



Reports of Cases

Case C-441/14

Dansk Industri (DI)
v
Estate of Karsten Eigil Rasmussen

(Request for a preliminary ruling from the Højesteret)

(Reference for a preliminary ruling — Social policy — Charter of Fundamental Rights of the European Union — Directive 2000/78/EC — Principle prohibiting discrimination on grounds of age — National legislation incompatible with the directive — Possibility for a private person to bring proceedings to establish the liability of the State for breach of EU law — Dispute between private persons — Balancing of various rights and principles — Principles of legal certainty and the protection of legitimate expectations — Role of the national court)

Summary — Judgment of the Court (Grand Chamber), 19 April 2016

1. *Union law — Principles — Equal treatment — Prohibition of discrimination on grounds of age — Connection with Directive 2000/78 — National legislation under which workers who are eligible for a retirement pension from their employer and who joined their pensions scheme before attaining the age of 50 cannot claim a severance allowance — Not permissible — Employee choosing to remain on the employment market — No effect*

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

2. *Social policy — Equal treatment in employment and occupation — Directive 2000/78 — Prohibition of discrimination on grounds of age — National legislation found to be contrary to the general principle prohibiting discrimination on grounds of age — Obligations of a national court adjudicating in a dispute between private persons — Non-application of national provisions to the contrary — Precedence to be given to the interpretation of EU law over the principles of legal certainty and the protection of legitimate expectations — The fact that it is possible for a private person to bring proceedings to establish the liability of the Member State concerned is of no effect*

(Art. 267 TFEU; Council Directive 2000/78)

1. The general principle prohibiting discrimination on grounds of age, as given concrete expression by Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, 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.

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.

In the light of the fact that Articles 2 and 6(1) of Directive 2000/78 preclude national legislation pursuant to which workers who are eligible for an old-age pension from their employer under a pension scheme which they joined before attaining the age of 50 cannot, on that ground alone, claim a severance allowance aimed at assisting workers with more than 12 years of service in the undertaking in finding new employment, 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.

(see paras 23, 26, 27, operative part 1)

2. 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 establishing a general framework for equal treatment in employment and occupation 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.

In that regard, first, the requirement to interpret national law in conformity with EU law entails the obligation for national courts to change established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive. 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.

Second, a national court adjudicating in a dispute between private persons cannot rely on the principle of the protection of legitimate expectations in order to continue to apply a rule of national law that has been held by the Court to be at odds with the general principle prohibiting discrimination on grounds of age, as laid down by Directive 2000/78. If a national court were to apply that principle in order to be able to continue to apply such a rule of national law, that would, in practice, have the effect of limiting the temporal effects of the Court's interpretation because, as a result of that application, such an interpretation would not be applicable in the case before the national court. Unless there are truly exceptional circumstances, the interpretation which the Court gives to EU law must be applied by the national courts even to legal relationships which arose and were established before the judgment ruling on the request for interpretation.

In any event, the protection of legitimate expectations cannot be relied on for the purpose of denying an individual who has brought proceedings culminating in the Court interpreting EU law as precluding the rule of national law at issue the benefit of that interpretation.

(see paras 33, 36-41, 43, operative part 2)