

SUMMARY

# **ECJ 6 November 2012, case C-286/12 (European Commission - v - Hungary), Age discrimination**

## **Facts**

Until 31 December 2011, Hungarian law allowed judges, prosecutors and notaries to remain in office until age 70. This was an exception to the rule applying to all other public sector employees, who were forced to retire at age 62.

In April 2011, Parliament adopted a law under which judges, prosecutors and notaries would not be allowed to remain in office beyond the 'general retirement age', being the age at which persons are eligible to receive State retirement benefits. This used to be 62, but in 2010 a law entered into force under which the general retirement age is gradually being increased from 62 to 65.

The law reducing the compulsory retirement age for judges, prosecutors and notaries contained transitional provisions pursuant to which officials who reach the general retirement age before 2012 lose their office on 30 June 2012 and officials who reach the general retirement age in the course of 2012 lose their office on 31 December 2012.

In January 2012, the European Commission (EC) notified Hungary that it was in breach of Directive 2000/78. When Hungary denied this, the EC sent Hungary a 'reasoned opinion' requesting Hungary to comply with Directive 2000/78 within one month. Hungary took the position (i) that the retirement age reduction was not discriminatory as it merely redressed a situation where there had been positive discrimination in favour of judges, prosecutors and notaries and (ii) that, even if there was discrimination, it was justified by two objectives: (a) the desire to standardise the age-limit for compulsory retirement in the public sector while ensuring the viability of the pension scheme, a high level of employment and the

improvement of the quality and efficiency of the judicial activities involved and (b) the establishment of a “more balanced age structure” facilitating access for young lawyers to the relevant professions and guaranteeing them an accelerated career. In July 2012 the Constitutional Court repealed the discriminatory provisions retroactively.

### **ECJ’s findings**

1. The fact that the Constitutional Court repealed the legislation at issue retroactively does not do away with the need to adjudicate on the action, because that legislation was still in force at the time the deadline laid down in the EC’s reasoned opinion expired (§ 40 – 47).
2. Was the legislation at issue discriminatory? Individuals aged 62 and over are in a comparable situation to that of younger individuals, but unlike the latter they are forced to retire at an earlier age. This is not altered by the fact that the legislation aims to redress a situation of positive discrimination (§ 48 – 54).
3. Is the legislation’s aim legitimate? The ECJ replies affirmatively. Aims are legitimate within the meaning of Article 6 of Directive 2000/78, if they consist of social policy objectives, such as those related to social policy, the labour market or vocational training. Standardisation can constitute a legitimate employment policy objective. Establishing a more balanced age structure can constitute a legitimate aim of employment and labour market policy, as the ECJ previously held in *Fuchs and Köhler* (§ 57 – 62).
4. The legislation at issue is an appropriate means of achieving the aim of standardisation, but is it necessary to achieve that aim? The ECJ replies negatively. Judges, prosecutors and notaries previously benefitted from an exception to the general retirement age allowing them to remain in office until age 70. They had a well-founded expectation that they would be able to remain in office, retaining their income, until that age. The legislation at issue abruptly and significantly lowered the age for compulsory retirement without introducing transitional measures to protect this legitimate expectation. Officials born in or before 2012 had a period of at most one year, but in the majority of cases much less, to adjust to lower incomes. Furthermore, Hungary has not explained why it lowered the retirement age of judges, prosecutors and notaries by eight years without providing for a gradual staggering of that amendment, while, on the other hand, the increase of three years in the general retirement age is being introduced from 2014 over a period of eight years and was already enacted in 2010 (64 – 75).
5. Is the legislation at issue an appropriate means to achieve the aim of establishing a more

balanced age structure? The ECJ replies in the negative. The short-term effect of vacating numerous posts in favour of younger lawyers will not, in itself, result in a truly balanced age structure in the medium and long term. In 2013, only one age group will have to be replaced and as the retirement age is raised progressively from 62 to 65 and the prospects for young lawyers will actually deteriorate.

### **Ruling**

[...] by adopting a national scheme requiring compulsory retirement of judges, prosecutors and notaries when they reach the age of 62 – which gives rise to a difference in treatment on grounds of age which is not proportionate as regards the objectives pursued – Hungary has failed to fulfil its obligations under Articles 2 and 6(1) of Council Directive 2000/78/EC [...]

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2012-11-06

**Case number:** C-286/12