



Press and Information

Court of Justice of the European Union
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Judgment in Case C-286/12
Commission v Hungary

The radical lowering of the retirement age for Hungarian judges constitutes unjustified discrimination on grounds of age

That measure is not proportionate to the objectives pursued by the Hungarian legislature seeking to standardise the retirement age for the public-service professions and to establish a more balanced age structure in the area of the administration of justice

In Hungary, until 31 December 2011, judges, prosecutors and notaries were permitted to remain in office until the age of 70. However, following the amendment of the relevant Hungarian legislation in 2011, with effect from 1 January 2012 judges and prosecutors who have reached the general retirement age, namely 62, are obliged to retire. For judges and prosecutors who reached that age prior to 1 January 2012, the Hungarian legislation specifies that they must retire on 30 June 2012. Those who reach that age between 1 January 2012 and 31 December 2012 are required to retire on 31 December 2012. From 1 January 2014, notaries must also retire on the date on which they reach the general retirement age.

As it took the view that such a rapid and radical lowering of the compulsory retirement age constituted age-related discrimination that was prohibited by the Directive on equal treatment in employment and occupation¹, to the detriment of judges, prosecutors and notaries who have reached that age in comparison with those persons who may continue to work, the Commission brought an action against Hungary for failure to fulfil obligations.

The Court of Justice acceded to the Commission's request that the case be dealt with under the expedited procedure, which has made it possible for the duration of the proceedings to be reduced to five months.

The Court notes, first of all, that judges, prosecutors and notaries who have reached the age of 62 are in a comparable situation to that of younger individuals working in the same professions. However, the former, by reason of their age, are obliged to retire, with the result that they are subject to treatment which is less favourable than that accorded to those who continue to work. The Court notes therefore that that situation constitutes a difference of treatment directly based on age.

The Court points out, however, that legitimate social policy objectives, such as those related to employment policy, the labour market or vocational training, may justify a derogation from the principle prohibiting discrimination on grounds of age. In that regard, the Court finds that the objectives invoked by Hungary, namely the need to standardise the age-limits for retirement for public sector professions and to establish a more balanced age structure facilitating access for young lawyers to the professions concerned, do indeed come within the scope of social policy.

However, as regards the objective of standardisation, the Court draws attention to the fact that, prior to 1 January 2012, the persons affected by the contested legislation had been able to remain in office until the age of 70, which gave rise, in their regard, to a **well-founded expectation that they would be able to remain in office until that age**. However, the contested legislation

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).

abruptly and significantly lowered the age-limit for compulsory retirement, without providing for transitional measures such as to protect the legitimate expectations of those persons. Consequently, those persons are obliged to leave the labour market automatically and definitively, without having had the time to take the measures, in particular of an economic and financial nature, that such a situation calls for. The Court notes in that respect, firstly, that the retirement pension of those persons is at least 30% lower than their salary and, secondly, that the retirement does not take contribution periods into account and does not, therefore, guarantee the right to a pension at the full rate.

The Court goes on to point out the existence of a contradiction between the immediate lowering of the retirement age for those professions by 8 years, without providing for a gradual staggering of that change, and the increase of the age of retirement for the general pension scheme by 3 years (that is to say, from 62 to 65), which must be carried out with effect from 2014 over a period of 8 years. That contradiction suggests that the interests of those who are affected by the lowering of the age-limit were not taken into account in the same way as those of other public sector employees for whom the age-limit has been increased.

In those circumstances, the Court concludes that **the radical lowering of the retirement age for the professions concerned by 8 years is not a measure which is necessary to achieve the objective of standardising the retirement age for public-sector professions.**

Finally, the Court examines the objective, invoked by Hungary, of establishing a more balanced age structure. In that regard, while recognising that the national legislation may facilitate, in the short term, the access of young lawyers to the professions concerned, the Court points out, however, that the immediate, apparently positive, effects are liable to cast doubt on the prospects of achieving a truly balanced 'age structure' in the medium and long term. While, in the course of 2012, the turnover of personnel in the professions concerned will be subject to a very significant acceleration, as eight age groups have been replaced by one single age group (that of 2012), that turnover rate will be subject to an equally radical slowing-down in 2013, when only one age group will have to be replaced. In addition, that rate of turnover will become slower and slower as the age-limit for compulsory retirement is raised progressively from 62 to 65, even leading to a deterioration in the prospects for young lawyers to enter the professions of the judicial system. It follows that **the contested national legislation is not appropriate to achieve the pursued objective of establishing a more balanced 'age structure'.**

Establishing that **the national legislation gives rise to a difference in treatment on grounds of age which is neither appropriate nor necessary to attain the objectives pursued and therefore does not comply with the principle of proportionality**, the Court concludes that **Hungary has failed to fulfil its obligations under Council Directive 2000/78/EC.**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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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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