

Introduction law
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been pronounced

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Introduction The European Court of Justice (CJEU) has been the central authority responsible for shaping the legal regime of European Union (EU) and its Member States for the past thirty years, developing a relation between communal legal order and national laws; promoting uniformity in community law in all states of the EU through development of doctrines of Supremacy and Direct Effect. The European Community law dictates, in cases of conflict between EU law and law of Member States, EU law prevails. This has been pronounced in Van Gend en Loos in 1963 where the CJEU stated ' the European Economic Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields'. The doctrine of Supremacy developed by CJEU has no formal basis in the Treaty of European Community. But was developed by the CJEU on the basis of its conception of a ' new legal order'.

In its landmark case, Flaminio Costa v. ENEL, the CJEU established a hierarchy between EU law and national law, stating that, ' by contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply'. Furthermore, ' the precedence of Community law is confirmed by Article 189, whereby a regulation ' shall be binding' and ' directly applicable in all Member States'. Bearing in mind the judgement of the Ajos case, this essay will critically analyse the questions raised about the supremacy of EU law clashed with institutional rationalities as a result of the decision of the Supreme Court of Denmark (SCDK). By examining the relevant case law, it

will evaluate whether the decision taken by the SCDK is an illustration of judicial disobedience. Furthermore, this essay will consider the justifications offered by the SCDK in arriving to their judgement and will deal with the aftermath of the proceedings to determine the potentially threat of the doctrine of primacy of EU laws established by CJEU.

The facts of the Ajos Case The case concerned a dispute between Ajos and the legal heirs of Rasmussen. Rasmussen had been employed by the company for 25 years before being dismissed by Ajos, at the age of 60. A dispute arose when the employer, Ajos refused to pay Rasmussen his entitled severance allowance under section 2a(1) of the Act on Salaried Employees according to Danish Law. However, the SCDK followed Section 2a(3) of the Act which refused the employee a claim to severance allowance if they were entitled to and joined a pension scheme before the age of 50.

The case appealed before the Court for refusal of severance allowance accounting to discrimination on the grounds of age which was against the EU Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation. Consequently, SCDK referred the case to CJEU for guidance through submission of two preliminary questions: To assess whether EU law can prevent a private party from depending on national laws to interpret the Directive and implement the principle of non-discrimination laws by national authorities; To assess whether the principle of non-discrimination on the basis of age can be interpreted by applying national legislation where the national legislation differs from the general principle prohibiting discrimination. For the first question, the CJEU found

that the principle of prohibiting discrimination on the grounds of age by the Directive is to be interpreted as applicable in horizontal cases, including between private parties. It is crucial juxtaposed with principles of employment and occupation.

For the second question, CJEU established that it is the duty of the Member States to compensate for any harm ensued by private persons as a result of the incorrect interpretation. Hence, CJEU firmly stated that if an interpretation complying with EU laws goes against national legislature, the State must display national laws for prohibition of discrimination. Legal Framework: Principle of Direct Effect In Ajos, SCDK applied Article 2a(3) which was consistent with their national law. But this interpretation has been misruled by the judgment established in Ingeniørforeningen I Danmark in 2010. The SCDK held that even though the legislative provision had not been amended, it could not be applied by public-sector employees where they showcased an intention to waive their right to old-age pension to continue their career prospects. Contrary to Ingeniørforeningen, the Ajos case dealt with private parties because of which the SCDK maintained that applying the provision consistently with EU laws would be contra legem to the national case law. Their argument focused on maintaining a separation of powers and dis-applying precedent Danish law would be outside its powers and against the will of the Parliament thereby overstepping its legislative roles. Furthermore, since the principle of non-discrimination was unwritten and did not find a foundation in Treaty basis thus, could not be applicable to their national laws.

The noncompliance resulted in a breach of Article 288 of the TFEU furthermore, due to SCDK's inability to conform with the EU laws, Rasmussed suffered, even when he could rely on the Francovich principle to obtain compensation. " Since the CJEU judgment in 1963, in the Van Gend en Loos case, the principle of direct effect has been a fundamental principle of EU law amongst the principle of supremacy." This has been the understructure of EU's new legal order. However, recently in the Ajos case, the horizontal effect matches the general principles of EU law. The SCDK reversed the CJEU's well established position and the case law relevant to this provision. Upon the SCDK's referral to the CJEU for preliminary ruling, they maintained that the Court would not have to overturn their national legislation and reversing prior case law to give effect to the Directive would not undermine its judicial powers. CJEU alerted the SCDK of their role of ' providing the legal protection which individuals derive from the rules of EU law and (ensuring) that those rules are fully effective.

' In cases of EU law where that law has been differently interpreted it is the duty of national courts to adopt an interpretation previously maintained by CJEU and national laws could not change this conclusion. SDCK also mentioned in their justification for not abiding by the advise offered by CJEU that because the Parliament did not account for the judgements of Mangold and Küçükdeveci, in their amendments and the horizontal effect is an unwritten general principle of EU law. Thus, CJEU did not hold competence or legality to provide precedence in a case contrary to national law. SCDK failed to recognise the importance of the established judgments of Mangold and

Kücükdeveci, as both cases concern private parties and do not seem to deter the effect of application of the Directive. Some may argue that it is a clear application of horizontal effect but, in reality, it is only specific to the Directive 2000/78/EC and the principle of equal treatment in different environments. Thus, in support of the CJEU, it is important to uphold the reasoning in the judgements of the above-mentioned German cases for respect of equality and comfortable employment relationships in the EU.

On the other hand, even when horizontal direct effect may be a notable general principle it deserves the criticism horizontality de facto entails. CJEU maintains that while application of horizontal direct effect does not affect legal certainty or judicial expectations of the principle of non-discrimination of age. However, the application in case of unwritten rules relies largely on the judiciary for interpretation which makes the principle of legal certainty unstable as different systems vary in terms of their views and stances, making it impossible for the CJEU to attain a uniform approach to protection of fundamental rights. Hence, while horizontal effect widens the scope for protection, it also makes uniformity in case law inevitable.

The judicial expectations as showcased by the Ajos case are in need of immediate improvement as uncertainties arise with the interoperation of EU law in compliance with national laws, it acts as the issue of a warning to the CJEU to take a step forward in a two-way judicial cooperation. General Observations The Ajos case showcases the discrepancies between EU law and the application of these laws in national courts. The decision of SCDK can be viewed as judicial disobedience because the judgement goes against

the fundamental principles of EU law supremacy and the principles of equality and fair treatment. From the point of view of EU, CJEU's advice should have laid down the law which made it impossible for national courts to go against their judgement. Furthermore, precedent requires national courts hearing disputes to protect the rights of individuals derived from EU law thereby, dis-applying any national laws contrary to given principle, even if it implies a reversal of previous case laws.

Supremacy and cooperation form the pillars of EU and when Member States become a part of EU, they are expected to ensure precedence of EU law over domestic laws. SCDK's decision to ignore the previous incorrectly interpreted EU and State laws The Ajos case put forth two irreconcilable judicial institutional images: the CJEU viewed as an 'activist', overstepping its threshold of legal application with deliberated methods of interpretation. In contrast, the SCDK showcased 'self-restraint' keeping in account the limits of its judicial power. The events form a structural explanation for a recent change in trends towards national sovereignty.