

Temporary employment after reaching the statutory retirement age

EU law does not preclude a national provision allowing the parties to an employment contract - without any further conditions - to postpone, possibly several times, the agreed termination of the employment relationship upon reaching the statutory retirement age by an agreement during the employment relationship.

Facts

The plaintiff was employed by the Free Hanseatic City of Bremen as a teacher. The collective agreement applicable to this employment relationship provided for the automatic termination of the employment relationship upon reaching the statutory retirement age. Shortly before reaching the statutory retirement age, the employee requested to continue working beyond that date. The parties then agreed to extend the employment relationship by half a year. The Free Hanseatic City of Bremen refused another application of the employee for renewed extension of his employment relationship.

The employee claimed that the limited term of the extension of the employment relationship infringed European Union law. The employee pointed out that a limited term based on sec. 41 sent. 3 SGB VI did not comply with European law.

Decision

The ECJ ruled that sec. 41 sent. 3 SGB VI is compatible with EU law. Sec. 41 sent. 3 SGB VI does not contravene the prohibition on age discrimination, since the provision does not constitute an abusive disadvantage for the employees concerned, but rather a benefit, as the extension may only apply for older employees, but is not available to younger employees.

The ECJ also considers the unlimited possibility of postponing the termination of the employment relationship as compatible with EU law. An employee who reaches the standard age for obtaining the statutory old-age pension is not only different from other employees in terms of social security, but also because he is regularly at the end of his working life. The possibility of postponing the termination of the employment relationship several times should therefore not be regarded as potential abuse.

Conclusion

Sec. 41 sent. 3 SGB VI allows the contracting parties to extend their employment relationship for a limited term – possibly several times – beyond the statutory retirement age. EU law concerns have been raised against this provision from the outset. These concerns have now been eliminated by the judgment of the ECJ.

However, the contracting parties may make use of the option under sec. 41 sent. 3 SGB VI only if an individual and/or collective agreement provides for an automatic termination of the employment relationship upon reaching the statutory retirement age. In addition, it is important to note that the agreement postponing the termination of the employment relationship after reaching the statutory retirement age has to be concluded during the existing employment relationship.

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