

environment and also of creating an incentive for potential buyers of the Cassandra Mines, was incompatible with the internal market. <sup>(1)</sup> By that decision, the Commission asked the Hellenic Republic to recover the aid, together with interest, from the beneficiary. The Hellenic Republic was also obliged to inform the Commission of the measures to implement the decision.

2. The Hellenic Republic requested an extension of the two-month period for the provision of information, which it was not granted by the Commission because no justification was advanced therefor.
3. Despite the Commission's letters of reminder to the Hellenic Republic of 19 May 2011 and 14 July 2011, no information was given to the Commission, within the time-limit laid down, concerning the adoption of measures to implement the Commission decision.
4. On 8 May 2012, the Greek authorities notified the Commission of their letter of 25 April 2012 by which they demanded repayment of the State aid in question from Ellinikos Khrisos A.E. within 30 days. The Commission observes, however, that the amount that must be recovered is not mentioned in that letter. It is to be noted that, even if the principal sum of the State aid was calculated by the Commission in its aforementioned decision, the Greek authorities did not calculate the amount of interest, as they were obliged to do, and they do not mention it in their demand addressed to the company. In any event, that first reaction on the part of the Greek authorities occurred 14 months after the Commission decision and since then the Commission has no other information relating to the recovery of the State aid at issue.

<sup>(1)</sup> Article 1 of the Commission Decision of 23 February 2011 on the State aid C 48/2008 (ex NN 61/2008) implemented by Greece in favour of Ellinikos Khrisos A.E.

## Action brought on 7 June 2012 — European Commission v Hungary

(Case C-286/12)

(2012/C 217/31)

*Language of the case: Hungarian*

### Parties

*Applicant:* European Commission (represented by: J. Enegren and K. Talabér-Ritz, acting as Agents)

*Defendant:* Hungary

### Form of order sought

— Declare that Hungary has failed to fulfil its obligation under Articles 2 and 6(1) of Council Directive 2000/78/EC of 27

November 2000 establishing a general framework for equal treatment in employment and occupation, <sup>(1)</sup> by adopting national legislation which provides for the compulsory termination at the age of 62 of the service of judges, prosecutors and notaries public — which gives rise to a difference of treatment on grounds of age which is not justified by a legitimate purpose and which, in any event, is not appropriate or necessary for the achievement of the stated purpose.

— order Hungary to pay the costs.

### Pleas in law and main arguments

Under the Hungarian legislation on the compulsory maximum retirement age of judges, prosecutors and notaries public, the service of the members of such professions is to be terminated when they reach a certain age — currently 62 — whereas previously they could continue to work until the age of 70. The legislation at issue provides that the service of judges and prosecutors who have reached the maximum age before 1 January 2012 is to be terminated on 30 June 2012 and the service of judges and prosecutors who reach that age between 1 January 2012 and 31 December 2012 is to be terminated on 31 December 2012. For notaries public, the reduction of the compulsory retirement age from 70 to 62 will be applicable from 1 January 2014.

The Commission relies on the following pleas in law and arguments in support of its action for failure to fulfil obligations:

First, the Commission takes the view that the national legislation at issue constitutes a difference of treatment on the grounds of age under Article 2 of the Directive, given that it provides for less favourable treatment for judges, prosecutors and notaries public who have reached the new maximum compulsory retirement age than for all other working persons who have not reached that age.

If legislation which gives rise to a difference of treatment on the grounds of age is to be excluded from the prohibition on discrimination, it must fulfil the requirements laid down by Article 6(1) of the Directive. On the one hand, the legislation in question has to be objectively justified by a legitimate aim, and, on the other, the means of achieving that aim have to be appropriate and necessary (principle of proportionality).

In that regard, the Commission maintains that the legislation at issue does not expressly lay down a legitimate aim and nor is it possible to infer such an aim from its context, which is in itself a breach of the Directive, since it prevents the judicial review of the legality and proportionality of the national legislation. As regards the legitimacy of the aims alleged during the infringement procedure, the Commission states that only the aims relating to social policy can be considered capable of justifying an exception to the prohibition of discrimination on the grounds of age.

Finally, in the view of the Commission, the national legislation at issue is not appropriate or necessary for achieving the allegedly legitimate aims, given that (i) the transitional period of at most one and a half years is extremely short, having regard to the drastic reduction from 70 to 62 in the compulsory maximum age for service and (ii) the transitional period is not consistent with the general reform of retirement, under which the general retirement age is to be increased from 62 to 65 over a period of eight years between 2014 and 2022,

which will give rise — after a period of only two years — to a new increase in the compulsory maximum age for service. Consequently, the Commission considers that the national legislation at issue disproportionately damages the legitimate interests of the judges, prosecutors and notaries public affected and goes beyond what is necessary to achieve its aim.

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(<sup>1</sup>) OJ 2000 L 303, p. 16, 'the Directive'.