JUDGMENT OF THE COURT (Fourth Chamber)

7 July 2011 *

In Case C-310/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Bacău (Romania), made by decision of 14 June 2010, received at the Court on 29 June 2010, in the proceedings

Ministerul Justiției și Libertăților Cetățenești

v

Ștefan Agafiței,

Raluca Apetroaei,

Marcel Bărbieru,

Sorin Budeanu,

* Language of the case: Romanian.

Luminița Chiagă,

Mihaela Crăciun,

Sorin-Vasile Curpăn,

Mihaela Dabija,

Mia-Cristina Damian,

Sorina Danalache,

Oana-Alina Dogaru,

Geanina Dorneanu,

Adina-Cătălina Galavan,

Gabriel Grancea,

Mădălina Radu (Hobjilă),

Nicolae Cătălin Iacobuț,

Roxana Lăcătușu,

Sergiu Lupașcu,

Smaranda Maftei,

Silvia Mărmureanu,

Maria Oborocianu,

Simona Panfil,

Oana-Georgeta Pânzaru,

Laurențiu Păduraru,

Elena Pîrjol-Năstase,

Ioana Pocovnicu,

Alina Pușcașu,

Cezar Ștefănescu,

Roxana Ştefănescu,

Ciprian Țimiraș,

Cristina Vintilă,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann (Rapporteur), L. Bay Larsen, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: Y. Bot,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 14 April 2011,

after considering the observations submitted on behalf of:

— the Romanian Government, represented initially by A. Popescu and V. Angelescu, and subsequently by R.H. Radu and R.-I. Munteanu, acting as Agents,

— Ireland, by D. O'Hagan, acting as Agent, and by A. Collins SC and N. Travers BL,

— the European Commission, by J. Enegren and L. Bouyon, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 15 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) and Article 17 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

(OJ 2000 L 303, p. 16) and, in the event of conflict between those provisions and national legislation or a judgment of the Curtea Constituțională (Constitutional Court), the consequences flowing from the primacy of European Union law.

Legal context

European Union legislation

2 Article 1 of Directive 2000/43 provides as follows:

'The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.'

3 Article 2(1) of Directive 2000/43 is worded as follows:

'For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.'

4 Article 1 of Directive 2000/78 provides as follows:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

5 Article 2(1) of Directive 2000/78 is worded as follows:

'For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.'

6 Article 3 of Directive 2000/43 and Article 3 of Directive 2000/78, entitled 'Scope', provide in paragraphs (1)(c) thereof that, within the limits of the powers conferred upon the Community, those directives are to apply to all persons, as regards both the public and private sectors, including public bodies, in relation to employment and working conditions, including dismissals and pay.

7 Article 14(a) of Directive 2000/43 and Article 16(a) of Directive 2000/78 provide that Member States are to take the necessary measures to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

8 Article 15 of Directive 2000/43 states:

'Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive....'

9 Article 17 of Directive 2000/78 provides as follows:

'Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive....'

National legislation

10 Government Legislative Decree No 137/2000 on the prevention and punishment of all forms of discrimination (*Monitorul Oficial al României*, Part I, No 431 of 2 September 2000) is intended inter alia to transpose Directives 2000/43 and 2000/78 into national law.

11 Article 1(2)(e)(i) of Legislative Decree No 137/2000 provides as follows:

'The principle that all citizens shall be equal and the principle that there shall be no privileges or discrimination shall be ensured, inter alia, in the exercise of the following rights:

...

(e) economic, social and cultural rights, in particular:

(i) the right to work, to free choice of employment, to fair and satisfactory working conditions, to protection against unemployment, to equal pay for the same work and to fair and satisfactory remuneration.'

12 Article 2(1) of Legislative Decree No 137/2000 is worded as follows:

'For the purposes of this Legislative Decree, discrimination shall mean any distinction, exclusion, restriction or preference applied on grounds of race, nationality, ethnic origin, language, religion, social class, belief, gender, sexual orientation, age, disability, non-contagious chronic illness, HIV-positive status, membership of a disadvantaged group and any other criterion the purpose or effect of which is to restrict or refuse the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms or the rights recognised by law in the political, economic, social and cultural sphere or in any other area of public life.'

13 Article 27(1) of Legislative Decree No 137/2000 provides as follows:

'Any person who considers himself to be the victim of discrimination may seek before the court compensation and the restoration of the status quo ante or the elimination of the situation to which the discrimination gave rise, in accordance with the provisions of general law. …'

14 By Decisions Nos 818 to 820 of 3 July 2008, Decision No 1325 of 4 December 2008 and Decision No 146 of 25 February 2010, the Curtea Constituțională declared that various provisions of Legislative Decree No 137/2000, including Article 27 thereof,

are to be regarded as unconstitutional, in so far as, under the terms of those provisions, the courts have jurisdiction to annul or to decline to apply legislative acts with the force of law which they consider to be discriminatory and to replace them with rules developed in the case-law or provisions contained in other legislative acts.

15 In accordance with the first paragraph of Article 11 and points 6 to 13 of Annex 1(A) to Ordonanța de Urgență a Guvernului (Urgent Government Legislative Decree) No 27/2006, as amended and supplemented by Law No 45/2007 ('OUG 27/2006'), the public prosecutors of the Direcția Națională Anticorupție (National Anti-Corruption Directorate) ('DNA') and the Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism (Directorate for Investigating Organised Crime and Terrorism) ('DIICOT') are paid a salary corresponding to that of prosecutors with the Prosecutor's Office of the Înalta Curte de Casație și Justiție (Supreme Court of Cassation).

16 It is apparent from the explanations provided by the referring court that in order to be eligible for the post of public prosecutor with the Înalta Curte de Casație și Justiție and, therefore, for payment of the remuneration linked to that post, the person concerned must satisfy, inter alia, the requirement of eight years' service in the judiciary or the public prosecution service, whereas that is not the case with DNA or DIICOT prosecutors.

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 At first instance, the applicants, who are judges, brought an action before the Tribunalul Bacău (Bacău District Court) against, inter alia, that court, the Curtea de Apel Bacău and the Ministerul Justiției și Libertăților Cetățenești (Romanian Ministry of Justice) for compensation for the harm they consider they have suffered as a result of the discriminatory treatment as regards remuneration to which they are subjected on account of the status accorded in this regard to DNA and DIICOT prosecutors.

18 In a judgment of 4 April 2008, the Tribunalul Bacău found that those applicants had been discriminated against on grounds of socio-professional category and place of work, criteria which correspond apparently to that of 'social class' referred to Article 2(1) of Legislative Decree No 137/2000, and that the principle laid down in Article 6(2) of the codul muncii (Employment Code) of equal pay for equal work had, in the circumstances, been infringed.

19 Consequently, the Tribunalul Bacău upheld the action brought before it and, on the basis of Article 27(1) of Legislative Decree No 137/2000, ordered the defendants to grant to the applicants salary credits equal to the difference between the salary which they already received and that provided for under OUG No 27/2006 for DNA and DIICOT prosecutors, with effect from the date of entry into force of OUG No 27/2006.

20 In support of the appeal which it lodged against that judgment, the Ministerul Justiției și Libertăților Cetățenești contends, inter alia, that the Tribunalul Bacău has exceeded the limits of its jurisdiction by conferring upon itself legislative powers, in breach of Decisions Nos 818 to 820, No 1325 and No 146 of the Curtea Constituțională, referred to above.

21 In those circumstances, the Curtea de Apel Bacău decided to stay the appeal proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do Article 15 of Directive [2000/43] and Article 17 of Directive [2000/78] – both transposed into national law by [Legislative Decree No 137/2000], as republished and amended – preclude national legislation or a judgment of the Curtea Constituțională prohibiting the national judicial authorities from awarding to claimants who have been discriminated against compensation for material and/or non-material damage which is considered appropriate in cases in which the compensation for the damage caused by discrimination relates to salary rights provided for by law granted to a socio-professional category other than that to which

the claimants belong (see, to that effect, judgments of the Curtea Constituțională No 1325 of 4 December 2008 and No 146 of 25 February 2010)?

(2) If the answer to Question 1 is in the affirmative, are the national courts required to await the repeal or amendment of the provisions of national law – and/or a change in the case-law of the Curtea Constituțională – which are, *ex hypothesi*, contrary to the provisions of [European Union] law, or are the courts required to apply [European Union] law, as interpreted by the Court of Justice of the European Union, directly and immediately to the proceedings pending before them, declining to apply any provision of national law or any judgment of the Curtea Constituțională which is contrary to the provisions of [European Union] law?'

The purpose of the questions referred to the Court

22 Read in the light of the information set out in the order for reference, the questions referred to the Court relate in essence, first, to whether, once Article 15 of Directive 2000/43 and Article 17 of Directive 2000/78 have been implemented in national law by means inter alia of a provision such as Article 27 of Legislative Decree No 137/2000, Article 15 and Article 17 must be interpreted as precluding the possibility for the Curtea Constituțională of finding that that provision of national law cannot give rise to the right, for persons who have been discriminated against as regards pay on the basis of socio-professional category or place of work, to compensation in the form of salary rights provided for by law for another socio-professional category. On the assumption that that is the case, the questions seek to ascertain, second, whether a national court is then required to disregard such a provision of national law or the constitutional case-law in question without being obliged to await the amendment of that provision by legislative means or a new interpretation of the provision by the constitutional court which are appropriate for ensuring its compliance with European Union law.

Whether the questions referred are admissible

23 The Romanian Government and Ireland entertain doubts in their written observations as to whether the questions referred are admissible, in particular on the ground that the situation at issue in the main proceedings does not fall within the scope of Directives 2000/43 and 2000/78 or, more generally, of European Union law.

24 In that regard, it should first be noted that, under Article 267 TFEU, the Court of Justice has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties and of acts of the institutions of the European Union.

25 According to settled case-law, the procedure provided for in Article 267 TFEU is a means of cooperation between the Court of Justice and national courts. It follows that it is for the national courts alone which are seised of the case and are responsible for the judgment to be delivered to determine, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court (see, in particular, Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, paragraphs 33 and 34; Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraph 24; and Case C-409/06 *Winner Wetten* [2010] ECR I-8015, paragraph 36 and the case-law cited).

26 Consequently, where questions submitted by national courts concern the interpretation of a provision of European Union law, the Court is, in principle, obliged to give a ruling (see, in particular, *Dzodzi*, paragraph 35; *Leur-Bloem*, paragraph 25; and *Winner Wetten*, paragraph 36 and the case-law cited).

27 Nevertheless, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to confirm its own jurisdiction (see, inter alia, Case C-13/05 *Chacón Navas* [2006] ECR I-6467, paragraph 33 and the case-law cited). The Court may refuse to

rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to enable it to give a useful answer to the questions submitted to it (see, inter alia, *Chacón Navas*, paragraph 33, and *Winner Wetten*, paragraph 37 and the case-law cited).

28 It is therefore apparent from settled case-law that a reference by a national court can be rejected if, inter alia, it is obvious that European Union law cannot be applied, either directly or indirectly, to the circumstances of the case (see, inter alia, *Leur Bloem*, paragraph 26 and the case-law cited).

29 In the present case, it should be noted at the outset that the Curtea de Apel Bacău is not asking the Court whether a situation such as that at issue in the main proceedings falls within the scope of Directives 2000/43 and 2000/78, in particular Articles 15 and 17 respectively thereof, to which the questions referred relate.

30 It must, however, be pointed out that, as submitted by the Romanian Government, Ireland and the European Commission, that is not the case here.

31 Article 1 of Directive 2000/78 states that the purpose of the directive is to lay down a general framework, as regards employment and occupation, for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation. The purpose of Directive 2000/43, as is apparent from Article 1 thereof, is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin.

32 However, it is apparent from the order for reference that the discrimination at issue in the main proceedings is not based on any of the grounds thus listed in those directives, but operates instead on the basis of the socio-professional category, within the meaning of national legislation, to which the persons concerned belong, or their place of work.

33 It follows that a situation such as that at issue in the main proceedings falls outside the general frameworks established by Directives 2000/43 and 2000/78 respectively for combating certain forms of discrimination.

34 As is apparent from Article 2(1) of those directives in particular, the principle of equal treatment enshrined in the directives applies by reference to the grounds exhaustively listed in Article 1 thereof (see, to that effect, Case C-303/06 *Coleman* [2008] ECR I-5603, paragraphs 38 and 46).

35 It should also be recalled in that connection that Article 13 EC – now Article 19 TFEU – which contains only rules governing the competences of the Community and on the basis of which the directives in question were adopted, does not refer to discrimination on grounds of socio-professional category or place of work, so that neither Article 13 EC nor Article 19 TFEU can even constitute a legal basis for Council measures to combat such discrimination (see, to that effect, *Chacón Navas*, paragraph 55, and *Coleman*, paragraph 46).

36 It follows from all the foregoing that a situation such as that at issue in the main proceedings falls outside the scope of measures adopted on the basis of Article 13 EC, in particular Directives 2000/43 and 2000/78, so that Articles 15 and 17 respectively of those directives, to which the reference for a preliminary ruling refers, do not relate to such a situation (see, by analogy, the order of 17 March 2009 in Case C-217/08 *Mariano*, paragraph 27).

37 However, since the Curtea de Apel Bacău has stated, both in the grounds of the order for reference and in the first question referred, that Legislative Decree No 137/2000 transposes Directives 2000/43 and 2000/78 into national law, it is necessary also to consider whether an interpretation by the Court of Articles 15 and 17 is capable of being justified, as submitted by the Commission, on the ground that those provisions were rendered applicable by domestic law to circumstances such as those at issue in the main proceedings as a result of the reference made by that law to those provisions.

38 The Court has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning European Union provisions in situations where the facts of the cases being considered by the national courts were outside the scope of European Union law and therefore fell within the competence of the Member States alone, but where those provisions of European Union law had been rendered applicable by domestic law due to a reference made by that law to the content of those provisions (see, inter alia, *Leur-Bloem*, paragraphs 25 and 27 and the case-law cited, and Case C-247/97 *Schoonbroodt* [1998] ECR I-8095, paragraphs 14 and 15).

39 The Court has stated in particular in that regard that where, in regulating purely internal situations, domestic legislation seeks to adopt the same solutions as those adopted in European Union law in order, for example, to avoid discrimination against foreign nationals or any distortion of competition or to provide for one single procedure in comparable situations, it is clearly in the European Union interest that, in order to forestall future differences of interpretation, provisions or concepts taken from European Union law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see, inter alia, *Leur Bloem*, paragraph 32 and the case-law cited, and Case C-130/95 *Giloy* [1997] ECR I-4291, paragraph 28).

40 However, that is not the case here.

41 As has just been pointed out and is admittedly clear from the order for reference, the purpose of Legislative Decree No 137/2000 is, inter alia, to transpose Directives 2000/43 and 2000/78 into national law and Article 27 of the decree, which provides that discrimination prohibited under the decree gives rise to liability on the part of those responsible for it and to the right to obtain compensation on the part of victims of such discrimination, implements Article 15 of Directive 2000/43 and Article 17 of Directive 2000/78. None the less, it does not follow that the interpretation of Article 27 of the decree, in cases in which it is applicable to discrimination which is prohibited under national law alone and falls outside the scope of those directives, should be contingent on the provisions of the directives or, more generally, those of European Union law.

42 Indeed, it has not in any way been established that, in the present case, it is clearly in the European Union interest that provisions or concepts taken from European Union law should be interpreted uniformly, irrespective of the circumstances in which they are to apply, in such a way as to confer jurisdiction on the Court to answer the questions referred to it for a preliminary ruling by the national court.

43 First of all, the order for reference does not contain sufficiently precise information from which it can be inferred that, by making infringements of rules prohibiting discrimination under Directives 2000/43 and 2000/78 and infringements of rules prohibiting discrimination under national law alone subject to one and the same compensation scheme, the national legislature intended, as regards infringements of the national rules, to refer to the content of provisions of European Union law or to adopt the same solutions as those adopted by those provisions.

44 Next, it should be noted, first, that rules on sanctions such as those which the Member States are required to implement under Article 15 of Directive 2000/43 and Article 17 of Directive 2000/78 constitute an adjunct to the substantive rules prohibiting discrimination laid down by those directives, such rules on sanctions being intended to ensure that those substantive rules are effective. However, as pointed out at paragraphs 31 to 36 above, those directives do not contain any rule prohibiting

discrimination on the ground of professional category, such as the rule at issue in the main proceedings.

45 Second, Article 15 of Directive 2000/43 and Article 17 of Directive 2000/78 simply require the Member States to introduce rules on sanctions applicable to infringements of the national provisions adopted pursuant to those directives and state that such sanctions must be effective, proportionate and dissuasive and that they may comprise the payment of compensation. It follows that the various specific measures required to implement the provisions of European Union law concerned can hardly be regarded, where they are intended to apply to situations which fall outside the scope of those provisions, as referring to concepts used in those provisions or as adopting the same solutions as those adopted by those provisions, which it would be necessary to interpret in a uniform manner irrespective of the circumstances in which they are to apply.

46 Lastly, it should be noted that, in the present case, the questions referred do not in essence seek an interpretation of the substantive content of Article 15 of Directive 2000/43 and Article 17 of Directive 2000/78. They seek rather a determination as to whether the principle of the primacy of European Union law precludes a rule of domestic law having constitutional status, as interpreted by the constitutional court of the Member State concerned, which, in a situation falling outside the scope of those provisions of European Union law, requires the domestic rule which moreover transposes those provisions of European Union law to be disapplied or that rule to be interpreted in a way that would be contrary to those provisions if that situation fell within their scope.

47 The need to ensure uniform interpretation of the provisions of European Union law may, as pointed out above, justify extending the Court's jurisdiction in matters of interpretation to the content of such provisions, including in situations in which, because a rule of national law refers to such provisions, they are applicable indirectly to a given situation. Such a consideration cannot, however, without disregarding the

divisions of powers between the European Union and its Member States, confer on that provision of European Union law primacy over higher-ranking provisions of domestic law which would require that, in such a situation, the rule of national law or any interpretation of it must be disregarded.

48 It follows from all the foregoing that the questions referred by the Curtea de Apel Bacău, the purpose of which is not to ascertain whether a situation such as that at issue in the main proceedings falls within the scope of Article 15 of Directive 2000/43 or Article 17 of Directive 2000/78, but which are in fact based on the assumption that that is the case in order to seek an interpretation from the Court, even though those provisions of European Union law clearly cannot be applied, either directly or indirectly, to the circumstances of the case, are inadmissible.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

The reference for a preliminary ruling from the Curtea de Apel Bacău (Romania) is inadmissible.

[Signatures]