ECJ's findings

1. The right to paid annual leave is a particularly important principle of EU social law, laid down not only in Directive 2003/88 but also in the Charter, and it cannot be interpreted restrictively. Its purpose is to enable the worker to rest and enjoy a period of relaxation and leisure (§ 19-23).
2. In the event periods of annual leave and sick leave overlap, Article 7(1) of Directive 2003/88 must be interpreted as precluding national legislation or practices under which the right to paid annual leave is extinguished at the end of the leave year (or of a carry-over period) where the worker has been on sick leave, for the whole or part of the leave year, and therefore has not actually had the opportunity to exercise that right (see *Schulz-Hoff, C-350/06*, and *Pereda, C-277/08)* (§ 24).
3. The purpose of annual leave is different from that of the right to sick leave, which is to enable the worker to recover from an illness (see *ANGED, C-78/11)*. In the light of those differing purposes of the two types of leave, the Court has concluded that a worker who is on sick leave during a period of previously scheduled annual leave has the right, at his request and in order that he may actually use his annual leave, to take that leave during a period which does not coincide with the period of sick leave (§ 25-26).
4. The issue in this case, therefore, is whether, in a situation where a period of convalescence leave overlaps with a period of previously scheduled annual leave, that overlap is liable to prevent the worker from taking his acquired annual leave at a later time (§ 27).
5. According to the referring court, convalescence leave has the objective of improving the state of health of workers who are prescribed it and, unlike annual leave, is not intended to grant those workers a period of relaxation and leisure since they must follow a course of treatment prescribed by a doctor (§ 28-31).
6. Should the referring court conclude that the purposes of convalescence leave and annual leave differ, the national legislation must lay down an obligation on the employer to grant the worker concerned a different period of annual leave proposed by him which is compatible with any overriding reasons relating to the interests of the employer, without excluding in advance the possibility that that period may fall outside the reference period for the annual leave in question (§ 32).

Judgment

Article 7(1) of Directive 2003/88 […] must be interpreted as precluding national legislation or a national practice, such as that at issue in the main proceedings, under which a worker who is on convalescence leave, granted in accordance with national law, during the period of annual leave scheduled in the leave roster of the establishment where he is employed may be refused, at the end of his convalescence leave, the right to take his paid annual leave in a subsequent period, provided that the purpose of the right to convalescence leave is different from that of the right to annual leave, a matter which is for the national court to determine.

ECJ 13 July 2016, case C-187/15 (Pöpperl), Free movement, pension

Joachim Pöpperl – v – Land Nordrhein-Westfalen

Summary

The replacement of civil servants' pension rights by less valuable general pension rights is contrary Article 45 TFEU.

Facts

Mr Pöpperl was a teacher with the status of civil servant of the province (*Land*) North Rhine-Westphalia for 21 years (1978-1999). As such, he accrued entitlement to a civil servants' pension that was considerably more generous than the federal 'general' old-age pension for employees. Mr Pöpperl resigned in order to take up employment as a teacher in Austria. This led to him (i) losing all rights to a civil servants' pension and (ii) instead, being awarded 21 years of pension accrual under the general pension scheme. Had he retained his status at a civil servant, the portion of his pension relating to the years 1978-1999 would have been € 2,263 per month. The value of his retroactive membership of the general pension scheme was € 1,050 per month, less than half.

The replacement of Mr Pöpperl's civil servants' pension rights by less valuable general pension rights was based on a combination of provincial and federal provisions of law. The relevant provincial provision was that a civil servant who resigns loses all accrued pension rights unless he becomes a civil servant in another *Land* or a federal civil servant, in which case he may apply to retain his right.

National proceedings

Mr Pöpperl applied to retain his civil service pension rights, without success. He appealed to Administrative

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Court in Düsseldorf. It referred two questions to the ECJ. It noted the following.

> The employment relationship in the civil service is based on the principle of life-long employment and, compared with other workers, a civil servant is bound to his employer in a particular and more comprehensive way. The basis of the right to a retirement pension and of the employer's corresponding obligation to the civil servant to provide financial support is the civil servant's duty, on account of his recruitment into the public service, to dedicate himself entirely to his employer, to which all that working capacity will be available, in principle on a life-long basis. If the public-law employment relationship is terminated by the civil servant, that normally ends the obligation to provide him with financial support and the obligation to provide for his welfare that are associated with it.
> The civil servant's retirement system rewards the number of years for which a civil servant has worked for his employer. In return, the civil servant accepts that his gross salary during his period of active service is normally less than that of an employee who has the same qualifications and works in the same field. On the other hand, in the general old-age insurance scheme, retirement pensions are calculated, in principle, on the basis of the gross remuneration insured each calendar year, converted into pay points.

ECJ's findings

1. The Court has consistently held that all the provisions of the Treaty on freedom of movement of people are intended to facilitate the pursuit by EU nationals of occupational activities of all kinds throughout the EU, and preclude measures which might place such nationals at a disadvantage when they wish to pursue an economic activity in the territory of a Member State other than their Member State of origin. In that context, nationals of the Member States have in particular the right, which they derive directly from the Treaty, to leave their Member State of origin to enter the territory of another Member State and reside there in order to pursue an economic activity there. Admittedly, EU primary law can offer no guarantee to an insured person that moving to a Member State other than his Member State of origin will be neutral in terms of social security, in particular where sickness benefits and old-age pensions are concerned, since, given the disparities between the Member States' social security schemes and legislation, such a move may be to the advantage of the person concerned in terms of social protection, or not, depending on the circumstances. However, it is settled case-law that, where its application is less favourable, national legislation is consistent with EU law only to the extent that, in particular, it does not place the worker concerned at a disadvantage compared with those who pursue all their activities in the Member State where it applies and does not purely and simply result in the payment of social security contributions on which there is no return (§ 23-24).
2. Thus, the Court has repeatedly held that the aim of Articles 45 TFEU and 48 TFEU would not be achieved if, as a consequence of the exercise of their right to freedom of movement, migrant workers were to lose the social security advantages afforded them by the legislation of one Member State. Moreover, according to the Court's case-law, Articles 45 TFEU and 48 TFEU are intended in particular to prevent a worker who, by exercising his right of freedom of movement, has been employed in more than one Member State from being treated, without objective justification, less favourably than one who has completed his entire career in only one Member (§ 25-26).
3. Legislation such as that at issue constitutes a restriction on freedom of movement for workers since, even though it also applies to civil servants of the *Land* of North Rhine-Westphalia who resign in order to work in the private sector in their Member State of origin, it is liable to prevent or deter them from leaving their Member State of origin to take up employment in another Member State. That legislation thus directly affects the access of civil servants of the *Land* of North Rhine-Westphalia to the employment market in Member States other than the Federal Republic of Germany and is thus such as to impede freedom of movement for workers. It is settled case-law that national measures which are liable to hinder the exercise of fundamental freedoms guaranteed by the Treaty or make it less attractive may be allowed only if they pursue an objective in the public interest, are appropriate for ensuring the attainment of that objective and do not go beyond what is necessary to attain the objective pursued (§ 27-29).
4. The *Land* of North Rhine-Westphalia and the German Government submit that the national legislation at issue in the main proceedings is justified by the legitimate objective of ensuring the proper functioning of the public authorities, in that it seeks, in particular, to ensure the loyalty of civil servants and thus continuity and stability of the civil service. This may or may not constitute an overriding reason in the public interest that can justify the restriction on freedom of movement for workers. It is not necessary to rule on this question because, in any event, the restriction must be appropriate for securing the attainment of that objective and not go beyond what is necessary to attain it (§ 30-31).
5. National legislation and the various relevant rules are appropriate for securing attainment of the objective pursued only if they genuinely reflect a concern to attain that objective in a consistent and systematic manner. This is not the case as far as the *Land* North Rhine Westphalia is concerned, given that, if a civil servant is transferred, he may obtain rights to a retirement pension greater than the pension which he

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would acquire by virtue of retrospective insurance under the general old-age insurance scheme, even if he leaves the public authority to which he is assigned to go to that of another *Land* or of the federal State. Thus, the national legislation at issue in the main proceedings is not liable to deter civil servants in all circumstances from leaving the public authorities of the *Land* of North Rhine-Westphalia (§ 36-37).

6. So far as concerns the objective of ensuring the proper functioning of the public authorities generally in Germany, even supposing that the legislation at issue in the main proceedings is appropriate for attaining such an objective, it goes beyond what is necessary to attain it. Under the law of certain *Länder*, former civil servants who have resigned from the public service of those *Länder* may retain the rights acquired under the retirement pension scheme for civil servants, and this amounts to a less restrictive measure than the legislation at issue in the main proceedings (§ 39-40).

Judgment

1. Article 45 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a person having the status of civil servant in a Member State who leaves his post voluntarily in order to be employed in another Member State loses his retirement pension rights under the retirement pension scheme for civil servants and is insured retrospectively under the general old-age insurance scheme, conferring entitlement to a retirement pension lower than the retirement pension that would result from those rights.
2. Article 45 TFEU must be interpreted as meaning that is incumbent on the national court to give full effect to that article and to grant workers, in a situation such as that at issue in the main proceedings, retirement pension rights which are comparable with those of the civil servants who retain retirement pension rights corresponding, despite a change in public-sector employer, to the years of pensionable service that they have completed, by interpreting domestic law in conformity with that article or, if such an interpretation is not possible, by disapplying any contrary provision of domestic law in order to apply the same arrangements as those applicable to those civil servants.

ECJ 14 July 2016, case C-335/15 (Ornano), Maternity leave

Maria Cristina Elisabetta Ornan – v – Ministerio della Giustizia, Direzione Generale dei Magistrati del Ministerio

Summary

EU law does not give an employee on maternity a right to full pay while on leave.

Facts

In 2007, Ms Ornano, an Italian judge, requested payment of an expense allowance that she was not paid during two periods of maternity leave in 1997/1998 and 2000/2001. Until 2005, Italian law provided that judges were not eligible for this allowance during periods of maternity leave. For this reason, Ms Ornano's request was denied.

National proceedings

Ms Ornano appealed to the *Consiglio di Stato*. It requested the ECJ to pronounce on whether the Italian law, as it stood before 2005, was compatible with EU law, including the Maternity Directive 92/85 and the Treaty provisions on gender equality.

ECJ's findings

1. Article 11(2)(b) of Directive 92/85 provides that, in the case of maternity leave, the maintenance of a payment to, and/or entitlement to an adequate allowance for, workers must be ensured. Article 11(3) provides that the allowance referred to in paragraph 2(b) is to be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation. The concept of 'pay' used in Article 11 encompasses the consideration paid directly or indirectly by the employer during the worker's maternity leave in respect of her employment. By contrast, the concept of an 'allowance,' to which Article 11 also refers, includes all income received by the worker during her maternity leave not paid to her by her employer pursuant to the employment relationship (§ 29-30).

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