

The role of the national courts in the application of equality within the scope of EU Directives: the relationship between national legal systems and the preliminary ruling procedure

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Challenges for the National Courts

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- ▶ The multiplicity of sources for gender discrimination
- ▶ The shared competence between the EU and the Member States
- ▶ The existence of prejudices and stereotypes relating to gender roles
- ▶ The difficulty in bringing incidents of discrimination to light

Latest developments

- ▶ Attention to the victim
- ▶ Importance of remedies
 - ▶ Deterrent effect
 - ▶ Reparative effect

National legal systems

- ▶ Explicit constitutional provisions prohibiting gender discrimination
- ▶ Provisions of domestic law against gender discrimination

Remedies

- ▶ Effective
- ▶ Proportional
- ▶ Dissuasive

Remedies and sanctions

- ▶ Procedural autonomy of the Member States
- ▶ Diversity of possible mechanisms:
 - ▶ Civil, criminal, administrative sanctions
 - ▶ Remedies focusing on the protection of the victim, on the protection of the offender, broader remedies with a greater social impact
 - ▶ Monetary or non-pecuniary compensation
- ▶ Possible civil remedies:
 - ▶ Punitive damages vs. compensatory damages
 - ▶ Nullity of discriminatory contractual provisions
 - ▶ Injunctive remedies
 - ▶ Restorative remedies

The role of the national courts in ensuring access to justice

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- ▶ Art 47 (1) EU Charter of Fundamental Rights: *Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in accordance with the conditions laid down in this Article.*
- ▶ Article 20 EU Charter of Fundamental Rights: *Everyone is equal before the law.*



Principle of equivalence of remedies Principle of effectiveness of remedies

Procedural autonomy of the Member States

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Limits

Equivalence

Effectiveness

The role of the national courts

Court of Justice, C-63/08, Pontin

The point of view of the National Courts

- ▶ Plurality of sources (internal/EU)
- ▶ Interpretations doubts
- ▶ Possibility of resolving interpretation doubts
- ▶ Compliant interpretation
- ▶ Disapplication
- ▶ Preliminary ruling

When is a reference for a preliminary ruling necessary or appropriate?

- ▶ Article 267 TFEU
- ▶ Courts of last result vs. other courts
- ▶ Referral functions:
 - ▶ Ensures a uniform interpretation of EU law
 - ▶ Contributes to the decision of the referring court

Case histories

- ▶ Acte clair
- ▶ Acte éclairé

- ▶ Internal contrast in interpretation
- ▶ Request for revision of a previous guideline

- ▶ Time required for a decision on referral

The Italian case of female workers in the performing arts

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Fact:

Dismissal of five dancers for reaching age limits

The case of female workers in the performing arts

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Relevant rule of domestic law:

Article 3 (7) of Legislative Decree no. 64/2010 converted into Act no. 100/2010

For workers in the performing arts in the categories of dancers, retirement age is set at 45 for men and women (...). For the two years following the entry into force of this provision, the workers referred to in this paragraph who have been hired on permanent basis and have reached or exceeded the age of retirement, shall be entitled to exercise an option (renewable annually) to remain in service. This option shall be exercised (...) without prejudice to the maximum retirement age of 47 for women and 52 for men

The case of the female workers in the performing art

Relevant rules of EU law:

Article 14 (c), Directive 2006/54/CE

There shall be no direct or indirect discrimination on grounds of sex in employment and working conditions, including dismissals as well as pay

The case of the female workers in the performing arts

Relevant rules of EU law:

Art. 157 TFEU

Equal pay for male and female workers for equal work

The case of female workers in the performing arts

Relevant rules of EU law:

Article 21 EU Charter of Fundamental Rights
Prohibition of discrimination

Article 23 EU Charter of Fundamental Rights
Equality between men and women

National court doubts

- ▶ Is national law incompatible with EU law?
- ▶ Is a compliant interpretation possible?
- ▶ Is the scope of the EU rules already sufficiently clear or has it been clarified on other occasions by the Court of Justice?

Court of Justice precedents

CJEU C-46/07 Commission vs. Italy

CJEU C-152/84 Marshall

CJEU C- 356/09 Kleist

Can this matter be resolved without the need for a referral?

The Court ops for referral

Court of Cassation, Labour Division, Order no. 6101/2017

Raises the question as to whether the national provision (Article 3(7) of Legislative Decree 64/2010, converted into Act no. 100/2010) is contrary to the *“principle of non-discrimination on grounds of sex, as laid down in Directive 2006/54/EC and in the Charter of Fundamental Rights of the European Union (Article 21)”*

The decision of the Court of Justice

Joined cases C-142/17 and C-143/17

Article 14 (1) c), of Directive 2006/54/EC must be interpreted to mean that national legislation, such as that provided in Article 3 (7) of Legislative Decree 64/2010, converted into Act no. 100/2010 introduces direct discrimination on grounds of sex prohibited by said directive.

A case of disapplication in similar proceedings

Verona court, Labour Section, judgment of 2.12.2012

Rules of EU law referred to:

- ▶ Article 21 Charter
- ▶ Article 157 TFEU
- ▶ Article 9 (f) Directive 2006/54/EC which provides by way of example of discrimination those based directly on sex for F) setting different age limits for retirement
- ▶ General principle of non-discrimination