

Remedies in discrimination law cases

The role of the EU Charter
and EU accession to the ECHR

Scope of the Charter

- Case of *Dutka and Sajtos*, order of 16 Jan. 2014
- Decision to fire civil servants did not fall within the scope of EU law
- Compare *Torrallbo Marcos*, judgment 27 March 2014
- Legal aid request (re judicial fees and deposits in order to lodge appeal)
- Concerned whether to determine that a business was in a state of insolvency, so Directive 2008/94 would apply
- CJEU: no link to EU law until the business actually was declared to be in a state of insolvency

Scope of the Charter

- Also compare *Julian Hernandez*, 10 July 2014 (CJEU)
- National legislation regarding compensation for an invalid dismissal which might be linked to the insolvency of an employer is not *closely enough* linked to the application of Directive 2008/94 for the Charter to apply

Scope of the Charter

- Cases on economic austerity decisions: *Corpus National al Politistilor*: no link to EU law, despite Council decision requiring cut backs
- nb discrimination law cases say that austerity is not a permissible ground for discrimination as such; any cutbacks must be carried out on a non-discriminatory basis

Damages remedies

- Case of *X*, 11 Sep. 2014
- Use of sex-based actuarial factors re pensions breached Directive 79/7, re equal treatment in social security on grounds of sex
- CJEU: position was not clear until *Test-Achats* judgment, and no judgment yet re this issue in main gender equality directive; so not a sufficiently serious breach
- *Specht* judgment, June 2014: age discrimination rule was intended to confer rights; position not clear until prior CJEU judgment (so not a sufficiently serious breach); apparently a causal link

Time periods

- Judgment in *Pohl*, 16 Jan. 2014
- National law reacted to *Hutter* judgment, on age discrimination relating to employment before age 18, by introducing new pay scales retroactively
- CJEU: 30-year period to raise a complaint in this regard was not too restrictive

Supremacy of EU law

- *Mangold*
- age-related rule in national law fell within scope of EU law since it related to fixed-term contracts
- Not relevant that Directive 2000/78 not yet due for transposition (re: age discrimination)
- breach of general principle of EU law banning age discrimination
- national court had to set aside

Supremacy of EU law

- *Kucukdeveci*
- Age-related discrimination, allowed by national law and applied after the date to transpose Directive 2000/78 re: age equality
- National law breached the Charter and Directive
- Impossible to interpret national law consistently with EU law, so general principles of EU law required national court to set aside conflicting national law, even though employer was private and directives have no direct effect re private parties

Supremacy of EU law

- Charter has supremacy over conflicting national law within its scope – judgments in *Fransson* and *Melloni*
- Judgment in *Specht*, 19 June 2014
- Pay for civil servants discriminated on grounds of age, could not be justified under Directive 2000/78
- Complex transitional rules were not a breach of EU law
- Other breaches: CJEU side-stepped supremacy point, referred to issues of damages liability

Contact details

- Professor Steve Peers, University of Essex
- E-mail: speers@essex.ac.uk
- Twitter: @StevePeers
- Blog: EU Law Analysis - www.eulawanalysis.blogspot.co.uk
- Recent publication: *Commentary on the EU Charter of Fundamental Rights*, eds. Peers, Hervey, Kenner and Ward (Hart, 2014)