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NEWS REPORT

Country:	Denmark
Title:	Danish Supreme Court Ajos-case
Date:	10 January 2017
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<u>Context</u>	
Issue at stake:	Danish Supreme Court rules in Ajos-case that the unwritten EU principle prohibiting age discrimination does not take precedence over Danish law
Ground of discrimination:	Age
Source:	Supreme Court, judgment delivered on 6 December 2016 in Case HR-15/2014
Field:	Employment
Applicable law:	Section 2a(3) of the Salaried Employees Act

Content

Case: A resigned employee sought a severance allowance from his private employer.

According to the Danish law in force at the time, the employer was not bound to pay the severance allowance. It followed from Section 2a(3) of the Salaried Employees Act, which held that no severance allowance should be paid, if the employee would receive an old age pension from the employer and the employee had joined the pension scheme in question before he turned 50 years.¹

The employee claimed that he was entitled to severance allowance according to EU law prohibiting discrimination on the grounds of age. However, the employer refused to pay the severance allowance referring to Danish law. It was left to the Supreme Court to decide whether the private employer could rely on the Danish rules and not pay severance allowance to the employee.

Decision of the Court: In the case, the Danish Supreme Court had referred several questions for a preliminary ruling by the Court of Justice of the European Union. In Case C-441/14,² the CJEU gave its preliminary ruling in this case, leaving the Danish Supreme Court with two options; (1) apply national law in a manner that is consistent with the Employment Directive or (2) disapply any provision of national law that is contrary to EU law.

The Supreme Court argued that the legal position under Section 2a(3) of the Salaried Employees Act was clear and that the Supreme Court could not change this legal position with regard to severance allowance as the CJEU had suggested by using methods of

¹ Section 2a(3) of the Salaried Employees Act was revoked by Act No. 52 of 27 January 2015.

² C-441/14 – DI. CJEU Judgment of 19 April 2016.

interpretation. Therefore, the Supreme Court found that it would be "contra legem" to interpret the national law in conformity with the Directive since the Danish law was clear. In the first part of the ruling the Supreme Court thus concluded that an interpretation consistent with EU law was not possible.

In the second part of the ruling, the Supreme Court concluded that it could not set aside national law since the Danish EU Accession Act did not confer sovereignty to the extent required for the unwritten EU principle prohibiting discrimination on the grounds of age to take precedence over national law. In other words, the Court concluded that the Danish Accession Act did not provide legal basis in a horizontal relationship to give precedence to an unwritten EU law principle. The Court finally stated that if the Danish Supreme Court was to set aside national law it would be acting outside constitutional limits to the judiciary.

Key points of analysis: The judgment constitutes a fundamental ruling with regard to the demarcation between the competence of the Court of Justice of the European Union and the Danish courts.

The judgment also demonstrates that employees on the Danish labour market cannot base a claim on general unwritten EU principles if there is a clear legal position in Danish law, which makes it impossible to interpret national law in conformity with EU-law.

Internet link source: Website of Danish Supreme Court:
<http://domstol.fe1.tangora.com/page31478.aspx?recordid31478=1318>.