



C-46/07 Commission v Italy, judgment of 13 November 2008

The Court finds that the Italian pension scheme for civil servants infringes the rules on equal pay for men and women.

The Italian pension scheme for civil servants and other public sector workers provides for a normal retirement age of 60 years for women and 65 years for men. Taking the view that that scheme is in fact discriminatory on grounds of sex as far as the right to receive the old-age pension at different ages is concerned, the Commission initiated proceedings for failure to fulfil obligations against Italy for infringement of Article 141 EC, which provides that each Member State is to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

The Commission's action having been brought before it, the Court considered whether the old-age pension constitutes pay within the meaning of Article 141 EC. The first subparagraph of Article 141(2) provides that pay means the ordinary basic or minimum wage and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

First of all, the Court held that civil servants who benefit from the pension scheme at issue constitute a specific category of workers, owing to their employment relationship with the State, other bodies or public employers. In addition, the pension paid under that scheme is directly linked to the worker's length of service and its amount is calculated on the basis of the worker's final salary. The Court concluded from this that the entitlement in question is to be regarded as pay within the meaning of Article 141 EC.

The Court pointed out that Article 141 EC prohibits any discrimination between men and women in relation to pay, whatever the arrangements giving rise to such inequality. Imposing an age condition which differs according to the sex of the person concerned in respect of the grant of a pension constituting pay is therefore contrary to that provision.

The Court went on to reject the justification put forward by Italy. Although Article 141 EC allows the Member States to maintain or adopt measures providing for specific advantages intended to prevent or compensate for disadvantages in professional careers in order to ensure full equality between men and women in working life, it cannot be inferred from this that that provision permits the imposition of such an age condition which differs according to the sex of the person concerned. The national measures covered by that provision must contribute to helping women to carry on their professional life on an equal footing with men. However, the imposition of an age condition which differs according to the sex of the person concerned in relation to retirement is not capable of compensating for disadvantages to which the careers of female civil servants are exposed by helping women in their professional life or by making up for the problems which they may face in their professional career.

The Court therefore concluded that, by maintaining provisions under which civil servants are entitled to receive the old-age pension at a different age depending on whether they are male or female, Italy failed to fulfil its obligations under Article 141 EC.