

Italy, Appeal Court of Rome (labour sect.) RG 1044/13, 15 April 2014

Deciding bodies and decisions

Court of Appeal of Rome (labour sect.), RG 1044/13, 15 April 2014

Area of law

Non-discrimination

Subject matter

Special employment contracts for young and elder workers

Dismissal of a worker only for reaching a given age (25 years)

Non compatibility with EU Law and with the general principle of non-discrimination.

Summary Facts Of The Case

The worker was employed with an on-call contract, on the basis of a national law which allows such contract for person with less than 25 years or more than 45 Years (if unemployed). He claims that his dismissal when he reached 25 years of age is a discrimination on grounds of age, and asks such discrimination to be ended, through the re-installment of the working relation and compensation.

Following rejection from the Tribunal of Milano, which stated that the company's decision was in conformity with the law, being the discrimination proportionate to the current crisis of the job market, the Court of Appeals of Milano reformed the judgment, disapplying national law in contrast with EU law and principles, and ordered the ceasing of the discriminatory conduct of the employer by re-admitting the employee to his previous job.

The Court of Appeals of Milano, following reasoning on the special procedure provided for by D. Lgs. 216/2003, implementing Directive 2000/78/CE, noted that the rules on job on-call set by art. 34 D. Lgs. 276/2003, referring only to age, are in conflict with art. 6 Directive 2000/78/CE, which also require objective and reasonable justification by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and that the means of achieving that aim are appropriate and necessary.

The Court of Appeal recalls ECJ judgments Mangold (22.5.2005, case C-144/04) and Kucukvedeci (19.1.2010, case C-555/07).

The Court comes to the conclusion that national law, which didn't require objective and reasonable justification to the discrimination on ground of age, was not proportionate to the aim of favouring occupation of young workers, in particular where allowing automatic dismissal at the reaching of 25 years of age of the worker, and therefore should be disappplied.

Relation to the scope of the Charter

The Court of Appeal in its reasoning affirms that the principle of non-discrimination is a general

principle of EU Law, as enshrined in art. 21 EUCFR, which has the same juridical value of the EU Treaties on the basis of art. 6 TEU, and applies also in private relationships.

Sources - EU and national law

Directive 2000/78/CE

D. Lgs. 216/2003

Sources - CJEU Case Law

Case C-144/04 Mangold [2005]

Case C-555/07 Kucukvedeci [2010]
