Case C-193/17. Fundamental rights

Cresco Investigation GmbH – v – Markus Achatzi, reference lodged by the German Oberster Gerichtshof on 13 April 2017

Is EU law, in particular Article 21 of the Charter of Fundamental Rights, in conjunction with Articles 1 and 2(2)(a) of Directive 2000/78/EC, to be interpreted as precluding, in a dispute between an employee and an employer in the context of a private employment relationship, a national rule under which Good Friday is also a holiday, with an uninterrupted rest period of at least 24 hours, only for members of the Evangelical Churches of the Augsburg and Helvetic Confessions, the Old Catholic Church and the United Methodist Church, and if an employee [belonging to one of those churches] works, despite that day being a holiday, he has, in addition to the entitlement to payment for the work not requiring to be performed as a result of the day being a holiday, also an entitlement to payment for the work actually performed, whereas other employees, who are not members of those churches, do not have any such entitlement?

Is EU law, in particular Article 21 of the Charter of Fundamental Rights, in conjunction with Article 2(5) of Directive 2000/78/EC, to be interpreted as meaning that the national legislation referred to in the first question, which – as measured against the total population and the membership, on the part of the majority of the population, of the Roman Catholic Church – grants rights and entitlements to only a relatively small group of members of certain (other) churches, is not affected by that directive because it concerns a measure that in a democratic society is necessary to ensure the protection of the rights and freedoms of others, particularly the right freely to practise a religion?

Is EU law, in particular Article 21 of the Charter of Fundamental Rights, in conjunction with Article 7(1) of Directive 2000/78/EC, to be interpreted as meaning that the national legislation referred to in the first question is a positive and specific measure in favour of the members of the churches mentioned in the first question which is designed to guarantee their full equality in working life, to prevent or offset disadvantages to those members due to religion, if they are thereby granted the same right to practise a religion during working hours on what is an important holiday for that religion, such as otherwise exists for the majority of employees in accordance with a separate provision of national law, because generally no work is performed on the holidays for the religion that is observed by the majority of employees?

If it is found that there is discrimination within the meaning of Article 2(2)(a) of Directive 2000/78/EC:

Is EU law, in particular Article 21 of the Charter of Fundamental Rights, in conjunction with Articles 1, 2(2)(a) and 7(1) of Directive 2000/78/EC, to be interpreted as meaning that, so long as the legislature has not created a non-discriminatory legal situation, a private employer is required to grant the rights and entitlements set out in the first question in respect of Good Friday to all employees, irrespective of their religious affiliation, or must the national provision referred to in the first question be disapplied in its entirety, with the result that the rights and entitlements in respect of Good Friday set out in the first question are not to be granted to any employees?

Case C-212/17. Fixed-term work

Simón Rodríguez Otero – v – Televisión de Galicia S.A., reference lodged by the Spanish Tribunal Superior de Justicia de Galicia on 24 April 2017

For the purposes of the principle of equivalence between workers with fixed-term contracts and those with contracts of indefinite duration, must ending of the employment contract due to 'objective circumstances' under Article 49(1)(c) ET [Estatuto de los Trabajadores: Workers' Statute] and its ending on 'objective grounds' under Article 52 ET be regarded as 'comparable situations' and does, therefore, the difference between the compensation payable in either case constitute unequal treatment between workers with fixed-term contracts and those with contracts of indefinite duration, prohibited by Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP?

If so, must the social-policy objectives legitimising the creation of the 'contrato de relevo' model of contract also be deemed to justify, under clause 4.1 of the above-mentioned framework agreement, the difference in treatment relating to the lower amount of compensation for termination of the employment relationship when the employer freely decides that such a 'contrato de relevo' should be for a fixed term?

Case C-252/17. Equal treatment

Moisés Vadillo González – v – Alestis Aerospace, S.L., reference lodged by the Spanish Juzgado de lo Social No 2, Cádiz on 12 May 2017

Does Directive 2010/18/EU 1 preclude an interpretation of Article 37.4 ET (leave of absence of an hour

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every day until the child reaches nine months of age) to the effect that, regardless of the sex of either parent, such leave is not be granted to the person applying for it if the other parent is unemployed?

Does Article 3 of Directive 2006/54/EC, 2 which seeks to guarantee full equality between men and women in their working lives, preclude an interpretation of the said Article 37.4 ET to the effect that, if the male parent is working, he has no entitlement to such leave if his wife and fellow parent is unemployed?

Case C-258/17. Discrimination and pension

E.B. – v – Versicherungsanstalt öffentlich Bediensteter BVA, reference lodged by the German Verwaltungsgerichtshof on 15 May 2017

Does Article 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation 1 ('the Directive') preclude the maintenance in being of the new legal position created by an administrative decision that has become final under national law, in the area of law governing disciplinary action in the civil service (disciplinary decision), compulsorily retiring and reducing the pension benefits of a civil servant, where that administrative decision was not yet subject to provisions of EU law, in particular the Directive, at the time when it was adopted, but a (notional) decision to the same effect would infringe the Directive if it were adopted within the temporal scope of the Directive?

If the first question is answered in the affirmative, is it, for the purposes of creating a non-discriminatory situation,

a. necessary under EU law, for the purposes of determining the civil servant's pension, to treat him as if, in the period between the entry into force of the administrative decision and his reaching statutory pensionable age, he had not been retired but working, or is it
b. sufficient for these purposes to recognise as due the unreduced pension accruing in consequence of compulsory retirement at the time specified in the administrative decision?

Does the answer to Question 2 depend on whether the civil servant did in fact proactively seek active employment in the federal civil service before reaching retirement age?

If it is considered sufficient to annul the percentage reduction of pension entitlement (and depending also, if necessary, on the circumstances referred to in Question 3):

Can the principle of non-discrimination contained in the Directive support a primacy of application over conflicting national law which a national court must observe, when calculating pension entitlement, even in respect of periods before the Directive became directly applicable in national law?

If Question 4 is answered in the affirmative, to which point in time does such 'retroactive effect' extend?

Case C-315/17. Fixed term work

Pilar Centeno Meléndez – v – Universidad de Zaragoza, reference lodged by the Spanish Juzgado de lo Contencioso-Administrativo de Zaragoza on 29 May 2017

Is Clause 4(1) of the Framework Agreement annexed to Council Directive 1999/70/EC of 28 June 1 applicable to the horizontal career increment claimed by the applicant, on the basis that it is an employment condition, or, rather, does the increment constitute an element of remuneration with the characteristics described in the present order that depends on the subjective qualities of the recipient which have been gained by working for a number of years under a system based on increasing levels of difficulty and responsibility and on continuity, specialisation and professionalism?

If the previous question is answered in the affirmative and the Court of Justice considers [the increment] to be an employment condition for the purposes of Clause 4(1) of the Framework Agreement, is the difference in remuneration justified on objective grounds?

Case C-370/17. Social security

Caisse de retraite du personnel navigant professionnel de l'aéronautique civile (CRPNPAC) – v – Vueling Airlines SA, reference lodged by the French Tribunal de grande instance de Bobigny on 19 June 2017

Is the effect of an E 101 certificate issued, in accordance with Article 11(1) and Article 12a(1a) of Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the

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