Case C-301/21, Discrimination General, Age Discrimination

Curtea de Apel Alba Iulia and Others – v – YF and Others, reference lodged by the Curtea de Apel Oradea (Romania) on 11 May 2021

1. Must Article 9(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, which ensures that judicial procedures are 'available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them', and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, which guarantees the right to 'an effective remedy [and] a fair … hearing', be interpreted as precluding national legislation, such as that laid down in Article 211(c) of Legea dialogului social nr. 62/2011 (Law No 62/2011 on social dialogue), which provides that the three-year time limit for bringing a claim for compensation runs 'from the date on which the damage occurred', irrespective of whether or not the claimants were aware of the occurrence of the damage (and the extent thereof)?
2. Must Article 2(1) and (2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, together with Article 3(1)(c), in fine, of that directive, be interpreted as precluding national legislation, such as that laid down in Article 1(2) of Legea-cadru nr. 330 din 5 noiembrie 2009 privind salarizarea unitară a personalului plătit din fonduri publice (Framework Law No 330 of 5 November 2009 on the uniform remuneration of staff paid from the public purse), as interpreted by Decision No 7/2019 (published in Monitorul Oficial al României – Official Journal of Romania – No 343 of 6 May 2019), given by the Înalta Curte de Casație Și Justiție (High Court of Cassation and Justice, Romania), ruling on an appeal on a point of law, in circumstances in which the claimants did not have the legal possibility of requesting an increase in their employment allowance on entering the judiciary at a date after the entry into force of [Framework Law No 330/2009], a legislative act which expressly provided that remuneration rights are to be and remain exclusively as provided in [that] law, thus creating remuneration discrimination as compared with their colleagues, including on the basis of the criterion of age, which means in fact that only older judges, who were appointed before January 2010 (who benefited from court rulings in the period from 2006 to 2009, the operative parts of which were subject to interpretation in 2019 pursuant to Decision [No 7/2019 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice)]), received retroactive payment of remuneration rights (similar to those sought in the action which forms the subject matter of the present proceedings) during December 2019 and January 2020, in respect of the period from 2010 to 2015, even though during that period the claimants also acted as judges and performed the same work, under the same conditions and in the same institution?
3. Must the provisions of Directive 2000/78/EC be interpreted as precluding discrimination only where it is based on one of the criteria referred to in Article 1 of that directive or, on the contrary, do those provisions, possibly supplemented by other provisions of EU law, generally preclude one employee from being treated differently from another, in respect of remuneration, where he or she performs the same work, for the same employer, [during the] same period, and under the same conditions?

Case C-304/21, Age Discrimination

VT – v – Ministero dell'Interno, Ministero dell'Interno – Dipartimento della Pubblica Sicurezza – Direzione centrale per le risorse umane, reference lodged by the Consiglio di Stato (Italy) on 12 May 2021

Must Council Directive 2000/78/EC of 27 November 2000, Article 3 TEU, Article 10 TFEU and Article 21 of the Charter of Fundamental Rights of the European Union be interpreted as precluding the national legislation contained in Legislative Decree No 334/2000, as subsequently amended and supplemented, and in the secondary sources adopted by the Ministry of the Interior, which lays down an age limit of 30 years for

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participation in a selection procedure for posts of commissioner in the career bracket of State Police officers?

Case C-311/21, Temporary Agency Work

CM – v – TimePartner Personalmanagement GmbH, reference lodged by the Bundesarbeitsgericht (Germany) on 18 May 2021

1. How is the concept of 'overall protection of temporary agency workers' in Article 5(3) of Directive 2008/104/EC to be defined, and, in particular, does it encompass more than what is provided for in the mandatory provisions on protection for all workers under national and EU law?
2. What conditions and criteria must be met for the presumption that arrangements concerning the working and employment conditions of temporary agency workers in a collective agreement which derogate from the principle of equal treatment laid down in Article 5(1) of Directive 2008/104 have been established while respecting the overall protection of temporary agency workers?
3. Is the assessment of respect for overall protection to be based – in the abstract – on the collectively agreed working conditions of the temporary agency workers covered by such a collective agreement or is it necessary to carry out an evaluative analysis comparing the collectively agreed working conditions with the working conditions existing in the undertaking to which the temporary agency workers are assigned (user undertaking)?
4. In the case of a derogation from the principle of equal treatment with regard to pay, does the respect for overall protection prescribed in Article 5(3) of Directive 2008/104 require the existence of an employment relationship of indefinite duration between the temporary employment agency and the temporary worker?
5. Must the national legislature prescribe the conditions and criteria under which the social partners must respect the overall protection of temporary agency workers within the meaning of Article 5(3) of Directive 2008/104 where the national legislature gives the social partners the option of concluding collective agreements which establish arrangements concerning the working and employment conditions of temporary agency workers which derogate from the principle of equal treatment, and the national collective bargaining system provides for requirements which can be presumed to ensure an appropriate balance of interests between the parties to collective agreements ('presumption of fairness of collective agreements')?
6. If the third question is answered in the affirmative: Is respect for the overall protection of temporary agency workers within the meaning of Article 5(3) of Directive 2008/104 ensured by statutory rules which, like the version of the Arbeitnehmerüberlassungsgesetz (Law on the supply of temporary workers) in force since 1 April 2017, provide for a minimum wage floor for temporary workers, for a maximum duration of assignment to the same user undertaking, for a time limit on the derogation from the principle of equal treatment with regard to pay, for the non-application of a collectively agreed arrangement derogating from the principle of equal treatment to temporary workers who, in the six months preceding the assignment to the user undertaking, left the employ of that user undertaking or an employer forming a group with that user undertaking within the meaning of Paragraph 18 of the Aktiengesetz (Law on public limited companies) and for an obligation of the user undertaking to grant temporary workers access to collective facilities or services (such as, in particular, childcare facilities, collective catering and transport) in principle under the same conditions as those applicable to permanent workers?
7. If that question is answered in the affirmative: Does this also apply if the relevant statutory rules, such as those in the version of the Law on the supply of temporary workers in force until 31 March 2017, do not provide for a time limit on derogations from the principle of equal treatment with regard to pay or a specific time frame for the requirement that the assignment may only be 'temporary'?
8. If the third question is answered in the negative: In the case of arrangements concerning the working and employment conditions of temporary agency workers which derogate from the principle of equal treatment through collective agreements in accordance with Article 5(3) of Directive 2008/104, may the national courts review such collective agreements without restriction with a view to determining whether the derogations have been established while respecting the overall protection of temporary agency workers, or does Article 28 of the Charter of Fundamental Rights and/or the reference to the 'autonomy of the social partners' in recital 19 of Directive 2008/104 grant the parties to collective agreements a margin of assessment with regard to respect for the overall protection of temporary agency workers that is subject to only limited judicial review and – if so – how far does that margin extend?

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