

Reference for a preliminary ruling from High Court of Ireland (Ireland) made on 16 August 2011 — Margaret Kenny and others v Minister for Justice, Equality and Law Reform, Minister for Finance, Commissioner of An Garda Síochána

(Case C-427/11)

(2011/C 311/41)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicants: Margaret Kenny, Patricia Quinn, Nuala Condon, Eileen Norton, Ursula Ennis, Loretta Barrett, Joan Healy, Kathleen Coyne, Sharon Fitzpatrick, Breda Fitzpatrick, Sandra Hennelly, Marian Troy, Antoinette Fitzpatrick, Helena Gatley

Defendants: Minister for Justice, Equality and Law Reform, Minister for Finance, Commissioner of An Garda Síochána

Questions referred

1. In circumstances where there is prima facie indirect gender discrimination in pay, in breach of Article 141 (now Article 157 TFEU) and Council Directive 75/117/EEC⁽¹⁾, in order to establish objective justification, does the employer have to provide:
 - (a) Justification in respect of the deployment of the comparators in the posts occupied by them;
 - (b) Justification of the payment of a higher rate of pay to the comparators; or
 - (c) Justification of the payment of a lower rate of pay to the complainants?
2. In circumstances where there is prima facie indirect gender discrimination in pay, in order to establish objective justification, does the employer have to provide justification in respect of:
 - (a) The specific comparators cited by the complainants and/or
 - (b) The generality of comparator posts?
3. If the answer to Question 2(b) is in the affirmative, is objective justification established notwithstanding that such justification does not apply to the chosen comparators?
4. Did the Labour Court, as a matter of Community Law, err in accepting that the 'interests of good industrial relations' could be taken into account in the determination of whether the employer could objectively justify the difference in pay?

5. In circumstances where there is prima facie indirect gender discrimination in pay, can objective justification be established by reliance on the industrial relations concerns of the respondent? Should such concerns have any relevance to an analysis of objective justification?

⁽¹⁾ Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women OJ L 45, p. 19

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 16 August 2011 — Purely Creative Ltd and others v Office of Fair Trading

(Case C-428/11)

(2011/C 311/42)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicants: Purely Creative Ltd, Strike Lucky Games Ltd, Winners Club Ltd, McIntyre & Dodd Marketing Ltd, Dodd Marketing Ltd, Adrian Williams, Wendy Ruck, Catherine Cummings, Peter Henry

Defendant: Office of Fair Trading

Questions referred

1. Does the banned practice set out in paragraph 31 of Annex 1 to Directive 2005/29/EC⁽¹⁾ prohibit traders from informing consumers that they have won a prize or equivalent benefit when in fact the consumer is invited to incur any cost, including a de minimis cost, in relation to claiming the prize or equivalent benefit?
2. If the trader offers the consumer a variety of possible methods of claiming the prize or equivalent benefit, is paragraph 31 of Annex 1 breached if taking any action in relation to any of the methods of claiming is subject to the consumer incurring a cost, including a de minimis cost?
3. If paragraph 31 of Annex 1 is not breached where the method of claiming involves the consumer in incurring de minimis costs only, how is the national court to judge whether such costs are de minimis? In particular, must such costs be wholly necessary?