Introduction by the editorial team

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Introduction by the Editorial Team

Equal treatment and non-discrimination are pervasive themes in international and regional human rights law. Further, the notion of equality is the basis of modern democratic systems based on the rule of law. Discrimination in relation to employment and occupation poses significant problems across all sectors and in both high- and low-income countries. In addition to prohibitions of discrimination in all UN human rights treaties, the International Labour Organization (ILO) has formulated norms on equal treatment and equal remuneration for men and women in its Fundamental Conventions No. 100 and No. 111 and in other instruments, such as the Workers with Family Responsibilities Convention, No. 156. Promoting gender equality and reducing inequalities in general are also incorporated in Sustainable Development Goals Nos. 5 and 10.

Discriminatory acts may be direct or indirect, obvious, or subtle and implicit, and are often difficult to prove before a judicial body. Unequal treatment may be a systemic problem when it is integrated in corporate or cultural structures. Particularly worrisome are situations of multiple discrimination, in which especially vulnerable groups may be the victim of different grounds of discrimination, for example, based on a combination of sex, nationality, and religion. Prohibited grounds of discrimination and their interpretations evolve with changing societal circumstances and beliefs. This issue of ILaRC features three cases dealing with equal treatment in relation to employment.

Beryl ter Haar and Suzanne Kali of Leiden University analyze the preliminary ruling of the Court of Justice of the European Union (CJEU) in the case of *Hubertus John v. Freie Hansestadt Bremen*, dealing with the interpretation of clause 5(1) of Directive 1999/70/EC on fixed-term work and Articles 1, 2(1) and 6(1) of Directive 2000/78 on equal treatment in employment and occupation. The collective agreement of Hubertus John included a clause that the employment contract would be automatically terminated when he reached retirement age. An agreement was concluded that postponed the automatic termination, but when the employer rejected a second postponement, John brought legal proceedings. Ter Haar and Kali examine the age-related termination and the unlimited consecutive postponement arguments in light of previous CJEU case law and question whether the lenient approach of the CJEU in accepting measures that affect the retirement age of workers is sustainable.

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A second case concerns a ruling by the Supreme Court of Finland (KKO:2018:39), which found that Ms. A was discriminated against on the basis of circumstances related to her health. Ms. A, a bus driver who was considerably overweight, did not get an additional employment contract after her third fixed-term contract had ended. The employer argued that the employment ended in a normal and lawful way. Ms. A argued that it was normal practice that company bus drivers who performed well were offered a permanent position and that the only reason why she was denied such a position was her health. Niklas Bruun of the Hanken School of Economics explains that the Court took into account EU law, which, though it does not include the grounds "state of health" but instead "disability," can have an indirect relevance for domestic law, given that general principles of discrimination should apply equally in Finnish and EU law.

Achim Seifert of the Friedrich-Shiller-University Jena examines the dismissal of a Catholic chief physician in a hospital run by the Catholic Church. The plaintiff was dismissed after he married a new partner before his previous marriage was annulled by the Catholic Church. The Federal Labour Court referred two questions to the CJEU, related to the interpretation of Article 4(2) of Directive 2000/78/EC, which allows differential treatment that may consist of churches' requiring individuals working for them to act in good faith and with loyalty to the organization's ethos. Seifert argues that the ruling in *IR v. JQ* constitutes another cornerstone in case law on religious discrimination and will have considerable impact on German labor law by countering widespread understanding of loyalty duties for employees of churches. Churches are bound by the requirements of Article 4(2) of the directive, which contains a proportionality test.

As always, the editorial team welcomes suggestions from readers of cases to be included in later issues. Please email ilarc@hhs.nl.