

lion, it does not state that the retroactive equalisation of the NPA was necessary to prevent the financial balance of that scheme from being seriously undermined. The case file does not include other information which suggests this. Therefore, there seems to be no objective justification for that measure, but this is nevertheless for the referring court to verify.

Ruling

Article 119 of the EC Treaty (now, after amendment, Article 141 EC) must be interpreted as precluding, in the absence of an objective justification, a pension scheme from adopting, in order to end discrimination contrary to that provision resulting from the fixing of a normal pension age differentiated by gender, a measure which equalises, with retroactive effect, the normal pension age of members of that scheme to that of the persons within the previously disadvantaged category, in respect of the period between the announcement of that measure and its adoption, even where such a measure is authorised under national law and under the Trust Deed governing that pension scheme.

ECJ 24 October 2019, case C-35/19 (Belgische Staat), Free movement

BU – v – État Belge, Belgian case

Question

Must Article 45 TFEU be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that the tax exemption applicable to disability allowances is subject to the condition that those allowances are paid by a body of the Member State concerned and, therefore, excludes from that exemption allowances of the same nature paid by another Member State?

Ruling

Article 45 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, without providing justification in that regard, a matter which is however for the referring court to verify, provides that the tax exemption applicable to disability allowances is subject to the condition that those allowances are paid by a body of the Member State concerned and, therefore, excludes from

that exemption allowances of the same nature paid by another Member State, even where the recipient of those allowances is a resident of the Member State concerned.

ECJ 5 November 2019, case C-192/18 (Commission – v – Poland), Gender Discrimination, Fair Trial

European Commission – v – Republic of Poland, EU Case

Legal background

Article 157 TFEU prohibits any discrimination with regard to pay as between men and women, whatever mechanism by which the inequality arises.

Article 5(a) of Directive 2006/54 provides that there is to be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards the scope of such schemes and the conditions of access to them.

Article 9(1) of Directive 2006/54 identifies a number of provisions which, when they are based on sex, either directly or indirectly, are to be included among the provisions contrary to the principle of equal treatment. Article 9(1)(f) applies in particular in the case of provisions based on sex for fixing different retirement ages.

Facts

The Republic of Poland introduced a law which distinguished between women and men as regards (i) the retirement age for judges of the ordinary Polish courts and public prosecutors in Poland and (ii) the age from which early retirement is possible concerning judges of the *Sąd Najwyższy* (Supreme Court). Moreover, the retirement age of judges of the ordinary Polish courts was lowered to 60 years for women and 65 years for men and the Minister for Justice in Poland received the right to authorise the extension of the period of active service as a judge from the age of 60 to 70 for women and the age of 65 to 70 for men.