

SUMMARY

ECJ (Grand Chamber) 19 April 2016, case C-441/14 (Ajos), age discrimination

<p>A court applying national law that is at odds with the principle of non-discrimination on grounds of age must disapply that law, even if it is unequivocal and even where the dispute is between private parties.</p>

Summary

A court applying national law that is at odds with the principle of non-discrimination on grounds of age must disapply that law, even if it is unequivocal and even where the dispute is between private parties.

Facts

Mr Rasmussen was dismissed by his employer Ajos in 2009. Having been with the company since 1984, he was, in principle, entitled to a severance allowance equal to three months' salary, pursuant to Article 2a(1) of the Law on salaried employees. However, since he had reached 60 years of age on the date of his departure and was entitled to an old-age pension payable by the employer under a scheme which he had joined before reaching 50 years of age, Article 2a(3) of the said law, as interpreted in consistent national case-law, barred his entitlement to the severance allowance, even though he remained on the labour market after his departure. Said Article 2a(3) provides: "No severance allowance shall be payable if, on termination of the employment relationship, the employee will receive an old-age pension from the employer and the employee joined the pension scheme in question before reaching 50 years of age".

In March 2012, Mr Rasmussen's union brought an action on his behalf against Ajos claiming payment of a severance allowance equal to three months' salary as provided for in Article 2a(1)

of the Law on salaried employees. The union relied on the ECJ's judgment in the Andersen case (C-499/08, officially known as *Ingeniørforeningen i Danmark*).

National proceedings

On 14 January 2014, the Sø- og Handelsretten (Maritime and Commercial Court) upheld a claim brought by the legal heirs of Mr Rasmussen, since deceased, for payment of severance allowance. That court held that it was clear from the judgment in Andersen that Article 2a(3) of the Law on salaried employees was contrary to Directive 2000/78 and that the previous national interpretation of that provision was inconsistent with the general principle, enshrined in EU law, prohibiting discrimination on grounds of age.

Ajos brought an appeal against that judgment before the Højesteret (Supreme Court). In support of its appeal, it argued that any interpretation of Article 2a(3) of the Law on salaried employees that was consistent with the judgment in Andersen would be *contra legem*. It also argued that the application of a rule as clear and unambiguous as Article 2a(3) of the Law on salaried employees could not be precluded on the basis of the general principle of EU law prohibiting discrimination on grounds of age without jeopardising the principles of legal certainty and the protection of legitimate expectations.

Noting that the present case entails a dispute between private persons in which it is not possible to give direct effect to Directive 2000/78 and that any interpretation of Paragraph 2a(3) of the Law on salaried employees that was consistent with EU law would conflict with national case-law, the referring court was uncertain whether the general principle of EU law prohibiting discrimination on grounds of age may be relied on by an employee against his private sector employer in order to compel the employer to pay a severance allowance provided for under Danish law, even when, under national law, the employer is not required to make any such payment. The case before the national court thus also raises the question of the extent to which an unwritten principle of EU law may preclude a private sector employer from relying on a provision of national law that is at odds with that principle. Accordingly, the court referred two questions to the ECJ.

ECJ's findings

-

The first question was whether, in proceedings between private parties, the general principle

prohibiting discrimination on grounds of age is to be interpreted as precluding national legislation which deprives an employee of the right to a severance allowance where the employee is entitled to claim an old-age pension from the employer under a pension scheme which the employee joined before reaching the age of 50, regardless of whether the employee chooses to remain on the employment market or take retirement (§21).

-

The source of the general principle prohibiting discrimination on grounds of age, as given concrete expression by Directive 2000/78, is to be found in various international instruments and in the constitutional traditions common to the Member States (see *Mangold*, C-144/04 and *Kücükdeveci*, C-555/07). As Directive 2000/78 does not itself lay down the general principle prohibiting discrimination on grounds of age but simply gives concrete expression to that principle in relation to employment and occupation, the scope of the protection conferred by the directive does not go beyond that afforded by that principle. The EU legislature intended by the adoption of the directive to establish a more precise framework to facilitate the practical implementation of the principle of equal treatment and, in particular, to specify various possible exceptions to that principle, circumscribing those exceptions by the use of a clearer definition of their scope (§22-23).

-

The Court has previously held that, by generally excluding a whole category of workers from entitlement to the severance allowance, Paragraph 2a(3) of the Law on salaried employees affects the conditions regarding the dismissal of those workers for the purposes of Article 3(1)(c) of Directive 2000/78 (*Ingeniørforeningen i Danmark*, C-499/08). It follows that the national legislation at issue in the main proceedings falls within the scope of EU law and, accordingly, within the scope of the general principle prohibiting discrimination on grounds of age. The same applies with regard to the fundamental principle of equal treatment, the general principle prohibiting discrimination on grounds of age being merely a specific expression of that principle (§25-26).

-

By its second question, the referring court seeks to ascertain, in essence, whether EU law is to be interpreted as permitting a national court seised of a dispute between private persons (where it is established that the relevant national legislation is at odds with the general principle prohibiting discrimination on grounds of age) to balance that principle against the principles of legal certainty and the protection of legitimate expectations and to conclude that

the latter principle should take precedence over the former. In that context, the referring court is also uncertain whether, in carrying out that balancing exercise, it may or must take account of the fact that the Member States are under a duty to compensate for the harm suffered by private persons as a result of the incorrect transposition of a directive, such as Directive 2000/78 (§28).

-

Where national courts are called on to give judgment in proceedings between individuals in which it is apparent that the national legislation at issue is contrary to EU law, it is for those courts to provide the legal protection which individuals derive from the provisions of EU law and to ensure that those provisions are fully effective. While it is true that, in relation to disputes between individuals, the Court has consistently held that a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual, the fact nonetheless remains that the Court has also consistently held that the Member States' obligation arising from a directive to achieve the result envisaged by that directive and their duty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation are binding on all the authorities of the Member States, including, for matters within their jurisdiction, the courts. It follows that, in applying national law, national courts called upon to interpret that law are required to consider the whole body of rules of law and to apply methods of interpretation that are recognised by those rules in order to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive (§29-30).

-

It is true that the Court has stated that this principle of interpreting national law in conformity with EU law has certain limits. Thus, the obligation on a national court to refer to EU law when interpreting and applying the relevant rules of domestic law is limited by general principles of law and cannot serve as the basis for an interpretation of national law *contra legem*. The requirement to interpret national law in conformity with EU law entails an obligation on national courts to change its established case-law where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive. Accordingly, the national court cannot validly claim in the main proceedings that it is impossible for it to interpret the national provision at issue in a manner that is consistent with EU law by mere reason of the fact that it has consistently interpreted that provision in a manner that is incompatible with EU law (§31-34).

-

Even if a national court does in fact find it impossible to arrive at an interpretation of national law that is consistent with the directive, it is nonetheless under an obligation to provide, within the limits of its jurisdiction, the legal protection which individuals derive from EU law and to ensure the full effectiveness of that law, disapplying, if need be, any provision of national legislation contrary to that principle. Moreover, the principle prohibiting discrimination on grounds of age confers on private persons an individual right which they may invoke as such and which, even in disputes between private persons, requires the national courts to disapply national provisions that do not comply with that principle. Accordingly, in the present case, if it considers that it is impossible for it to interpret the national provision at issue in a manner that is consistent with EU law, the national court must disapply that provision (§35-37).

-

A national court cannot rely on the principle of the protection of legitimate interests in order to continue to apply a rule of national law that is at odds with the general principle prohibiting discrimination on grounds of age. According to settled case-law, the interpretation which the Court gives to EU law clarifies and, where necessary, defines the meaning and scope of that law as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that, unless there are truly exceptional circumstances, which is not claimed to be the case here, EU law as thus interpreted must be applied by the courts even to legal relationships which arose and were established before the judgment ruling on the request for interpretation (§38-41).

-

The fact that it is possible for private persons with an individual right deriving from EU law to claim compensation where their rights are infringed by a breach of EU law attributable to a Member State, cannot alter the obligation the national court is under to uphold the interpretation of national law that is consistent with Directive 2000/78 or, if such an interpretation is not possible, to disapply the national provision that is at odds with the general principle prohibiting discrimination on ground of age, as given concrete expression by that directive, or justify that court giving precedence, in the dispute before it, to the protection of the legitimate expectations of a private person who has complied with national law (§42).

Judgment

-

The general principle prohibiting discrimination on grounds of age, as given concrete expression by Council Directive 2000/78 [...] must be interpreted as precluding, including in disputes between private persons, national legislation [...], which deprives an employee of entitlement to a severance allowance where the employee is entitled to claim an old-age pension from the employer under a pension scheme which the employee joined before reaching the age of 50, regardless of whether the employee chooses to remain on the employment market or take his retirement.

-

EU law is to be interpreted as meaning that a national court adjudicating in a dispute between private persons falling within the scope of Directive 2000/78 is required, when applying provisions of national law, to interpret those provisions in such a way that they may be applied in a manner that is consistent with the directive or, if such an interpretation is not possible, to disapply, where necessary, any provision of national law that is contrary to the general principle prohibiting discrimination on grounds of age. Neither the principles of legal certainty and the protection of legitimate expectations nor the fact that it is possible for the private person who considers that he has been wronged by the application of a provision of national law that is at odds with EU law to bring proceedings to establish the liability of the Member State concerned for breach of EU law, can alter that obligation.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-04-19

Case number: C-441/14 (Ajos)