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File No.: 6712/2008/VOP/JKV

Statement of the Public Defender of Rights regarding the assessment of the provision of Sec. 74a (2) of the Pension Insurance Act[1]

In connection with the mentioned provision of the Pension Insurance Act, a question arose whether it leads to **unjustified differentiation based on age**.

Causes of differentiation cannot be considered in the same way. Instead, they should be graded according to seriousness. The most serious breach of the right to equal treatment would be differentiation based on race (or ethnicity).[2] The European Court of Human Rights further includes in the list of suspicious reasons gender, sexual orientation, family origin, religion and nationality. If we are to respect this range, age does not belong to suspicious reasons, or, more precisely, belongs to most recent reasons.[3] As a practical consequence, it is not necessary to investigate in such a thorough and strict way whether the given differentiation is based on reasonable and objective reasons and whether it maintains reasonable proportion of proportionality between the pursued objective and the selected measures as in case of prima facie reasons.

Further, it is necessary to take into consideration the area of social rights. According to the margin of appreciation doctrine[4] applied by the European Court of Human Rights, a wide margin of discretionary power of the state applies.[5] From the point of view of European law, most important powers in the area of social policy and employment are left with Member States.

As a result, the scrutiny of unequal treatment in the social area due to age is weakened by two facts. First, age does not belong to suspicious discriminatory reasons and second, the state has a wide margin of discretion in the area of social

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[1] Act No. 155/1995 Coll., on Pension Insurance, as amended.

[2] According to judicial decisions of the Supreme Court of the United States, it is the only really suspicious criterion subjected to strict scrutiny. Further see Bobek, M., Boučková, P., Kühn, Z. (eds.) Rovnost a disrkiminace. Praha: C. H. Beck, 2007, p. 47 and subseq.; Ely, J. H. Democracy and distrust: A Theory of Judicial Review. United States: Harvard University Press, 1980, p. 135 – 165.

[3] It is not explicitly listed e.g. in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948, published as Resolution No. DE01/48 of the UN General Assembly, Universal Declaration of Human Rights, in issue 1/1948 of Selected Declarations of US General Assembly; it is not explicitly listed in Constitutional Act No. 23/1991 Coll., which introduces the Charter of Fundamental Rights and Freedoms as a constitutional act of the Federal Assembly of the Czech and Slovak Federal Republic; it is not mentioned in the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 3, 5 and 8 of 4 November 1950 published in the Czech Republic in the Collection of Laws as the Communication of the Federal Ministry of Foreign Affairs No. 209/1992 Coll., on the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 3, 5 and 8; and it is not included in the International Covenant on Civil and Political Rights, i.e. Decree of the Minister of Foreign Affairs No. 120/1976 Coll., on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

[4] See e.g. Barinka, R. Evropská úmluva o lidských právech a doktrína margin of appreciation: Teoretické dimenze problému. Právník, 2005, issue 10, p. 1073 – 1121.

[5] See e.g. the judgment of European Court of Human Rights in case Runkee and White v. United Kingdom.

security as to what policy to choose. On the other hand, if we negated the ability of the state to differentiate in the area of retirement policy on the grounds of age, we would arrive at absurd conclusions.

European law

The conclusions stated above regarding the character of age as a discriminatory criterion is somewhat weakened by the fact that the European Court of Justice regards the principle of non-discrimination on the basis of age as a general principle of European Community law.[6] Provisions related to the prohibition of discrimination can be found both in the primary law[7] and the secondary law[8] and also in judicial decisions of the European Court of Justice. By the Amsterdam amendment,[9] a new article, No. 13, was inserted in the Treaty (now Article 19, after the Lisbon Treaty became valid). This article is an empowering provision to take appropriate action to combat discrimination. This provision specifically determines that "the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

The decision in which the European Court of Justice declared the principle of non-discrimination due to age a general principle of European Community law concerned the interpretation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. According to item 63 of the decision in the Mangold case, Member States enjoy broad discretion in their choice of the measures capable of attaining their objectives in the field of social and employment policy.[10] According to point 75 of this decision, the principle of non-discrimination on grounds of age must be regarded as a general principle of Community law; this principle shall then apply when implementing community regulations, and the European Court of Justice may use it to consider national regulations which fall within the scope of Community law. On the basis of this principle, subjects shall not be given differential treatment in comparable situations and identical treatment in different situations, unless such difference of treatment is objectively justified by pursuing a legitimate objective and provided the means to attain this objective are appropriate and necessary.

The activist decision in the Mangold case became the subject of extensive discussions and criticism. Advocate General Mazák argues against the decision in the Mangold case.[11]According to him, it needs to be borne in mind that age as a criterion is a point on a scale, which distinguishes it from other discriminatory reasons, which remain unchanged in the course of life (the impossibility of change represents one of the characteristic features of prohibited reasons). As a result, it is

[6] The judgment of the European Court of Justice in case C-144/04, Werner Mangold [2005] ECR-I-09981.
[7] The Treaty establishing the European Community, now (after the Lisbon Treaty became valid) the Treaty on the Functioning of the European Union.
[8] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
[9] Which became valid on 1 May 1999.
[10] Thereby it corresponds to the concept of broad discretionary power provided to contracting states by the European Court of Human Rights.
[11] Opinion of GA Mazák in case C-411/05, Félix Palacios de la Villa v. Cortefiel Servicios SA

much harder to determine the existence of discrimination on the grounds of age than for example the existence of discrimination on the grounds of gender, where comparative features are defined more clearly.[12] The application of the prohibition of discrimination on the grounds of age requires a complex and subtle assessment; at the same time, age-related distinctions are very common in social and employment policies. “In particular, age-related distinctions are naturally, inherent in retirement schemes. It should be borne in mind that national provisions laying down retirement ages automatically entail, according to the concept of discrimination as defined in Article 2 of Directive 2000/78, direct discrimination on grounds of age. Consequently, if such national provisions were to fall within the scope of Directive 2000/78, every such national rule, whether it lays down a minimum or a maximum age of retirement, would in principle have to be measured against the directive”.[13]

Simultaneously, it should be borne in mind that in the area of social and employment policies, most important powers stay with Member States.[14] General principles of Community law are sources of law, and in their finding the European Court of Justice drew inspiration from legal traditions common to Member States and from international treaties. Various international documents and constitutional traditions common to Member States indeed enshrine the general principle of equal treatment but not – besides a few cases, such as e.g. the Finnish Constitution – the specific principle of prohibition of discrimination on the grounds of age as such.[15]

The general principle of prohibition of discrimination is essentially distinguished from a specific prohibition of a particular type of discrimination by the fact that in the latter case the criterion on which differentiation may not be based on the basis of state citizenship, gender, age or any other “batch” of discriminatory reasons is referred to in the formulation of the specific prohibition in question. By contrast, the general prohibition of discrimination leaves open the question of which causes of differentiation are acceptable. That question has apparently been answered in various ways over time and at present it is subject to continuous developments at both national and international levels.[16]

The idea of equal treatment regardless of age is a subject of frequent limitation and exceptions, such as age limits of various types, often legally binding, which are regarded not only as acceptable but also as really desirable and sometimes even basic.[17]

Age is a criterion especially typical of retirement schemes and some differences based on age are unavoidable within this context.[18] In Community law the prohibition of discrimination on the grounds of age is not just subject to much more numerous conditions and limitations than in case of discrimination on the grounds of gender, but it is also a much more recent phenomenon.[19] The conclusions of GA Mazák thus fully correspond to the theory of gradation of prohibited reasons mentioned at the beginning of this opinion.

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[12] Item 61 of the Opinion
[13] Item 63 of the Opinion
[14] Item 63 of a decision in the Mangold case
[15] Item 88 of the Opinion of GA Mazák
[16] Item 92 of the Opinion
[17] Item 85 of the Opinion
[18] Item 86 of the Opinion
[19] Item 87 of the Opinion

As regards retirement rights, this area is not covered by European Community anti-discrimination legislation and therefore it falls only within the competence of the state to determine conditions in this area. [20] Therefore, the European Court of Justice is not competent to decide whether the regulation of retirement rights is in compliance with the general principle of Community law. [21]

With respect to the above mentioned facts and the wide discretion of the state in the area of social and retirement rights as well as the specific character of age as a prohibited discriminatory reason, discrimination in violation of European Community law cannot be established in case of the provision of 74a (2) of the Pension Insurance Act.

Czech law

The Constitutional Court

We shall proceed to assess the compliance of the provision of Sec. 74a (2) of the Pension Insurance Act with the constitutional order. This means assessing whether it is in violation of the provisions of the Charter of Fundamental Rights and Freedoms regulating the principle of non-discrimination or whether the provision under scrutiny fulfils the elements of arbitrariness, violating the principle of proportionality. [22]

The principles of prohibition of discrimination and equality of humans are not protected as such but only in connection with the infringement of another right or freedom contained in the Charter or an international treaty regulating human rights.[23] The provision of Article 1 of the Charter, however, does not mention fundamental rights, which would indicate that discrimination is prohibited with respect to any rights, not just those guaranteed by the Charter or an international treaty but also rights guaranteed by law.[24] In several cases, the Constitutional Court also worked with the category of non-accessory equality (i.e. it did not identify a breach of equality in

[20] See e.g. the decision of Irish Equality Tribunal No. DEC-E2001-029, in which discrimination due to age was examined. A person aged above 60 years was offered a pension and other payments under less advantageous conditions than a person under 60 years of age. However, the pension rights did not come within the definition of remuneration according to the Employment Equality Act of 1998. Only non-pension components were recognized as remuneration according to the law.

[21] See the judgment of the European Court of Justice in case C-427/06, Birgit Bartsch v. Bosch und Siemens Hausgeräte (BSH) Altersfürsorge GmbH [2008] ECR I-07245, item 24, 25.

[22] The test of proportionality, used by the Constitutional Court, comprises three stages: 1) whether the regulation pursues a legitimate objective necessary in a free democratic society; 2) whether there is rational connection between the objective and the means chosen to implement it; 3) whether the objective can be achieved by alternative means whose application would make the encroachment upon the fundamental right less intensive, or would eliminate it altogether. See e.g. judgments in cases under file No. Pl. ÚS 4/94 of 12 October 1994 (published under No. 214/1994 Coll.), Pl. ÚS 15/96 of 9 October 1996 (published under No. 280/1996 Coll.), Pl. ÚS 16/98 of 17 February 1999 (published under No. 68/1999 Coll.), Pl. ÚS 41/02 of 28 January 2004 (published under No. 98/2004 Coll.)

[23] The Constitutional Court therefore proceeds in a similar way as the European Court of Human Rights when applying Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. We speak of a so-called accessory character of equality. See e.g. the judgment in a case under file No. Pl. ÚS 42/04 of 6 June 2006, published under No. 405/2006 Coll.; further, the judgment in a case under file No. Pl. ÚS 5/95 of 8 November 1995.

[24] This concept would correspond to the legal regulation contained in Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms. According to the Protocol, the enjoyment of rights and freedoms set forth by law shall be secured without discrimination. The Czech Republic has not ratified the Protocol yet, however.

fundamental rights but stated a breach of equality as such).[25] T**he principle of non-accessory equality includes the exclusion of arbitrariness on the part of the lawmaker in differentiation of subjects and rights.[26] The lawmaker's arbitrariness is manifested if different subjects are treated differently in the same or a comparable situation, without the existence of objective and reasonable grounds for the differential treatment applied.** [27]

In the case in question, it is possible to consider the compliance of the provision of the Pension Insurance Act within the intention of the accessory concept of equality in particular with Article 1, Article 3 (1) and Article 4 (3), which address equality of people in dignity and rights and the prohibition of discrimination, and set that statutory limitation of the fundamental rights and freedoms must apply in the same way to all cases which meet the specified conditions. Equality of people before the law and the right to equal protection of the law without any discrimination is regulated in Article 26 of the International Covenant on Civil and Political Rights.[28] The right to adequate material security in old age is regulated by Article 1 (30) of the Constitution of the Czech Republic, and the provision of Article 41 of the Constitution stipulates that this right may be claimed only within the scope of laws implementing this provision. In the examined case, the law means Act No. 155/1995 Coll., on Pension Insurance, as amended.

The Constitutional Court has dealt with the interpretation of the constitutional principle of equality in numerous judgments.[29] It interpreted equality as a relative category which requires the removal of unjustified differences. Therefore, the principle of equality in rights should be understood to mean that statutory differentiation in access to certain rights must not manifest arbitrariness; however, it does not follow that everybody has to be granted any right. The protected fundamental values listed in Article 3 of the Charter were not conceived as absolute by the lawmaker. As a result, the Constitutional Court arrived at a conclusion that a specific legal regulation that puts one group or category of persons at advantage compared to another may not be in itself regarded as the violation of the principle of equality. The lawmaker therefore has certain room to consider whether to stipulate such preferential treatment. In doing so, the lawmaker needs to take care that the preferential approach is based on objective and reasonable grounds, i.e. a legitimate objective of the lawmaker, and that there is a relationship of proportionality between that objective and the means used to achieve it.

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[25] See the judgment in a case under file No. Pl. ÚS 36/01 of 25 June 2002.

[26] I.e. failing the test of proportionality, see footnote No. 22.

[27] See the judgment in a case under file No. Pl. ÚS 53/04 of 16 October 2007, published under No. 341/2007 Coll., item 28.

[28] Ministry of Foreign Affairs Decree No. 120/1976 Coll., on the International Pact on Civil and Political Rights and the International Pact on Economic, Social and Cultural Rights.

[29] E.g. judgments in cases under file No. Pl. ÚS 16/93 of 24 May 1994 (promulgated under No. 131/1994 Coll. and published in the Collection of Judgments and Resolutions of the Constitutional Court, volume 1, p. 189 and subseq.), file No. ÚS 36/93 of 17 May 1994 (promulgated under No. 132/1994 Coll. and published in the Collection of Judgments and Resolutions of the Constitutional Court, volume 1, p. 175 and subseq.), file No. Pl. ÚS 5/95 of 8 November 1995 (promulgated under No. 6/1996 Coll. and published in the Collection of Judgments and Resolutions of the Constitutional Court, volume 4, p. 205 and subseq.), file No. Pl. ÚS 33/96 of 4 June 1997 (promulgated under No. 185/1997 Coll. and published in the Collection of Judgments and Resolutions of the Constitutional Court, volume 8, p. 163 and subseq.); the judgment of the Constitutional Court of the CSFR of 8 October 1992, file No. Pl. ÚS 22/92 (promulgated in part 96/1992 Coll. and published under No. 11 of the Collection of Judgments and Resolutions of the Constitutional Court of CSFR).

The matter concerning the Pension Insurance Act was dealt with by the Constitutional Court e.g. in its judgment Pl. ÚS 15/02, regarding a petition to repeal Sec. 78 of Act No. 155/1995, on Pension Insurance. In this judgment the Constitutional Court in particular addressed the issue of advantages provided to some groups of workers in the mining industry, and it concluded that comparison with other insured persons was not indicative, and hence not in violation of Article 1 of the Charter since in determining the retirement age for various groups of insured persons, the demands of their occupations need to be taken into account, in the case of miners mainly with respect to damage to health and the degree of body wear-out during work under extreme conditions.

To assess whether a specific legal regulation is discriminatory or not, the persons subject to comparison have to be in the same or an analogous position. To change the position of a group of workers in the mining industry for the better, a positive action from the lawmaker and not a derogatory action from the Constitutional Court would be needed. According to the Constitutional Court, it is only up to the lawmaker whether more advantages will be given to a specific group than to another group, provided the lawmaker does not proceed in an arbitrary way.

The Constitutional Court further pointed out the temporary character of the provision and the quickly declining circle of people who will be able to assert their claim on its basis. The effects of this provision in practice will subside in the next few years. Under these circumstances, the present degree of statutory preferential treatment provided to the given group of persons does not seem to be inadequate. The Constitutional Court also acknowledged the constitutional relevance of an argument, according to which the potential repealing of the provision in question would trigger secondary inequality between those insured persons who have already reached the retirement age within the protective period and those who have not reached it within this period yet. This secondary inequality would apparently have the parameters of discrimination since it would not be based on reasonable grounds but merely on an arbitrary moment of the repeal of the provision by the Constitutional Court. With respect to the fact that the Constitutional Court appears in the position of a so-called negative lawmaker, it needs to be considered whether it would be purposeful to repeal the provision.

The Supreme Administrative Court

The definition of the principle of non-discrimination was also dealt with in judgments of the Supreme Administrative Court. According to the court’s opinion, not every inequality is discriminatory, in particular if reasonable grounds for differentiation exist. In a number of decisions the Supreme Administrative Court has addressed the justifiability of preferential treatment of some persons established by Government Decree No. 557/1990 Coll., on the special provision of old-age pensions to certain miners. It stated that its decisions rest on objective reasonable grounds based on the necessity to resolve a situation connected with a slow-down in the mining industry and a decrease of limits of the highest permissible exposure. As a result, the decree in question relates only to persons who met the given condition by 31 December 1990, i.e. to persons who had already exceeded the newly set limits for the highest possible exposure at that moment. According to the Supreme Administrative Court, the aim of the directive was not to enable miners to terminate the performance of

employment in a mine and deliberately meet the given condition but to help miners who had already terminated the performance of employment.[30]

Conclusion

Since the Defender is not in the position of a negative lawmaker, within the sense of the position of the Constitutional Court, he does not have to consider what consequences the repeal of the provision in question would have. The aim of this opinion was to say whether the provision under scrutiny fulfils the elements of discrimination or not. When assessing the provision in question it is necessary to examine:

1) whether a person is treated more favourably than another in a comparable situation,

2) whether, as a result of differential treatment, equality in dignity and rights is violated,

3) whether the person is disadvantaged due to a reason prohibited by law,

4) whether differential treatment cannot be justified by a legitimate purpose or proportionality of achieving the purpose.

Ad 1)

The provision of Sec. 74a (2) stipulates conditions under which an insured person may retire already at 55 years of age. However, the age of 55 must be reached after 30 June 2006. This constitutes inequality between insured persons meeting all other conditions only on the grounds of age, or the date of birth. It is a situation when insured persons of an older age (who reached 55 years before 30 June 2006) are disadvantaged compared to insured persons of a younger age meeting the same criteria (i.e. employment for the period of 10 years in the mining, exploration and processing of uranium ore). This means that the condition of a comparable situation is established.

Ad 2)

Equality in dignity and rights is stipulated in Article 1 of the Charter of Fundamental Rights and Freedoms. Since the assessment of equality in dignity and rights does not require both these components to be evaluated cumulatively, it is sufficient if inequality in rights is identified; then it will not be necessary to deal simultaneously with the question of dignity.[31] The prohibition of discrimination stipulated in Article 3 (1) of the Charter guarantees and specifies equality in rights stipulated in Article 1 of the Charter. The provision of Article 4 (3) provides that statutory limitation of fundamental rights and freedoms must apply in the same way to all cases which meet the specified conditions.

The principle of equality in rights is not essentially protected in itself but only in connection with the exercise of another fundamental right guaranteed by constitutional laws or by international treaties on human rights. There is also a

[30] The judgment of the Supreme Administrative Court of 31 August 2009, file No. 4 Ads 187/2008 – 39.

[31] Dignity, according to the formulation of the Supreme Court of Canada, means “development of human potential according to individual capabilities”. See Miron v. Trudel [1995] 2 SCR 418 p. 489.

possible interpretation that discrimination is prohibited not just with respect to the rights guaranteed by the Charter or an international treaty but with respect to any rights guaranteed by law. The right to adequate material security in old age and periods of work incapacity is stipulated in Article 30 (1) of the Charter. This right belongs to social rights, which may be claimed only within the scope stipulated by law (Article 41 (1) of the Charter). The law means in particular the Pension Insurance Act. (In this case there is also intersection with the area of social security, where discrimination is prohibited according to Act No. 198/2009 Coll., on Equal Treatment and on Legal Means of Protection against Discrimination and on Amendments of some Laws (the Anti-discrimination Act). Nevertheless, the Anti-discrimination Act shall not be used to assess whether the provision of another regulation is discriminatory).

Additionally, we may deduce inequality in access to the right to early retirement within the provision of Sec. 74a (2) of the Pension Insurance Act. Since it is not a fundamental right guaranteed by the Charter or an international treaty, the Constitutional Court proceeds in these cases by assessing the arbitrariness (randomness) of the lawmaker by means of a specific test of proportionality – i.e.:

a) whether the regulation pursues a legitimate objective necessary in a free democratic society;

b) whether there is rational connection between the objective and the means chosen to implement it;

c) whether the objective can be achieved by alternative means whose application would make the encroachment upon the fundamental right less intensive, or would eliminate it altogether.

As follows from the ensuing text, in this case the legitimate objective of the regulation under scrutiny is already absent.

Ad 3)

Age is the prohibited reason that is examined. The Charter of Fundamental Rights and Freedoms does not explicitly state age as a prohibited reason in Article 3; however, it gives a so-called open-ended list of discriminatory reasons. Consequently, age as a discriminatory reason can be deduced to be the so-called “other status”. Age as a prohibited discriminatory reason is explicitly stated in the Anti-discrimination Act and European Community law. Neither European law[32] nor the Anti-discrimination Act is applicable to this case; however, they refer to the fact that age as a cause of discrimination is a normally recognized reason. Nevertheless, we need to bear in mind the limitation connected with this reason indicated at the beginning of this opinion since age is not a qualified suspicious criterion within the sense of the foregoing considerations requiring a strict inquiry.

Ad 4)

The prohibition of discrimination is usually interpreted from two points of view – the first is given by the requirement to eliminate arbitrariness in the lawmaker’s procedure during the differentiation of groups of subjects and their rights, and the second is given by the requirement of acceptability of the perspectives of

[32] The Treaty on the Functioning of the European Union (Article 19), Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

differentiation. The postulate of equality does not imply generally demand for equality of everyone with everyone else; it implies demand that law should not give unjustifiably preferential treatment to some or disadvantage some compared to others. These principles are breached if various subjects that are in the same or a comparable situation are treated differently without the existence of objective and reasonable grounds for the different approach applied. **If the lawmaker chooses a certain approach, the approach must be based on objective and reasonable grounds and there has to be a relationship of proportionality between this objective and the means used to achieve it**.[33]

The purpose of the provision of Sec. 74a of the Pension Insurance Act was to expand the group of persons eligible for retirement under more advantageous conditions. With respect to the fact that the examined provision became effective on 1 July 2006, it was to regulate situations taking place after that date. The harshness of the law that occurred in this case with respect to insured person of an older age should be removed by a transitional provision, which means the provision of Article LXVII of Act No. 264/2006 Coll., amending certain laws in connection with the enactment of the Labour Code. However, the transitional provision explicitly mentions only the provision of Sec. 74a (1) of Act No. 155/1995 Coll., on Pension Insurance, as amended, and not the provision of Sec. 74a (2) of the Act. Thereby, differentiation between insured persons based on only age takes place. **It is not possible to identify a legitimate objective, which could deny the right to an early retirement to insured persons of an older age, as is the case of insured persons who reached 55 year of age after 1 July 2006.** As regards the right to be granted a pension, the principle of equality in law stipulated in Article 30 (1) of the Charter was violated.

Despite the fact that in the foregoing text age was given a weaker status within the list of qualified suspicious criteria, in this case no legitimate objective was identified that would justify the use of age as a criterion; this means that it will not hold out in the so-called standard inquiry either.[34] Therefore, while we do not regard age as an a priori impossible criterion, having considered the context of the specific case, we had to find its application unjustified.

With respect to the above-mentioned facts, it needs to be concluded that the regulation in question constitutes illegitimate differentiation based on age. As a result, we find the legal rule discriminatory due to age.

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[33] E.g. judgments in cases under file No. Pl. ÚS 15/02 of 21 January 2003, file No. Pl. ÚS 16/93 of 24 May 1994 (promulgated under No. 131/1994 Coll. and published in the Collection of Judgments and Resolutions of the Constitutional Court, volume 1, p. 189 and subseq.), file No. Pl. ÚS 36/93 of 17 May 1994 (promulgated under No. 132/1994 Coll. and published in the Collection of Judgments and Resolutions of the Constitutional Court, volume 1, p. 175 and subseq.), file No. Pl. ÚS 5/95 of 8 November 1995 (promulgated under No. 6/1996 Coll. and published in the Collection of Judgments and Resolutions of the Constitutional Court, volume 4, p. 205 and subseq.), file No. Pl. ÚS 33/96 of 4 June 1997 (promulgated under No. 185/1997 Coll. and published in the Collection of Judgments and Resolutions of the Constitutional Court, volume 8, p. 163 and subseq.)

[34] I.e. as a case of “common” discrimination scrutinized on the basis of the test of rationality. See Bobek, M., Boučková, P., Kühn, Z. (eds.) Rovnost a disrkiminace. Prague: C. H. Beck, 2007, p. 50.