# Free Movement of Workers and Old-age Benefits: The Court of Justice of the European Union's Standpoint in *Commission v. Cyprus* (C-515/14)

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In its recent judgment *Commission v. Cyprus*,[1] the Court of Justice of the European Union (CJEU) stated that a domestic norm, which prevents Cypriot civil servants under the age of 45 to fully benefit from the aggregation of all insurance periods in case they resign from national employment to carry out a professional activity within an EU institution or other international organization, was contrary to Arts 45 and 48 of the Treaty on the Functioning of the European Union (TFEU), and to the principle of sincere cooperation laid down in Art. 4, para. 3, of the Treaty on the European Union (TEU).

In dealing with one of the fields ancillary to workers' freedom to move, namely social security (more specifically pensions),[2] the CJEU held that such a fundamental freedom was hindered by a discriminatory measure based on the ground of the age.

However, the reasoning of the Court appears to be far-fetched with regard to a specific issue.

The most problematic aspect of the case discussed here is probably represented by the fact that civil servants were concerned. At times, in fact, they can fall within the exception to the free movement rule, as established in Art. 45, para. 4, TFEU. Indeed, according to the case law of the CJEU on employment in the public service "the concept of

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[1] Court of Justice, judgment of 21 January 2016, case C-515/14, *Commission v. Cyprus*.

[2] It should be recalled that this issue is mainly ruled by national norms. For an exhaustive analysis on this topic, see E.M. IMMERGUT, I. SCHULTZE, M.K. ANDERSON (eds), *The Handbook of West European Pension Politics*, Oxford: Oxford University Press, 2007. For more details about social security issues related to the accession of Cyprus to the EU, see N. IOANNOU, *Social Policy and Employment*, in C. STEFANOU (ed.), *Cyprus and the EU: the Road to Accession*, Aldershot: Burlington, Ashgate, 2005, p. 199 *et seq.*

'public service' within the meaning of Art. 45, para. 4, TFEU covers posts which involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities and thus presume on the part of those occupying them the existence of a special relationship of allegiance to the State and reciprocity of rights and duties which form the foundation of the bond of nationality".[3]

Therefore, as the exception contained in Art. 45, para. 4, TFEU might apply to some categories of civil servants, it is remarkable that the judgment at hand literally overlooks this point. As a consequence, the Court seems to have implicitly admitted that there are no distinctions between workers and civil servants, when deciding whether Art. 45 TFEU is applicable in relation to social security.

The clear stance of the CJEU goes beyond the findings of other recent judgments on similar subject matters.[4] By reducing the scope of application of Art. 45, para. 4, TFEU, the Court could eliminate existing differences amongst Member States with regard to the notion of employment in the civil service. However, such extreme consequence is not so advisable, given the relevance of Art. 45, para. 4 for some peculiar interests of every EU Member State, which should be assessed on a case-by-case basis.

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[3] Recently, Court of Justice, judgment of 10 September 2014, case C-270/13, *Haralambidis*, para. 42 *et seq.* (in particular, para. 44).

[4] See, for instance, Court of Justice, judgment of 4 July 2013, case C-233/12, *Gardella*. See also M. ORLANDI, *La tutela del diritto alle prestazioni pensionistiche dei lavoratori europei al servizio di organizzazioni internazionali: la sentenza Gardella*, in *Il diritto dell'Unione europea*, 2013, p. 839 *et seq.*