



Too old for payment of severance allowance?

Findings of the Court of Justice of the European Union

Questions referred to the CJEU for a preliminary ruling were as follows:

- Can Directive 2000/78 have direct effect in a dispute between private persons?
- Does the general EU law principle prohibiting discrimination on grounds of age preclude a national legislation that is at odds with this principle?
- How are general principles of the EU to be weighed against the principles of legal certainty and the protection of legitimate expectations?

In its judgement the Court stated that the general principle of prohibiting discrimination on grounds of age

- is enshrined in Article 21 of the Charter,
- must be regarded as a general principle of EU law (here the court refers to its own judgements in *Mangold*, C-144/04 and *Kücükdeveci*, C-555/07) and
- has been given concrete expression by Directive 78/2000 in relation to employment and occupation.

A Directive in relation to disputes between individuals cannot itself impose obligations on individuals and cannot therefore be relied upon as such against an individual.

National Courts in applying national law are to interpret that law as far as possible in the light of the wording and the purpose of the directive concerned. This can also mean that national courts have to change national case law. This obligation is limited by general principles of law and cannot serve as a basis for an interpretation of national *law contra legem*.

If it is impossible for the national court to interpret national legislation in a way 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. This can mean that the court in order to ensure full effectiveness of that law has to disapply a provision of national legislation. 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.

See: *Dansk Industri v Estate of Karsten Eigil Rasmussen*, Case C-441/14, Judgement of 19.04.2016



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