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NEWS REPORT

Country:	Norway
Title:	Supreme Court judgment on incurred costs following breach of ECSR on age discrimination
Date:	1 July 2016
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Update of news report nr:	16/2013 of 14 November 2013
<u>Context</u>	
Issue at stake:	Is the State liable for lack of implementation of the European Convention on Social Rights (ECSR - the "Social Charter")?
Ground of discrimination:	Age
Source:	Judgment
Field:	Employment
Applicable law:	Previous Seamen's Act of 1975 § 19 no. 1

Content

Case development:

The Supreme Court delivered on 8. February 2016 judgment in its case HR-2016-296-A, between the trade union the Federation of seafarers (*Fellesforbundet for sjøfolk*) and the State. The case raised the fundamental question whether the State could be liable for lack of implementation of the European Social Charter, a convention Norway has ratified.

The issue was if the state is responsible for costs the Federation had incurred by providing legal assistance to two members. The background for the current case were two court cases concerning a dismissal of two sailors handled in the Norwegian courts in the period 2008-2010. Both sailors had been dismissed with reference to the Seamen's Act of 1975 § 19 no. 1, where employment protection for seafarers ceased at age 62. Anti-discrimination protection against discrimination had been included in the Seamen's act in 2007, but the mandatory age-limit of 62 years had not been assessed in relation to the inclusion. The sailors sued the state, claiming that their dismissals were invalid because of unlawful age discrimination. One case ended in the Supreme Court, which held that the dismissal was valid (Rt-2010-202 Kystlink). The Federation subsequently lodged an appeal to the European Committee of Social Rights in 2011. The ECSR held unanimously that the Norwegian rule in the Seamen's Act was contrary to the Social Charter Article 1 § 2 and Article 24. See Flash report NO 16/2013 of 14 November 2013.

The state had meanwhile appointed a committee to consider changes in the Seamen's Act. The age limit for sailors' employment protection was subsequently changed to 70 years by the adoption of the Ship Labour Act § 5-12 on 21 June 2013.¹

¹ The Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (The Ship Labour Act) chapter 10, in force as of 01.01.2014. The rest of the Act came into force on 20 August 2013. See <https://www.sjofartsdir.no/en/legislation/laws/ship-labour-act/>.

The Federation of seafarers thus brought an action before Norwegian courts, claiming compensation for their legal expenses in the Kystlink judgment as well as their appeal to the Committee of Social Rights, given that the rule in the Seamen's Act was contrary to the Social Charter.

Decision of the Court:

The Supreme Court found in its judgment² that the 62-year rule of the Seamen's Act § 19 no. 1 was not contrary to the Social Charter when the Seamen's Act was revised in 2007. In any event, the continuation of the Seamen's Act § 19 no. 1, would in no way entail State liability. The appeal was thus rejected.

Key points of analysis:

The Supreme Court case raised the fundamental question whether the State could be liable for lack of implementation of the European Social Charter, and which consequences a breach of such a convention has for legal costs incurred for the claimant. The Charter is ratified, but not incorporated, into Norwegian law. The fact that the State was found not liable for these kinds of costs by Supreme Court are slightly depressing, as this would provide a remedy for the discriminatory behaviour of the state. As the ESCR found that the age limit was in breach of the convention, it would have been reasonable that costs incurred in the process clarifying this question would have been at the liability of the state.

As the act is now changed, the situation is remedied.

Internet link source: *to be found in Norwegian only on the pay-walled service www.lovdato.no.*

² The case was handled first by the Oslo District Court in judgment of 9 September 2014 and in the Borgarting Appeal Court in its judgment of 26 May 2015.