

STRENGTHENING *UNIVERSITY* COOPERATION *OSIJEK – PÉCS*

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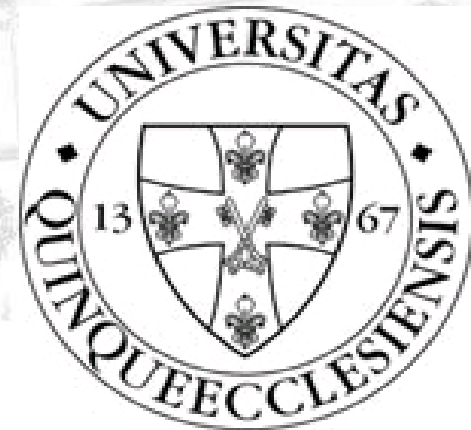


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Hungary-Croatia

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Are older workers second-class?- The case of Croatia and Hungary

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CONTEMPORARY LEGAL CHALLENGES:

EU – HUNGARY – CROATIA

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Who is 'old' worker?

How widespread is age discrimination?

Perception: It is widespread:

- EU average: 58%
- Hungary: 79 % (the highest level)
- Croatia: 47 %

Experienced age discrimination in the EU: 6 %

(Source: Special Eurobarometer 317, Report of the European Commission, Discrimination in the EU in 2009. p. 70-75.)

In Croatia: 10-20% of workers and unemployed have experienced discrimination (2010)

EU regulation - 2000/78/EC directive

Art. 6:

Discrimination  justifiable difference in treatment

Different treatment on ground of age can be justified, if:

- there is a legitimate aim (employment policy objectives)
- the means are appropriate and necessary

'Forced retirement'

When the worker get entitled to pension, the employment relationship:

- ends automatically, or
- the employer can terminate it easily.

Main question:

Can be justified a rule in the law, collective agreement or employment contract, which provides for the possibility of 'forced retirement'?

CJEU judgments

- In general 'forced retirement' is permissible

legitimate objective: to reduce unemployment, support young workers to get a job

- Is this reasoning true?
- shift the problem to the pension system

Is it proportionate (necessary and appropriate)?

- Retired workers get financial compensation by pension

Domnica Petersen judgment (C-341/08.):

In Germany the age limit for doctors was 68

BUT: it applied only for practising in the state financed system

Rosenbladt judgment (C-45/09.)

Mrs Rosenbladt cleaned barracks part-time (10 hours a week) 39 years long

Wage: 300,-€ / month

When she reached her retirement age, her employment ended.

Reason: clause in a universally applicable collective agreement

Pension: 253,-€ / month

CJEU: the law was not discriminative:

She had the same right like other workers to look for another job

She enjoyed protection from discrimination

It did not force people to withdraw from the labour market

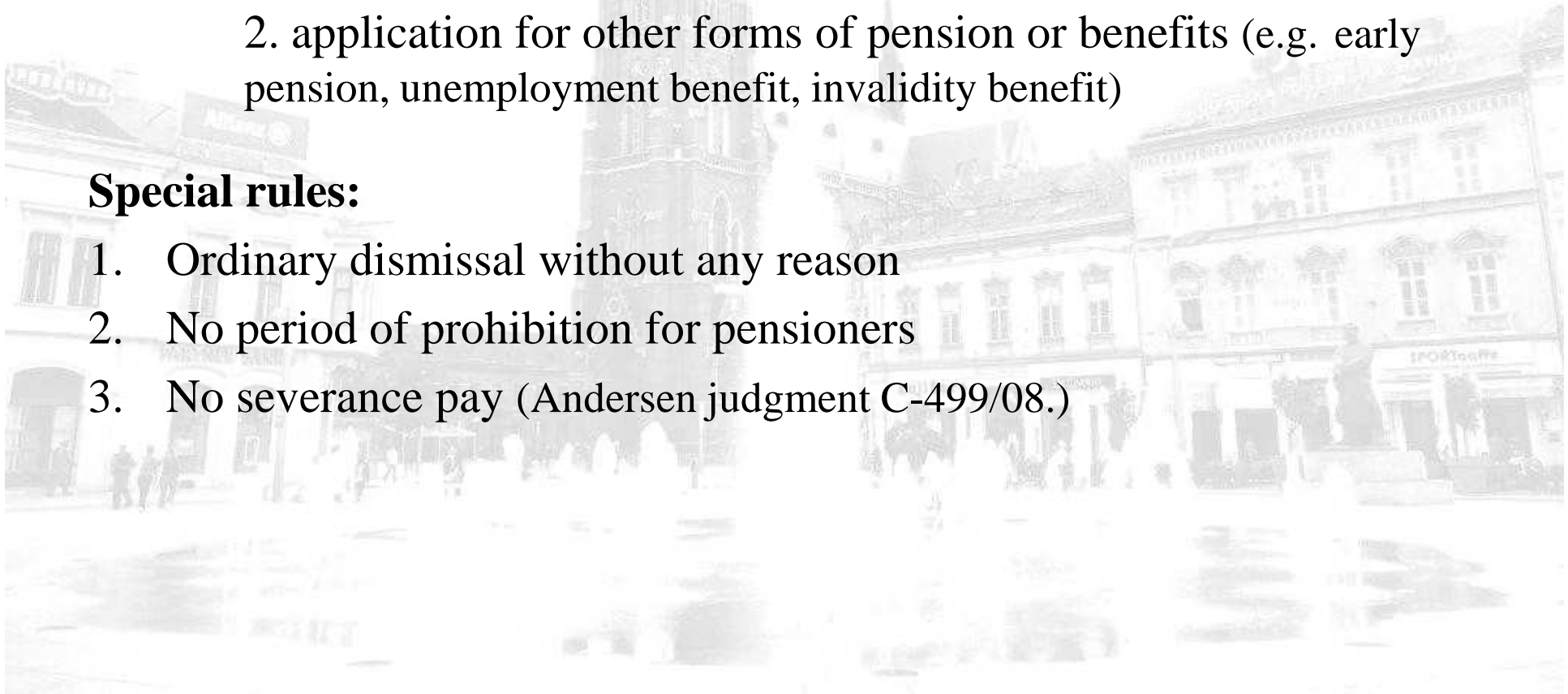
The Hungarian regulation on dismissal of pensioners

Definition of pensioner:

1. entitlement for old-age pension (retirement age + necessary period of service)
2. application for other forms of pension or benefits (e.g. early pension, unemployment benefit, invalidity benefit)

Special rules:

1. Ordinary dismissal without any reason
2. No period of prohibition for pensioners
3. No severance pay (Andersen judgment C-499/08.)



The Croatian regulation on dismissal of pensioners

Statutory forced retirement:

When the worker has reached 65 years and has 15 years of employment service, his/her employment contract will end,

unless otherwise agreed by the employer and worker.

Croatia

Automatic termination

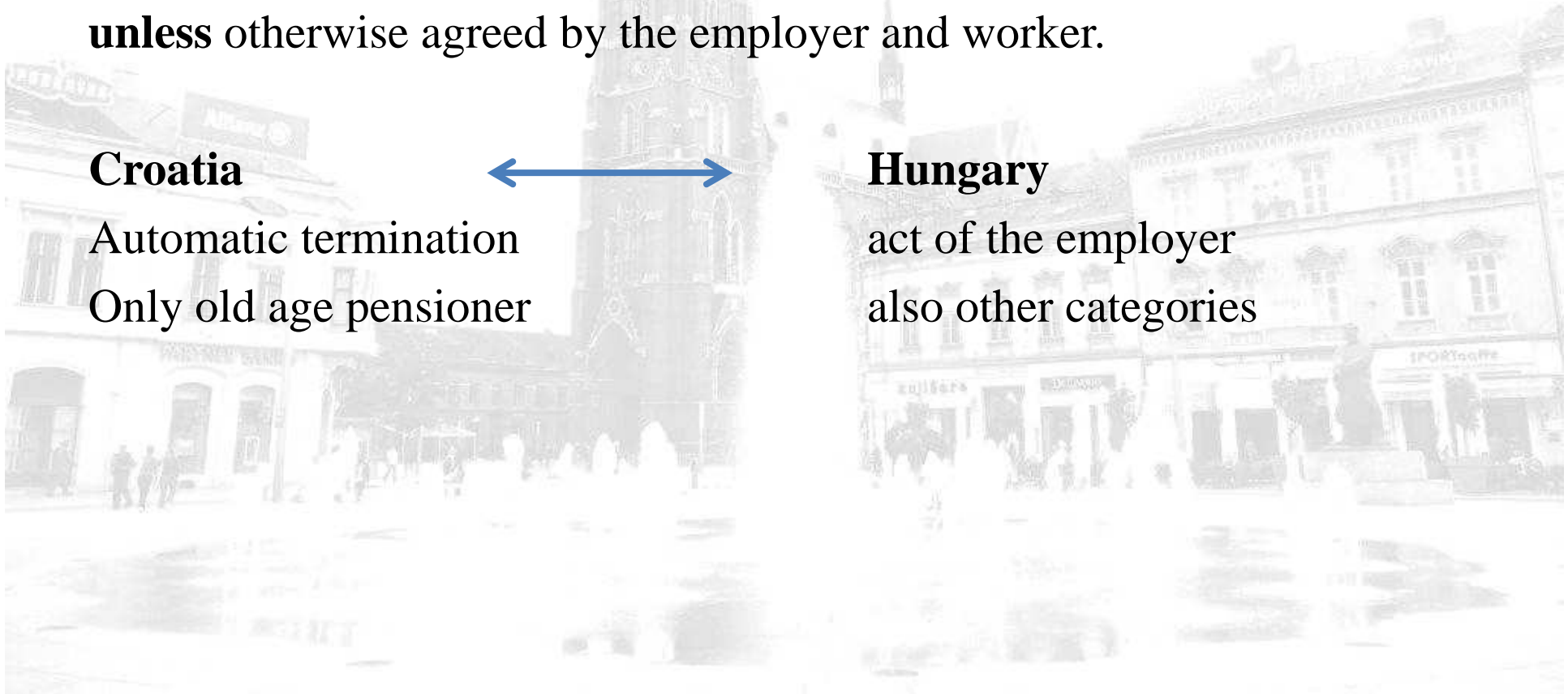
Only old age pensioner



Hungary

act of the employer

also other categories



Conclusion

Compulsory retirement might be in line with the case law of CJEU

BUT

1. No proved positive effect on the reduction of unemployment

Therefore no legitimate aim (!)

2. It is not an appropriate tool
3. Shift the problem of unemployment to the pension system