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Judgment of the Court of Justice in Case C-388/07

*The Incorporated Trustees of the National Council on Ageing (Age Concern England) v.
Secretary of State for Business, Enterprise and Regulatory Reform*

**THE COURT CLARIFIES THE CONDITIONS UNDER WHICH MEMBER STATES
MAY AUTHORISE THE DISMISSAL OF WORKERS BY REASON OF RETIREMENT**

National legislation may provide, in a general manner, that this kind of difference of treatment on grounds of age is justified if it is a proportionate means to achieve a legitimate social policy objective related to employment policy, the labour market or vocational training.

Directive 2000/78¹ prohibits discrimination on grounds of age as regards employment and occupation. By way of exception, it provides that certain differences of treatment on grounds of age do not constitute discrimination if they are objectively and reasonably justified by legitimate aims, such as those related to employment policy, the labour market or vocational training. Furthermore, the means of achieving that aim must be appropriate and necessary. The directive lists certain differences of treatment which may be justified.

The United Kingdom regulations which transpose the directive provide that employees who have reached their employer's normal retirement age or, if the employer does not have a normal retirement age, age 65, may be dismissed for reason of retirement without such treatment being regarded as discriminatory. The regulations set out a number of criteria designed to ascertain whether the reason for the dismissal is retirement and requires a set procedure to be followed. For employees under 65 years of age the regulations do not contain any particular provisions and merely lay down the principle that any discrimination on grounds of age is unlawful, unless the employer can show that it is 'a proportionate means of achieving a legitimate aim'.

The National Council on Ageing (Age Concern England), a charity which promotes the well-being of older people, challenged the legality of that legislation on the ground that it does not properly transpose the directive. It submits that the possibility to dismiss an employee aged 65 or more by reason of retirement is contrary to the directive.

The High Court asked the Court of Justice whether the directive requires Member States to specify the kinds of differences of treatment which may be justified and whether it precludes

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16)

legislation which merely provides in a general manner that a difference of treatment on grounds of age is not discrimination if it is a proportionate means of achieving a legitimate aim.

The Court recalls that the transposition of a directive does not always require that its provisions be incorporated formally in express, specific legislation. In this case, **the directive does not require Member States to draw up a specific list of the differences in treatment which may be justified by a legitimate aim.**

In the absence of such precision, it is important, however, that other elements, taken from the general context of the measure concerned, enable the underlying aim of that measure to be identified for the purposes of review by the courts of its legitimacy and whether the means put in place to achieve that aim are appropriate and necessary. The Court notes that **the aims which may be considered 'legitimate' by the directive**, and, consequently, appropriate for the purposes of justifying derogation from the principle prohibiting discrimination on grounds of age, **are social policy objectives**, such as those related to employment policy, the labour market or vocational training. By their public interest nature, those legitimate aims are distinguishable from purely individual reasons particular to the employer's situation, such as cost reduction or improving competitiveness.

It is for the national court to ascertain, first, whether the United Kingdom legislation reflects such a legitimate aim and, second, whether the means chosen were appropriate and necessary to achieve it.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: ES, CS, DE, EN, EL, FR, HU, IT, NL, PL, PT, SK

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-388/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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