



Reports of Cases

Case C-286/12

**European Commission
v
Hungary**

(Failure of a Member State to fulfil obligations — Social policy — Equal treatment in employment and occupation — Directive 2000/78/EC — Articles 2 and 6(1) — National scheme requiring compulsory retirement of judges, prosecutors and notaries on reaching the age of 62 — Legitimate objectives justifying a difference in treatment vis-à-vis workers under the age of 62 — Proportionality of the duration of the transitional period)

Summary — Judgment of the Court (First Chamber), 6 November 2012

1. *Action for failure to fulfil obligations — Subject-matter of the dispute — Determined by the reasoned opinion — Time-limit communicated to the Member State — Judgment of that Member State repealing, with retroactive effect, the provisions covered by the action — Judgment delivered after the expiry of that time-limit — Action not devoid of purpose*

(Art. 258 TFEU)

2. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — Prohibition of discrimination on grounds of age — National legislation requiring, within the professions concerned, compulsory retirement at the age of 62 — Objective of standardising the compulsory age of retirement — Objective purporting to establish a more balanced age structure — National measures not appropriate or necessary to achieve those objectives — Lack of justification*

(Council Directive 2000/78, Arts 2 and 6(1))

3. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — Prohibition of discrimination on grounds of age — National legislation requiring, within the professions concerned, compulsory retirement at the age of 62 — Lack of precision in the national legislation at issue as regards the aim pursued — Justification for that measure irrelevant*

(Council Directive 2000/78)

1. An action for failure to fulfil obligations cannot be considered to be devoid of purpose if, after the expiry of the period laid down by the Commission during which the Member State in question must take the measures necessary to comply with the reasoned opinion, the provisions of national law which, according to the Commission, gave rise to that failure to fulfil obligations, were repealed with retroactive effect.

The date which must be used by the Court for the purpose of determining whether there is a breach of obligations is the date of expiry of that period. The retroactive nature of the judgment repealing those provisions cannot render the action devoid of purpose if that judgment results from an event which took place after that date and which, for that reason, cannot be taken into account.

(see paras 43,45)

2. A Member State fails to fulfil its obligations under Articles 2 and 6(1) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation by adopting a national scheme requiring compulsory retirement of judges, prosecutors and notaries when they reach the age of 62, which unjustifiably gives rise to a difference in treatment on grounds of age.

Such legislation gives rise to a difference in treatment between individuals engaged in those professions and who have reached the age of 62 and younger individuals who are engaged in the same professions since the former, due to their age, are required automatically to cease their functions.

Moreover, that discrimination is not justified in so far as such legislation does not constitute an appropriate or necessary means for achieving the legitimate objectives pursued.

The aim of standardisation, in the context of professions in the public sector, pursued by that legislation can constitute a legitimate employment policy objective. However, provisions such as those at issue, which abruptly and significantly lowered the age-limit for compulsory retirement, without introducing transitional measures of such a kind as to protect the legitimate expectations of the persons concerned, are not necessary to achieve that aim.

Likewise, the aim pursued by such legislation to establish a more balanced age structure facilitating access for young lawyers to the professions of judge, prosecutor and notary, can constitute a legitimate aim of employment and labour market policy. However, provisions such as those at issue, which give rise to apparently positive short-term effects but which are liable to call into question the possibility of achieving a truly balanced 'age structure' in the medium and long terms, are not appropriate to achieve that aim.

(see paras 50, 61, 62, 64, 68, 75, 77, 79, operative part)

3. See the text of the decision.

(see paras 57, 58)