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### NEWS REPORT

**Date:** 12 February 2015  
**Expert:** Pia Justesen  
**Title:** Supreme Court judgment on age discrimination and unemployment benefit  
**Country:** Denmark  
**Context**  
**Issue at stake:** Does the Danish Act on Unemployment Insurance violate the Employment Directive (2000/78/EC)?  
**Ground of discrimination:** Age  
**Source:** Supreme Court judgment of January 19, 2015. Case 308/2012.  
**Field:** Employment  
**Legislative provisions:** Section 43 of the Act on Unemployment Insurance and article 3(3) of the Employment Directive (2000/78/EC).

### Content

**Case:** In December 2007, A was informed by his unemployment insurance fund that his membership would be terminated in April 2008 because of the fact that he turned 65 years and would be eligible for state pension. A was still working at that time and did not want to retire. One year later he resigned from his job and declared himself unemployed as well as available. He did not take the state pension and requested unemployment benefit instead. The unemployment insurance fund declined his request referring to Section 43 of the Act on Unemployment Insurance stating that a member of an unemployment insurance fund will automatically stop being a member at the age of 65 years.

On behalf of A, DaneAge Association sued the Ministry of Employment claiming that Section 43 of the Act on Unemployment Insurance violated Article 2 of the Employment Directive and the general EU-principle on prohibition of age discrimination. They claimed that it was a violation of the prohibition of age discrimination to cut off employees wanting to stay on the labour market from unemployment benefits and instead refer them to state pension just because they have turned 65 years of age. The Ministry of Employment argued that unemployment benefit constitutes a state social protection scheme as described in the exception clause in article 3(3) of the Employment Directive. Thus according to the Ministry, unemployment benefit is not encompassed by the Employment Directive.

In its judgment of October 10, 2012, the Eastern High Court concluded that section 43 of the Danish Act on Unemployment Insurance did not violate the Employment Directive. DaneAge Association appealed the High Court judgement to the Supreme Court.

**Decision of the Court:** The Supreme Court referred to a number of rulings of the CJEU, including the combined cases of C-124/11, C-125/11 and C-143/11 (Dittrich). The Court concluded that the Danish system of unemployment benefit should be regarded as a public scheme of social protection. The court stressed the fact that the unemployment benefit scheme works independently of employers and

that the benefit cannot be compared to a salary. According to the Court, the payment of unemployment benefit was therefore encompassed by the exception clause in article 3(3) of the Employment Directive. In conclusion, the Court stated that section 43 of the Danish Act on Unemployment Insurance did not violate the Employment Directive.

**Internet link source and additional information:**

<http://www.hoejesteret.dk/hoejesteret/nyheder/Afgorelser/Pages/Aldersgraenseformedlemskabafafasse.aspx>