

JUDGMENT OF THE COURT (First Chamber)

2 June 2016 (*)

(Reference for a preliminary ruling — Social policy — Principles of equal treatment and non-discrimination on grounds of age — Directive 2000/78/EC — Equal treatment in employment and occupation — Articles 2, 3 and 6 — Difference in treatment on grounds of age — National legislation providing, in certain situations, for higher taxation of pension income than earned income — Scope of application of Directive 2000/78 — Competence of the European Union in the field of direct taxation)

In Case C-122/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), made by decision of 6 March 2015, received at the Court on 10 March 2015, in the proceedings brought by

C

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, A. Arabadjiev (Rapporteur), J.-C. Bonichot, C.G. Fernlund and S. Rodin, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 10 December 2015,

after considering the observations submitted on behalf of:

- C, by K. Suominen and A. Kukkonen, asianajaja,
- the Finnish Government, by S. Hartikainen, acting as Agent,
- Ireland, by J. Quaney and A. Joyce, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes, C. Freire and M. Conceição Queirós, acting as Agents,
- the Swedish Government, by A. Falk, U. Persson, N. Otte Widgren, C. Meyer-Seitz, E. Karlsson and L. Swedenborg, acting as Agents,
- the European Commission, by D. Martin and I. Koskinen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 January 2016,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the principle of non-discrimination on grounds of age, Article 2(1) and (2)(a), Article 3(1)(c) 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 (OJ 2000 L 303, p. 16), and Article 21(1) of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings brought by C challenging the decision of the Finnish tax authority to apply a supplementary tax charged at a rate of 6% on his retirement pension income which, after deduction of the pension income allowance, exceeds EUR 45 000 per annum.

Legal context

EU law

- 3 Under recital 13 of Directive 2000/78, the latter 'does not apply to social security and social protection schemes whose benefits are not treated as income within the meaning given to that term for the purpose of applying Article [157 TFEU]'.
- 4 In accordance with Article 1 of that directive, its 'purpose ... is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment'.
- 5 Article 2 of that directive provides:
 - '1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.
 2. For the purposes of paragraph 1:
 - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;
 - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless
 - (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary ...

...'

- 6 Article 3 of that directive, entitled 'Scope', provides:
 - '1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...

3. This Directive does not apply to payments of any kind made by State schemes or similar, including State social security or social protection schemes.

...'

7 Article 6 of the directive reads as follows:

'1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

...

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.'

Finnish law

8 Under Paragraph 124(1) and (4) of the Tuloverolaki (1992/1535) (Law 1992/1535 on income tax), in the version applicable to the facts in the main proceedings:

'All natural persons and all estates must pay to the State tax on earned income, on a progressive income tax scale and tax on capital income in accordance with a rate of income tax. All natural persons must also pay the State a supplementary tax on income from retirement pensions according to the provisions of subparagraph 4. All other taxpayers must pay tax on its taxable income on the basis of the income tax rate.

...

Natural persons shall also pay a supplementary tax of 6% on the retirement pension income which exceeds EUR 45 000 after deduction of the pension income allowance. The supplementary tax on retirement pension income is subject to the provisions of the present law or any other law relating to income tax payable to the State in respect of earned income.'

Dispute in the main proceedings and the questions referred for a preliminary ruling

- 9 C is a Finnish national born in 1948 who lives in Finland. The tax authorities assessed C's rate of tax deducted for the tax year 2013 to be paid as advance income tax. In that context, supplementary tax on pension income at 6% was charged on the basis of Paragraph 124(1) and (4) of Law 1992/1535, on the fraction of his income from retirement pensions which exceeded EUR 45 000 after deduction of the pension income allowance.
- 10 As is apparent from the request for a preliminary ruling, in the 2013 tax year, C received a retirement pension in Finland of a total of EUR 461 900.88, of which EUR 251 351.10 was deducted as advance income tax. In addition to his retirement pension, C received earned income for work undertaken in Finland.
- 11 By decision of 11 March 2013, the tax authority rejected the complaint lodged by C relating to the rate of tax applicable to the advance income tax payable for the tax year 2013.
- 12 C challenged that decision before the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland) arguing that the provisions relating to the supplementary tax on retirement pension income provided for in Paragraph 124(1) and (4) of Law 1992/1535 on income tax could not be applied in order to determine the rate of tax applicable to his retirement pension income.
- 13 The Helsingin hallinto-oikeus (Administrative Court, Helsinki) dismissed that appeal after ruling that the objectives pursued by those provisions, which were, as is clear from the travaux préparatoires, to increase the taxation of taxpayers receiving income from large retirement pensions, were in the public interest, generally acceptable and consistent with the general objectives of taxation. That court also held that EU law and, therefore, the Charter were not applicable to the dispute in the main proceedings as it concerns direct taxation which falls within the competence of the Member States.
- 14 C applied to the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) for leave to appeal against the decision of the Helsingin hallinto-oikeus (Administrative Court, Helsinki). According to the referring court, the tax provisions at issue in the main proceedings do not concern employment and working conditions within the meaning of Article 3(1)(c) of Directive 2000/78 and cannot, in general, be regarded as measures falling within the scope of that directive. In particular, they do not lay down a criterion for determining pay. Thus, and contrary to the situation in the case which gave rise to the judgment of 26 February 2013 in *Åkerberg Fransson* (C-617/10, EU:C:2013:105), those provisions fall outside the substantive law of the European Union.
- 15 Thus, it is apparent from the order for reference that the objective of the legislation at issue in the main proceedings is to collect tax revenue from recipients of retirement pensions who are capable of paying, to narrow the difference of tax rates between pension income and employment income, and to improve incentives for older persons to continue working.
- 16 The referring court is unsure as to whether that legislation falls within the scope of European Union law, in particular the scope of Directive 2000/78 as defined by Article 3 thereof and, where applicable, whether that legislation constitutes direct or indirect discrimination on the grounds of age, within the meaning of Article 2 of that directive.
- 17 In those circumstances, the Korkein hallinto-oikeus (Supreme Administrative Court), decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) Are the provisions of Article 3(1)(c) of Directive 2000/78/EC to be interpreted as meaning that national legislation such as the provisions on supplementary tax on retirement pension

income in Paragraph 124(1) and (4) of Law 1992/1535 on income tax fall within the scope of EU law so that the provision prohibiting discrimination on grounds of age laid down in Article 21(1) of the Charter is applicable in the present case?

Questions 2 and 3 are submitted only in the event that the Court of Justice's reply to Question 1 is that the matter falls within the scope of EU law:

- (2) If the first question is answered in the affirmative, are Article 2(1) and (2)(a) or (b) of Directive 2000/78 and the provisions of Article 21(1) of the Charter to be interpreted as precluding national legislation, such as the provisions of Paragraph 124(1) and (4) of Law 1992/1535 on income tax, concerning the supplementary tax on retirement pension income, under which the pension income received by a natural person, the receipt of which is based at least indirectly on the person's age, is burdened in certain cases with more income tax than would be charged on the equivalent amount of earned income?
- (3) If those provisions of Directive 2000/78 and the Charter preclude national legislation such as the supplementary tax on pension income, must Article 6(1) of that directive be interpreted as meaning that national legislation such as the supplementary tax on pension income may nevertheless be regarded in terms of its aim as objectively and reasonably justified within the meaning of that provision of the directive, in particular on the basis of a legitimate employment policy, labour market or vocational training objective, since the purpose expressed in the preparatory materials for Law 1992/1535 on income tax is, by means of the supplementary tax on pension income, to collect tax revenue from recipients of pension income who are capable of paying, to narrow the difference of tax rates between pension income and earned income, and to improve incentives for older persons to continue working?

Consideration of the questions referred for a preliminary ruling

The first question

- 18 By its first question, the referring court asks essentially whether Article 3(1)(c) of Directive 2000/78 must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, relating to a supplementary tax on retirement pension income falls within the substantive scope of that directive and, therefore, whether the principle of non-discrimination on grounds of age laid down in Article 21(1) of the Charter is applicable to the dispute in the main proceedings.
- 19 It must be recalled from the outset that, according to settled case-law, it is apparent both from its title and preamble and from its content and purpose that Directive 2000/78 is intended to lay down a general framework in order to guarantee equal treatment 'in employment and occupation' to all persons, by offering them effective protection against discrimination on any of the grounds mentioned in Article 1, which include age (judgment of 26 September 2013 in *Dansk Jurist- og Økonomforbund*, C-546/11, EU:C:2013:603, paragraph 23 and the case-law cited).
- 20 The scope of Directive 2000/78 must be understood, in the light of Article 3(1)(c) and (3), read in conjunction with recital 13 thereof, as excluding social security or social protection schemes, the benefits of which are not equivalent to 'pay' within the meaning given to that term for the application of Article 157(2) TFEU (judgment of 21 January 2015 in *Felber*, C-529/13, EU:C:2015:20, paragraph 20 and the case-law cited).
- 21 It is true that the concept of 'pay' within the meaning of Article 3(1)(c) of Directive 2000/78 must be interpreted broadly. Thus, the Court has held that it covers, in particular, any consideration,

whether in cash or in kind, whether immediate or future, provided that the employee receives it, albeit indirectly, in respect of his or her employment from his or her employer, and irrespective of whether it is received under a contract of employment, by virtue of legislative provisions or on a voluntary basis (judgment of 12 December 2013 in *Hay*, C-267/12, EU:C:2013:823, paragraph 28 and the case-law cited). Moreover, the fact that certain benefits are paid after the termination of the employment relationship does not prevent them from being in the nature of pay within the meaning of the abovementioned provisions (judgment of 9 December 2004 in *Hložek*, C-19/02, EU:C:2004:779, paragraph 35 and the case-law cited).

- 22 The Court has also stated that consideration classified as pay specifically includes consideration paid by the employer under a contract of employment whose purpose is to ensure that workers receive income even where, in certain cases specified by the legislature, they are not performing any work provided for in their contracts of employment. Moreover, the fact that such benefits are in the nature of pay cannot be called in question merely because they can also be regarded as reflecting considerations of social policy (judgment of 9 December 2004 in *Hložek*, C-19/02, EU:C:2004:779, paragraph 39 and the case-law cited).
- 23 Thus, the Court has ruled that benefits granted under a pension scheme which essentially relates to the employment of the person concerned form part of the pay received by that person and come within the scope of Article 157(2) TFEU (judgment of 7 January 2004 in *K.B.*, C-117/01, EU:C:2004:7, paragraph 25 and the case-law cited).
- 24 However, it does not follow that national legislation relating to the rate of tax on retirement pension income must be regarded as falling within the scope of Directive 2000/78.
- 25 First of all, it must be observed that the dispute in the main proceedings does not concern the procedure or the conditions for determining the amount of the benefits paid to the worker by reason of the employment relationship between him and his former employer (judgment of 1 April 2008 in *Maruko*, C-267/06, EU:C:2008:179, paragraph 46), but on the rate of tax on retirement pension income. Such taxation is external to the employment relationship and, therefore, to the determination, in that context, with which Directive 2000/78 is solely concerned, of ‘pay’ within the meaning of that directive and Article 157(2) TFEU.
- 26 A supplementary tax on retirement pension income, such as that at issue in the main proceedings, without any link to the contract of employment, derives directly and exclusively from national tax legislation applicable to all natural persons whose income from retirement pensions exceeds EUR 45 000, after deduction of the pension income allowance, as is clear from the wording of Paragraph 124(1) and (4) of Law 1992/1535 on income tax.
- 27 Therefore, national legislation, such as that at issue in the main proceedings, relating to supplementary tax on pension income does not fall within the scope of Directive 2000/78.
- 28 As regards, more specifically, the provisions of the Charter which the referring court asks the Court to interpret, suffice it to point out that, according to Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing EU law.
- 29 It is common ground that Law 1992/1535 does not implement any provision of European Union law and no directive on taxation is applicable in the situation at issue in the main proceedings. Furthermore, as is clear from paragraph 27 of the present judgment, the dispute in the main proceedings does not fall within the scope of Directive 2000/78. Therefore, the provisions of the Charter the interpretation of which is sought by the present request for a preliminary ruling cannot be successfully relied on in the context of that dispute.

- 30 Having regard to the foregoing considerations, the answer to the first question is that Article 3(1)(c) of Directive 2000/78 must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, relating to a supplementary tax on pension income, does not fall within the substantive scope of that directive nor, therefore, is it covered by Article 21(1) of the Charter.

The second and third questions

- 31 In view of the answer given to the first question, there is no need to answer the second and third questions.

Costs

- 32 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 (First Chamber) hereby rules:

Article 3(1)(c) 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 national legislation, such as that at issue in the main proceedings, relating to a supplementary tax on pension income, does not fall within the substantive scope of that directive nor, therefore, is it covered by Article 21(1) of the Charter of Fundamental Rights of the European Union.

[Signatures]

* Language of the case: Finnish.