

SUMMARY

# **ECJ 4 December 2018, C-378/17 (Minister for Justice and Equality and Commissioner of the Garda Síochána), Discrimination, General (IR)**

## ***Minister for Justice and Equality, Commissioner of An Garda Síochána – v – Workplace Relations Commission, Irish case***

### **Summary**

A national body established by law in order to ensure enforcement of EU law in a particular area must have jurisdiction to disapply a rule of national law that is contrary to EU law.

### **Legal background**

Directive 2000/78/EC (the Framework Directive for equal treatment) aims to combat discrimination in employment. Article 9(1) stipulates that Member States shall ensure that judicial and/or administrative procedures are available to enforce the Directive.

The Constitution of Ireland provides that justice shall be administered by the courts. The High Court, the Court of Appeal and the Supreme Court have sole jurisdiction to the question of validity of any law having regard to the provisions in the Constitution.

The Constitution also stipulates that limited functions and powers of a judicial nature can be exercised by any person or body of persons authorised by law. This is the case for the Irish Equality Acts, which transpose Directive 2000/78. The Workplace Relations Commission (formerly the Equality Tribunal) has jurisdiction in such cases and may order various forms of redress.

### **Facts**

Mr Boyle and two other persons applied for the position of police officer. However, they were excluded from the procedure as the applicable Admissions and Appointment Regulations – which were measures of national law – provided that persons younger than 18 and older than 35 years of age were not eligible (all three applicants were too old).

They then brought complaints before the Equality Tribunal (now the Workplace Relations Commission), asserting that the maximum age constitutes discrimination both under Directive 2000/78 and the Equality Acts.

The Minister for Justice and Equality pleaded that the Equality Tribunal lacked jurisdiction as the contested provision was a measure of national law. Consequently, not the Equality Tribunal but the High Court would have jurisdiction to decide, if necessary, to disapply such a provision. However, the Equality Tribunal decided that it would proceed to consider the complaints and stated that it would consider and decide the constitutional issue raised by the Minister.

The Minister then brought an action before the High Court for an order prohibiting the Equality Tribunal from acting in a manner contrary to law, which was upheld. The Equality Tribunal appealed to the Supreme Court. The Supreme Court stated that the Equality Tribunal, which meanwhile had become the Workplace Relations Commission, lacked jurisdiction to disapply provisions of national law. Only the High Court had such jurisdiction. Moreover, the jurisdiction to hear cases relating to equality in employment was divided between the Workplace Relations Commission and the High Court (the latter only if the upholding of the application would require, *inter alia*, disapplication of rules). According to the Supreme Court, this division of jurisdiction complied with the principles of equivalence and effectiveness. As the Workplace Relations Commission asserted that it should have all powers necessary to ensure that national and EU law relating to equality in employment are complied with, the Supreme Court decided to ask preliminary questions.

### **Question**

Must EU law, in particular the principle of primacy of EU law, be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a national body established by law in order to ensure enforcement of EU law in a particular area lacks jurisdiction to decide to disapply a rule of national law that is contrary to EU law?

### **Consideration**

First, it should be pointed out that there is a difference between disapplying a provision in a

specific case and striking down a provision. The Member States have the task of designating a system (i.e. courts/institutions, legal remedies and procedures) as regards the latter. On the other hand, the primacy of EU law means that national courts must give full effect to provisions of EU law, if necessary by having the power of disapplying provisions of national law.

Accordingly, any provisions which might impair the effectiveness of EU law by withholding such powers are incompatible with the requirements which are the very essence of EU law. As the ECJ has repeatedly held, that duty is owed not only by national courts, but also by all organs of the State – including administrative authorities – called upon, within the exercise of their respective powers, to apply EU law. It follows that the principle of primacy of EU law requires not only the courts but all the bodies of the Member States to give full effect to EU rules. It is in the light of those considerations that the question referred must be answered.

In this case, it is clear that the Workplace Relations Commission is a body established for the purpose of Article 9 of Directive 2000/78. Against that background, having the power to ensure enforcement of the principle of non-discrimination the primacy of EU law requires that it must be fully effective disapplying, if need be, provisions contrary to EU law. Moreover, insofar as the Workplace Relations Commission must be considered as a ‘court or tribunal’ within the meaning of Article 267 of the TFEU, it may refer questions to the ECJ, but also is bound by its judgments. If it were unable to disapply a national provision, EU law would be less effective. Rules of national law, even constitutional provisions, cannot undermine the unity and effectiveness of EU law.

It follows from the primacy of EU law that the bodies called upon to apply EU law – within the exercise of their respective powers – must be able to disapply national law or national case law which are contrary to EU law. For EU law to be fully effective, they must neither request nor await the prior setting aside of such a provision or such case law by legislative or other constitutional means. The fact that individuals have the alternative to bring an action before the High Court instead of the Workplace Relations Commission does not change this conclusion.

### **Ruling**

EU law, in particular the principle of primacy of EU law, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a national body established by law in order to ensure enforcement of EU law in a particular area lacks jurisdiction to decide to disapply a rule of national law that is contrary to EU law.

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

**Verdict at:** 2018-12-04

**Case number:** C-378/17