidies in connection with the early cessation of agricultural activities by an agricultural entrepreneur (nařízení vlády č. 69/2005 Sb., o stanovení podmínek pro poskytování dotace v souvislosti s předčasným ukončením provozování zemědělské činnosti zemědělského podnikatele). In accordance with Article 1 thereof, the purpose of the governmental decree is to grant subsidies under the support scheme for early cessation of agricultural activities by an agricultural entrepreneur.

12 Under Paragraph 3(1)(b) of the government decree, registration under that scheme is subject to the condition that, at the date on which the application for registration is submitted, the applicant has reached at least the age of 55 and has not reached the age required for entitlement to a retirement pension.

13 Paragraphs 32(1) and (2) of Law No 155/1995 on pension insurance (zákon č. 155/1995 Sb., o důchodovém pojištění), in the version applicable to the dispute in the main proceedings, to which Paragraph 3(1)(b) of the government decree refers, provided as follows:

'(1) Retirement age shall be:

(a) for men, 60 years;

(b) for women:

1. 53 years, where they have raised at least 5 children,

2. 54 years, where they have raised 3 or 4 children,

3. 55 years, where they have raised 2 children,

4. 56 years, where they have raised 1 child, or

5. 57 years, where the insured persons reached that age by 31 December 1995.

(2) In the case of insured persons who reach the age limits set out in Paragraph 32(1) during the period 1 January 1996 to 31 December 2012, retirement age shall be determined by adding to the month during which the insured person reaches that limit 2 months, for men, and 4 months, for women, for each calendar year, or part thereof, for the period from 31 December 1995 to the date on which the age limits set out in Paragraph 32(1) are reached, and retirement age shall be deemed to be the age reached during the month thus calculated on the date corresponding to the date of birth of the insured person; where the month thus calculated does not include such a day, retirement age shall be deemed to be the age reached on the last day of the month so calculated.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 Mrs Soukupová is a farmer born on 24 January 1947 who has raised two children. On 24 May 2004, she reached the age at which she became entitled to an old-age pension, pursuant to Paragraphs 32(1) and (2) of Law No 155/1995.

15 On 3 October 2006, Mrs Soukupová filed, with the State Agricultural Intervention Fund, an application for registration under the support scheme for early retirement from farming.

16 By decision of 20 December 2006, that application was refused, pursuant to Paragraph 3(1)(b) of Government Decree No 69/2005, on the ground that, at the time at which that application was made, Mrs Soukupová had reached the age entitling her to an old-age pension.

17 Mrs Soukupová contested that decision before the Ministerstvo zemědělství, which rejected her claim by decision of 12 April 2007.

18 Mrs Soukupová challenged that decision by bringing an action before the Městský soud v Praze (Prague City Court). In her action, she claimed that Paragraph 3(1)(b) of Government Decree No 69/2005 conflicted with the second indent of Article 11(1) of Regulation No 1257/1999, since that

regulation refers to 'normal retirement age', whereas the government decree refers to 'the age required for entitlement to a retirement pension'. Claiming that the condition laid down in paragraph 3 of the government decree was discriminatory on the ground that the age required for entitlement to a retirement pension, under that paragraph is determined differently for men and women and that, furthermore, it varies for women according to the number of children raised, Mrs Soukupová requested an interpretation of the concept of 'normal retirement age', for the purposes of that regulation, which would not result in discrimination with regard to certain applicants. Therefore, she maintained that, under Czech legislation, women who have raised more children objectively enjoy a shorter period in which to submit an application for registration under the support scheme for early retirement than that granted to men or women who have raised fewer children.

19 By judgment of 30 April 2009, the Městský soud v Praze set aside that decision of the Ministerstvo zemědělství, holding that there were no legitimate grounds to justify different treatment of a male and a female farmer with respect to access to agricultural subsidies. Therefore, it rejected any interpretation likely to result in unjustified differences of treatment between applicants. It also held that the age limit for registration under the support scheme for the early cessation of activities by an agricultural entrepreneur must be regarded as the normal retirement age, calculated in the same way for all applicants.

20 The Ministerstvo zemědělství lodged an appeal against that judgment before the Nejvyšší správní soud (Supreme Administrative Court). In its appeal, the ministry claimed that Regulation No 1267/1999 made specific provision only for the lower age limit of applicants. It claimed that the terms 'normal retirement age' within the meaning of the second indent of Article 11(1) of that regulation and 'retirement age' within the meaning of Paragraph 32 of Law No 155/1995 had similar meanings. The ministry also maintained that, with a view to precisely and objectively determining normal retirement age, for the purpose of Article 11 of that regulation, it had been decided to define that age, under national law, in accordance with paragraph 32 of that law. The Ministerstvo zemědělství also claimed that an identical method of determining normal retirement age had been established in the programming document entitled 'Horizontal Rural Development Plan for the Czech Republic 2004-2006', which was approved both by the government of that Member State, by Decision No 671 of 9 July 2003, and by the European Commission, by Decision (2004) CZ 06G DO 001 of 3 September 2004.

21 Since it had doubts concerning Mrs Soukupová's right to register under the support scheme for the early cessation of activities by an agricultural entrepreneur established by Government Decree No 69/2005, and considered that it was necessary to receive, in that respect, guidance concerning both the interpretation of the concept of 'normal retirement age' in the second indent of Article 11(1) of Regulation No 1257/1999, and the question whether European Union law allowed a distinction to be made, for the purposes of assessing an application for registration under that scheme, between the applicants according to their gender and the number of children raised, the Nejvyšší správní soud decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) May the concept of "normal retirement age" at the time of transfer of a farm under Article 11 of … Regulation … No 1257/1999 … be interpreted as "the age required for entitlement to a retirement pension" by a particular applicant under national legislation?

(2) If the answer to the first question is in the affirmative, is it in accordance with European Union law and the general principles of European Union law for "normal retirement age" at the time of transfer of a farm to be determined differently for individual applicants depending on their gender and the number of children they have raised?

(3) If the answer to the first question is in the negative, what criteria should the national court take into account when interpreting the concept of "normal retirement age" at the time of transfer of a farm under Article 11 of … Regulation … No 1257/1999 … ?'

Consideration of the questions referred

Questions 1 and 2

22 By questions 1 and 2, which it is appropriate to examine together, the referring court asks, in essence, whether it is compatible with European Union law and the general principles of equal treatment and non-discrimination for 'normal retirement age', for the purposes of the second indent of Article 11(1) of Council Regulation (EC) No 1257/1999, to be determined differently depending on the gender of the applicant for support for early retirement from farming and, in the case of female applicants, on the number of children raised by the applicant, under the provisions of the national retirement scheme of the Member State concerned relating to the age required for entitlement to an old-age pension.

23 In that regard, it must be noted at the outset that, as is apparent from Article 10(1) of Regulation No 1257/1999, the objective of the mechanism for support for early retirement from farming, for the purposes of that regulation, is to promote, inter alia, the provision of an income to elderly farmers who decide to stop farming and to encourage the replacement of such elderly farmers by farmers able to improve, where necessary, the economic viability of the remaining agricultural holdings. That objective is also referred to in recital 23 in the preamble to that regulation.

24 It follows that early retirement support acts as an economic incentive which seeks to encourage elderly farmers to stop farming definitively, earlier than they would do under normal circumstances and, thus, to facilitate structural change in the agriculture sector, with a view to better ensuring the economic viability of holdings.

25 It is therefore clear that, as pointed out by the Advocate General in point 47 of his Opinion, support for early retirement from farming provided for by Regulation No 1257/1999 is an instrument of the Common Agricultural Policy, financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), which is designed to ensure the viability of agricultural holdings, and not a social security benefit falling within the scope of Directive 79/7.

26 In those circumstances, while the definition of 'normal retirement age' within the meaning of the second indent of Article 11(1) of Regulation No 1257/1999, in the absence of harmonisation at European Union level, falls within the competence of the Member States, the fact nevertheless remains that, for the purposes of the application of that regulation, Member States may not rely on the difference in treatment that Article 7(1) of Directive 79/7 authorises them to retain when defining retirement age in the field of social security. The European Union legislature cannot be regarded, on the basis of that reference to a concept which has not been harmonised, as having empowered Member States, in the implementation of that regulation, to adopt measures which would infringe the general principles of European Union law and fundamental rights (see, to that effect, Case C-540/03 *Parliament* v *Council* [2006] ECR I-5769, paragraphs 22 and 23).

27 Furthermore, it should be noted that recital 40 in the preamble to Regulation No 1257/1999 proposes that measures to remove inequalities and to promote equal opportunities for men and women be supported. The eleventh indent of Article 2 of that regulation also provides that support for rural development may take the form of the removal of inequalities and the promotion of equal opportunities for men and women. It follows, therefore, from those provisions that, where support for

early retirement from farming is granted on the basis of that regulation, it is necessary to ensure equal treatment between women and men and, therefore, to prohibit any discrimination on grounds of gender.

28 Consequently, in implementing Regulation No 1257/1999, the Member States are required, pursuant to Article 51(1) of the Charter of Fundamental Rights of the European Union, to respect the principles of equal treatment and non-discrimination, enshrined in Articles 20, 21(1) and 23 of that charter.

29 According to settled case-law, the principles of equal treatment and non-discrimination require that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, in particular, Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraph 61; Case C-152/09 *Grootes* [2010] ECR I-11285, paragraph 66; and Case C-236/09 *Association belge des Consommateurs Test-Achats and Others* [2011] ECR I-773, paragraph 28).

30 In the present case, it is clear that elderly female farmers and elderly male farmers are in comparable situations, in the light of the purpose of support for early retirement set out in Article 10(1) of Regulation No 1257/1999, which is to encourage such farmers, regardless of their sex and of the number of children they have raised, to stop farming early and definitively, with a view to better ensuring the viability of agricultural holdings, as is apparent from paragraph 24 above. Those farmers, both men and women, are entitled to claim such support, if, in accordance with Article 11(1) of that regulation, they have definitively stopped all commercial farming activity after having practised farming for the 10 years preceding that cessation and are not less than 55 years old but not yet of normal retirement age at the time of the cessation.

31 In those circumstances, it would be contrary to European Union law and the general principles of equal treatment and non-discrimination for those situations to be treated differently, without objective justification, on the basis of the fact that, under the provisions of the national retirement scheme of the Member State concerned, 'normal retirement age', for the purposes of the second indent of Article 11(1) of Regulation No 1257/1999, is determined differently depending on the gender of the applicant for support for early retirement from farming and, in the case of female applicants, on the number of children raised by the applicant.

32 That law and those principles would be infringed if it were accepted that unfavourable treatment which is not objectively justified could be applied to applicants for early retirement support who, as a result of their gender and, in the case of female applicants, the number of children they have raised, fall within a category of farmers for whom normal retirement age, as determined by those provisions of the national scheme, is reached earlier than it is for applicants belonging to a different category of farmers. In that case, applicants within that second category would have a longer period in which to submit their application for support, so that they would receive preferential treatment, without any objective justification, vis-a-vis those belonging to the first category, who would be subject, for an application of the same type, to more restrictive conditions of eligibility for that support.

33 In the main proceedings, the national legislation at issue results in a person, such as Mrs Soukupová, who stops farming at an age between the normal retirement age established by that legislation on the basis of her gender and the number of children she has raised, and the normal retirement age fixed by that legislation for male farmers, not being able to benefit from early retirement support and, consequently, having her rights limited to the receipt, for the rest of her life, of an old-age pension which is lower than that support, whereas a male farmer who stops farming at the same age as that person may, for his part, benefit from such support during a total period of 15 years or until his 75th birthday, in accordance with Article 12(2) of Regulation No 1257/1999, less the old-age pension paid by the Member State concerned.

34 Contrary to the submissions of the Czech and Polish governments, a difference in treatment, such as that brought about by the national legislation at issue in the main proceedings, cannot be objectively justified. Indeed, as pointed out by the Advocate General in point 61 of his Opinion, the objectives of structural change in the agricultural sector envisaged by support for early retirement from farming granted on the basis of Regulation No 1257/1999 can clearly be attained without the Member States resorting to discriminatory treatment.

35 As regards the consequences of failure to observe the principle of equal treatment in a situation such as that in the main proceedings, it must be recalled that, in accordance with established case-law, where discrimination contrary to European Union law has been established, as long as measures reinstating equal treatment have not been adopted, observance of the principle of equality can be ensured only by granting to persons within the disadvantaged category the same advantages as those enjoyed by persons within the favoured category (see Case C-18/95 *Terhoeve* [1999] ECR I-345, paragraph 57; and Case C-399/09 *Landtová* [2011] ECR I-5573, paragraph 51). The disadvantaged person must therefore be placed in the same position as the person enjoying the advantage concerned.

36 In the light of all the foregoing, the answer to the first and second questions is that it is incompatible with European Union law and the general principles of equal treatment and non-discrimination for 'normal retirement age', for the purposes of the second indent of Article 11(1) of Regulation No 1257/1999, to be determined differently depending on the gender of the applicant for support for early retirement from farming and, in the case of female applicants, on the number of children raised by the applicant, under the provisions of the national retirement scheme of the Member State concerned relating to the age required for entitlement to an old-age pension.

Question 3

37 In view of the answer to questions 1 and 2, there is no need to reply to the third question referred by the national court.

Costs

38 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

It is incompatible with European Union law and the general principles of equal treatment and non-discrimination for 'normal retirement age', for the purposes of the second indent of Article 11(1) of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations, to be determined differently depending on the gender of the applicant for support for early retirement from farming and, in the case of female applicants, on the number of children raised by the applicant, under the provisions of the national retirement scheme of the Member State concerned relating to the age required for entitlement to an old-age pension.

[Signatures]