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Judgment of the Court in Case C-587/20 | HK/Danmark and HK/Privat

An age limit laid down in the statutes of an organisation of workers for eligibility to stand as sector convenor of that organisation falls within the scope of the 'Anti-Discrimination' directive

Neither the political nature of such a post nor the method of recruitment (election) has any bearing on the application of that directive

A, who was born in 1948, was recruited in 1978 as a union representative in a local branch of HK, a Danish organisation of workers including HK/Danmark and HK/Privat. In 1993, she was elected sector convenor of HK/Privat. That political office, which was based on trust, nevertheless included certain elements characteristic of ordinary workers. A was employed full-time, received a monthly salary and the Law on holidays applied to her. A was re-elected every four years and held the post of sector convenor until 8 November 2011, when she reached the age of 63 and had exceeded the age limit laid down in the statutes of HK/Privat ¹ for standing for the election planned for that year.

Following the complaint lodged by A with the Ligebehandlingsnævnet (Equal Treatment Board, Denmark), that Board held that it was contrary to the Danish Anti-Discrimination Law ² for A to be prohibited, by reason of her age, to stand for election as sector convenor of HK/Privat and ordered HK to pay compensation to A for the harm suffered.

As that decision was not complied with, the Equal Treatment Board, acting on behalf of A, brought an action against HK. The Østre Landsret (High Court of Eastern Denmark) considers that the outcome of the dispute depends on whether, as a politically elected sector convenor of HK/Privat, A falls within the scope of the 'Anti-Discrimination' directive. If that is the case, it is not disputed that she would be the victim of direct discrimination on grounds of age contrary to that directive, under the statutes of HK/Privat.

The Court of Justice, from which the High Court of Eastern Denmark requested a preliminary ruling, holds that an age limit laid down in the statutes of an organisation of workers for eligibility to stand as sector convenor of that organisation falls within the scope of the 'Anti-Discrimination' directive. ³

Findings of the Court

¹ According to its statutes, only members who are under the age of 60 on the date of the election may be elected as sector convenor, with that age limit being deferred to 61 for members re-elected after the 2005 congress.

² The lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v. (forskelsbehandlingsloven) [Law on the prohibition of discrimination on the labour market – (Anti-Discrimination Law)], as amended by lov nr. 253 (Law No 253) of 7 April 2004, and lov nr. 1417 (Law No 1417) of 22 December 2004, concerning the transposition of Council Directive 2000/78/EC of November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p.16) ('Anti-Discrimination' directive).

³ Article 3(1)(a) and (d), of the 'Anti-Discrimination' directive, entitled 'Scope'.

First, the Court concludes that the ‘conditions for access’ within the meaning of Article 3(1)(a) of Directive 2000/78,⁴ to the post of sector convenor of an organisation of workers fall within the scope of that directive.

In that respect, as regards the concept of ‘conditions for access to employment, to self-employment or to occupation’, within the meaning of that provision, it follows from the use, together, of the terms ‘employment’, ‘self-employment’ and ‘occupation’ that Article 3(1)(a) covers conditions for access to any occupational activity, whatever the nature and characteristics of such activity. Those terms must be construed broadly, as is apparent from a comparison of the different language versions of that provision.

Accordingly, it follows from the wording of Article 3(1)(a) of the ‘Anti-Discrimination’ directive that the scope of that directive is not limited solely to the conditions for accessing posts occupied by ‘workers’ within the meaning of Article 45 TFEU.

In addition, the objectives of that directive bear out a textual interpretation thereof. The ‘Anti-Discrimination’ directive, the legal basis of which is the current Article 19(1) TFEU, does not seek to protect only workers as the weaker party in an employment relationship. The directive seeks to eliminate, on grounds relating to social and public interest, all discriminatory obstacles to access to livelihoods and to the capacity to contribute to society through work, irrespective of the legal form in which it is provided. Accordingly, the question of whether the conditions for access to the post of sector convenor of HK/Privat fall within the scope of Directive 2000/78 does not depend on whether or not the sector convenor is characterised as a worker within the meaning of Article 45 TFEU and the case law interpreting it.⁵

The political nature of such a post has no bearing on the inclusion of those conditions in the scope of the ‘Anti-Discrimination’ directive, since that directive applies to both the private and the public sectors and whatever the branch of activity, any exceptions being expressly specified.⁶ In addition, the method of recruitment to a post, such as being elected, has no bearing on the application of that directive.

The foregoing findings are not called into question by the argument relating to the right of organisations of workers to elect freely their representatives, which forms part of the freedom of association enshrined in Article 12 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

That right must be reconciled with the prohibition of discrimination in employment and occupation which is the purpose of the ‘Anti-Discrimination’ directive, as a specific expression of the general principle of non-discrimination enshrined in Article 21 of the Charter. Freedom of association is not absolute, according to Article 52(1) of the Charter, its exercise may be subject to limitations, provided that these are provided for by law and respect the essence of that freedom and the principle of proportionality.

Second, as regards the interpretation of Article 3(1)(d) of the ‘Anti-Discrimination’ directive, according to which that directive applies to, inter alia, involvement in an organisation of workers, the Court considers that the pursuit of the activity of sector convenor of such an organisation falls within the scope of that provision. To stand for election as sector convenor of an organisation of workers, just as is the case in respect of holding the role of sector convenor once elected, constitutes a means of ‘involvement’, in the usual sense of that term, in such an organisation.

Such an interpretation reflects the objective of that directive, which is to lay down a general framework to combat

⁴ Article 3(1)(a) of that directive applies, within the limits of the areas of competence conferred on the European Union, to all persons, as regards both the public and private sectors, including public bodies, in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion.

⁵ According to settled case-law of the Court, a ‘worker’, within the meaning of Article 45 TFEU, is a person who, for a certain period of time, performs services for and under the direction of another person in return for which he or she receives remuneration.

⁶ Under Article 3(4) of the ‘Anti-Discrimination’ directive, Member States may provide that that directive, in so far as it relates specifically to discrimination on the grounds of age, does not apply to the armed forces.

discrimination on the grounds, inter alia, of age in employment and occupation, so that concepts which, in Article 3 of that directive, define the scope of that directive cannot be interpreted restrictively.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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