

ECJ 24 November 2016, case C-443/15 (Parris), Sex discrimination

David L. Parris – v – Trinity College Dublin and Others, Irish Case

Summary

The ECJ found that a gay lecturer was not unlawfully discriminated against under an occupational pension scheme that did not entitle those over a certain age or sexual orientation to claim a survivor's benefit for their (same-sex) civil partner or spouse.

Facts

Mr Parris worked as a lecturer in French at Trinity College Dublin between 1972 and 2010. He has dual Irish and British nationality. Mr Parris has lived for over 30 years in a stable relationship with a same-sex partner.

Under his employment contract, Mr Parris was a non-contributory member of a pension scheme operated by Trinity College Dublin. This pension scheme provides for the payment of a survivor's pension to the spouse or, since 1 January 2011, the civil partner of a member, if the member predeceases his or her spouse or civil partner. However, the survivor's pension is payable only if the member was married or had entered into a civil partnership before reaching the age of 60.

In 2005, it became possible to enter into a civil partnership in the United Kingdom. In 2009, when Mr Parris was 63, he registered a civil partnership in the United Kingdom. At that time there was no provision in Irish law by which his civil partnership could be recognized in Ireland. In December 2010, Mr Parris was allowed an option to take cost-neutral early retirement (he was contractually entitled to retire September 2013). The Irish Civil Partnership Act entered in force on 1 January 2011. At that time, Mr Parris was 65.

Mr Parris made a request to Trinity College Dublin that, on his death, his civil partner should receive a survivor's pension. His request was rejected.

National proceedings

Mr Parris appealed the decision to the Higher Education Authority. It upheld the decision of the College, finding that Mr Parris had retired before recognition of his civil partnership in Ireland and that the Trinity's pension rules excluded payment of a survivor's benefit where the member married or entered into a civil partnership after the age of 60.

Mr Parris then brought proceedings before the Equality Tribunal in Ireland, arguing that he had been directly or indirectly discriminated against by reason of his age and/or sexual orientation. The action was dismissed by the Equality Tribunal and Mr Parris appealed to the Labour Court in Ireland.

The Labour Court was uncertain whether having a national rule that specified an age by which a member of an occupational benefit scheme must marry or enter into a civil partnership for his spouse or civil partner to be entitled to a survivor's pension, amounted to discrimination on grounds of age and/or sexual orientation, contrary to Directive 2000/78. It referred three questions to the ECJ for a preliminary ruling.

Questions put to the ECJ

1. Does it constitute discrimination on grounds of sexual orientation, contrary to Article 2 of Directive 2000/78, to apply a rule in an occupational benefit scheme limiting the payment of a survivor's benefit to the surviving civil partner of a member of the scheme on their death, by a requirement that the member and his surviving civil partner entered their civil partnership prior to the member's 60th birthday in circumstances where they were not permitted by national law to enter a civil partnership until after the member's 60th birthday and where the member and his civil partner had formed a committed life partnership before that date?
2. If the answer to Question 1 is in the negative: Does it constitute discrimination on grounds of age, contrary to Article 2, in conjunction with Article 6(2) of Directive 2000/78, for a provider of benefits under an occupational benefit scheme to limit an entitlement to a survivor's pension to the surviving civil partner of a member of the scheme on the member's death, by a requirement that the member and his

civil partner entered their civil partnership before the member's 60th birthday where:–

- a. The stipulation as to the age at which a member must have entered into a civil partnership is not a criterion used in actuarial calculations, and
 - b. The member and his civil partner were not permitted by national law to enter a civil partnership until after the member's 60th birthday and where the member and his civil partner had formed a committed life partnership before that date?
3. If the answer to Question 2 is in the negative: Would it constitute discrimination contrary to Article 2 in conjunction with Article 6(2) of Directive 2000/78 if the limitations on entitlements under an occupational benefit scheme described in either Question 1 or Question 2 arose from the combined effect of the age and sexual orientation of a member of the scheme?

ECJ's findings

The first question to the ECJ addressed discrimination on grounds of sexual orientation. This comes down to whether Article 2 of Directive 2000/78 must be interpreted as meaning that a national rule which makes the right of a surviving civil partner of a member of an occupational benefit scheme to receive a survivor's benefit subject to a condition that their civil partnership was entered into before the member reached the age of 60 – even though national law did not allow them to enter into a civil partnership before the age limit – constitutes discrimination on grounds of sexual orientation and is therefore prohibited.

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It was not disputed that on the date Mr Parris retired, he did not satisfy the conditions for his civil partner to be entitled to the survivor's benefit because he exceeded the maximum age limit. However, his argument was that national law did not allow him to enter into a civil partnership before reaching the age limit. This meant that there were no circumstances in which someone of Mr Parris's age and sexual orientation could claim a survivor's benefit for his (same-sex) civil partner or spouse under the pension scheme.

The fact that Mr Parris was unable to satisfy that condition was because (1) the law in Ireland did not recognize any form of civil partnership between a same-sex couple when he was 60 and (2) there were no transitional provisions in the rules governing survivor's benefits in the Irish Civil Partnership Act to deal with cases of gay members who had already reached 60 on the date of its entry into force. In the past, the ECJ has held that marital status and the benefits flowing from it fall within the competence of Member States. Member States are therefore free to provide – or not provide – for marriage for people of the same sex, or an alternative form of legal recognition of their relationship, and, if they do provide this, they are also free to lay down the date from which the marriage or alternative form can have effect.

Consequently, Ireland was not required under EU law to provide for marriage or a form of civil partnership for same-sex couples before 1 January 2011, nor to give this retroactive effect under the Civil Partnership Act. Nor was Ireland required to provide transitional measures for same-sex couples where a member of the scheme had already reached 60 on the date of entry into force of the Civil Partnership Act. Thus, in the case at hand, there was no discrimination on grounds of sexual orientation.

The second question was whether there was discrimination on grounds of age. Although the national rule of the pension scheme at issue makes the survivor's benefit available only to surviving spouses and civil partners of members who entered into the marriage or civil partnership before reaching the age of 60 and thus fixes an age for access to the survivors' benefits under pension schemes and therefore a difference in treatment on grounds of age is created, this does not constitute discrimination on grounds of age because, as mentioned above, EU law did not preclude the state of national law, as this is regarded as a benefit that flows from marital status and is therefore within the competence of individual Member States to determine.

The final issue that the Court had to consider was whether the contested rule was discriminatory as a result of the combined effect of age and sexual orientation, even though the rule does not constitute discrimination on either ground taken separately. The Court states that the answer to that question is no: there is no new category of discrimination resulting from the combination of more than one of those grounds, such as sexual orientation and age, that may be found to exist where discrimination on the basis of those grounds taken in isolation has not been established.

Consequently, the Court ruled that Mr Parris did not suffer unlawful discrimination.

Ruling

1. Article 2 of Council Directive 2000/78 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.

- 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 grounds of sexual orientation or on grounds of age taken in isolation.

ECJ 24 November 2016, case C 454/15 (Webb- Sämann), Social policy

Jürgen Webb-Sämann – v – Christopher Seagon,
German case

Summary

Under Article 8 of Directive 2008/94, if an employer becomes insolvent in circumstances where it previously withheld funds from an employee's salary to pay into an occupational pension scheme – but then failed to make those payments – there is no requirement to exclude those funds from the scope of insolvency proceedings.

Facts

Mr Webb-Sämann had been employed on a part-time basis by Baumarkt Praktiker since 18 November 1996. On 1 October 2013, insolvency proceedings were initiated against the business.

Mr Webb-Sämann's made certain claims, including some relating to contributions to occupational pension schemes covering the three months immediately preceding the date when insolvency proceedings commenced (i.e. July to September 2013). These were honoured by the guarantee institution.

Thereafter, the only issue in dispute was the right to have social security contributions payable towards an occupational pension scheme from January to June 2013 inclusive, excluded from the scope of the insolvency proceedings. Mr Webb-Sämann invoked Article 8 of Directive 2008/94 to argue that, if he were not granted a right to have the amount payable excluded from the

scope of insolvency proceedings, that provision would be infringed.

National proceedings

The Arbeitsgericht Darmstadt (Labour Court, Darmstadt) dismissed Mr Webb-Sämann's action. Mr Webb-Sämann appealed against the judgment to the Hessisches Landesarbeitsgericht (Higher Labour Court, Hessen, Germany). The court decided to refer the following question to the ECJ for a preliminary ruling: it asked, in essence, whether Article 8 of Directive 2008/94 must be interpreted as meaning that if an employer becomes insolvent, money withheld from a former employee's salary to be paid into a pension fund on behalf of the employee, should be excluded from the scope of insolvency proceedings.

ECJ's findings

Although pension contributions are not expressly referred to in Article 8 of Directive 2008/94, they are closely connected with the rights conferring immediate or prospective entitlement to old-age benefits, which that provision seeks to protect. Pension contributions are designed to provide employees with financial security when they retire. The ECJ had already held that failure by the employer to pay contributions could cause a supplementary occupational pension scheme to become underfunded – a situation which falls under Article 8 of the Directive. Both Article 3 and Article 8 of the Directive are relevant in the event of failure to pay pension contributions.

The two Articles have different purposes and concern two different types of protection. Article 3 of the Directive requires that the payment of outstanding claims, including not only salary, but also certain contributions in the form of salary claims, must be ensured by the guarantee institutions. Article 4(2) and (3) of Directive 2008/94 grants Member States the power to restrict the scope of Article 3 in terms of the length of the period to be covered by the guarantee institution and a cap on the level of payments. It should be noted that the protection afforded by Article 3 of the Directive concerns short-term claims.

Article 8 of Directive 2008/94, is more restricted in scope, as it seeks to protect the interests of employees in obtaining payment of their pension. Moreover, Article 8, unlike Articles 3 and 4, does not expressly provide that Member States can restrict the level of protection. Finally, unlike Article 3, Article 8 seeks to guarantee the protection of employees' long-term interests, as these may extend over the entire retirement period. Thus, Article 8 applies to outstanding pension contributions, insofar as they are not covered by Article 3.