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NEWS REPORT

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| Country: | Denmark |
| Title: | Supreme Court judgment on age discrimination and dismissal |
| Date: | 13 January 2016 |
| Expert: | Pia Justesen |
| Update of flash report nr: | 18-DK-ND |
| <u>Context</u> | |
| Issue at stake: | Use of statistics to document age discrimination in a case of dismissal |
| Ground of discrimination: | Age |
| Source: | Supreme Court judgment of December 14, 2015. Case 28/2015 |
| Field: | Employment |
| Applicable law: | Section 1, 2 and 7a of the Act on the Prohibition of Discrimination in the Labour Market etc. |

Content

Case: In June 2011, A and B (along with 3 other colleagues), were dismissed from their positions in a government agency because of workforce reduction. The dismissed employees were all above 50 years of age. A and B claimed that they had been discriminated against because of their age.

The Board of Equal Treatment had previously issued a decision in the case stating that the percentage of elderly employees who had been dismissed constituted a disproportionately high percentage of the overall number of employees. The Board concluded that the complainants had established facts of possible discrimination and that the employer could not prove that no discrimination had taken place. Thus the complainants were awarded compensation (Decisions by the Board of Equal Treatment no. 401/ 2012 and no. 402/2012).

The government agency declined to follow the decision. Thus, the Board brought the case against the government agency to the civil courts. In January 2015 the Eastern High Court concluded that A and B had not established facts of possible discrimination and acquitted the government agency. The case was appealed to the Supreme Court.

Decision of the Court: The Supreme Court stated that statistical information being authentic and sufficiently significant by itself could establish an assumption for discrimination because of age. The Court referred to the ruling of the CJEU in the case of C-127/92 (*Enderby*).¹ The Court, however, also emphasised that a number of employees

¹ C-127/92 - *Enderby v Frenchay Health Authority and Secretary of State for Health*, Judgment of the Court of Justice of the European Union (27 October 1993).

in the government agency who were older than A and B did not get dismissed during the workforce reduction. Thus the Court concluded in the case that the statistical data on the age of the dismissed as well as information about the age composition in the government agency did not establish facts of possible discrimination. Like the Eastern High Court the Supreme Court acquitted the government agency.

Key points of analysis:

If statistical information is authentic and sufficiently significant such information can by itself establish an assumption for discrimination because of age.

Internet link source:

<http://domstol.fe1.tangora.com/Domsoversigt-%28Højesteretten%29.31478.aspx?recordid31478=1149>

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