

SUMMARY

ECJ 7 July 2011, case C-310/10 (Ministerul Justitiei si Libertatilor Cetatenesti – v – Stefan Agafitei and others), Other forms of discrimination

***<p>The plaintiffs were 31 Romanian judges. They felt discriminated against because prosecutors within two branches of the Justice Department (the branch that prosecutes corruption and the branch that prosecutes terrorism) were given a salary increase, as a result of which they earn more than judges.

The reference for a primary ruling is inadmissible.</p>

Facts

Romania transposed directives 2000/43 (racial discrimination) and 2000/48 (framework directive on discrimination) (the 'Directives') by means of Legislative Decree 137/2000. It prohibits discrimination, not only on the grounds mentioned in the Directives, but also on the ground of, inter alia, 'social class'. Article 27 of the Decree allows victims of discrimination to seek compensation. In 2008 the Romanian Constitutional Court declared Article 27 to be unconstitutional insofar as it gives courts jurisdiction to annul, or to decline to apply, legislative acts which they consider to be discriminatory and to replace them with rules developed in case law.

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more than judges.

National proceedings

The court of first instance found that the plaintiffs had been discriminated against on grounds of socio-professional category and place of work (criteria that correspond to 'social class'). The Justice Department appealed. The Court of Appeal stayed the appeal proceedings and referred two questions to the ECJ, essentially asking whether the Directives preclude a judgment such as that of the Constitutional Court.

ECJ's findings

1. In principle, the ECJ is obliged to answer the referring court's questions, given that it is for the national courts alone to assess the need for a preliminary ruling (§ 23-26).
2. Nevertheless, where it is obvious that EU law cannot be applied to the circumstances of the case, the ECJ may refuse to rule on a question (§ 27-28).
3. A situation such as that at issue in the main proceedings does not fall within the scope of the Directives, the alleged discrimination not being based on any of the grounds listed therein (§ 29-36).
4. However, since legislative decree 137/2000 transposes the Directives into national law, it is necessary to consider whether an interpretation of the Directives can be justified on the ground that the said decree was rendered applicable by domestic law to circumstances such as those at issue as a result of the reference made by the decree to the Directives (§ 37).
5. The ECJ concludes that there is no such justification. The need to ensure uniform interpretation of the provisions of EU law may justify extending the ECJ's jurisdiction in matters where, because national law refers to such provisions, they are only indirectly applicable. However, such a consideration cannot, without disregarding the divisions of power between the EU and its Member States, confer on such provisions of EU law primacy over higher-ranking provisions of domestic law (§ 38-41).

Ruling

The reference for a primary ruling is inadmissible.

Creator: European Court of Justice (ECJ)

Verdict at: 2011-07-07

Case number: C-310/10