



12 December 2012

PRESS SUMMARY

X (Appellant) v Mid Sussex Citizens Advice Bureau and another (Respondent) [2012] UKSC 59

On appeal from [2011] EWCA Civ 28

JUSTICES: Lord Neuberger (President), Lord Walker, Lady Hale, Lord Mance and Lord Wilson.

BACKGROUND TO THE APPEALS

On 12 May 2006 the appellant became a volunteer adviser for the respondent following an interview. The position was unpaid and no contract was signed. However, both parties signed a volunteer agreement setting out the nature of the role and what was expected of them. The volunteer agreement was not legally binding. After signing the agreement the appellant completed a period of training before starting as a voluntary adviser carrying out a wide range of advice work duties.

Around a year later, on 21 May 2007, the appellant claims she was asked to cease to act as a volunteer adviser in circumstances amounting to discrimination on grounds of disability. As a result the appellant sought to bring proceedings against the respondent. The substance of this claim has yet to be the subject of adjudication as the Employment Tribunal, the Employment Appeal Tribunal and the Court of Appeal have all held that the Employment Tribunal has no jurisdiction to hear the case.

Each held that the appellant, as a volunteer rather than an employee, falls outside the scope of the protections against discrimination on the grounds of disability afforded by the Disability Discrimination Act 1995 and Directive 2000/78/EC (“the Framework Directive”).

The appellant appeals to the Supreme Court on the basis that the lower courts erred in interpreting the Directive. She argues that her voluntary activities constituted an “occupation” for the purposes of article 3(1)(a) of the Framework Directive, that the protection against discrimination on the grounds of disability intended to be afforded by the Directive should therefore extend to her, and that effect should be given to this conclusion either under the principle in *Marleasing* Case C-106/89 or alternatively by recognising her as having a direct claim under the principle in *Mangold* Case C-144/04..

She further contends that the meaning of the Framework Directive is at least open to reasonable doubt and that a reference should be made to the Court of Justice of the European Union (CJEU) in order to clarify whether the Directive applies to at least some categories of volunteer.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Since the appellant had no contract, she did not on the face of it benefit by the domestic protection afforded by the Disability Discrimination Act 1995. Whether she could have any claim thus depended upon whether it is the intention of article 3(1)(a) of the Framework Directive that there should be wider protection, covering volunteers in her position. In the Court’s unanimous view, that is not its intention. This is not open to reasonable doubt and there is no need for a reference to the CJEU for a preliminary ruling. The judgment of the Court is given by Lord Mance.

REASONS FOR THE JUDGMENT

- The Directive is not unlimited in scope or extent; instead it confers carefully defined protections against discrimination on grounds of disability to apply in specified circumstances [24]. In this sense the Directive is of a piece with other anti-discrimination measures enacted both domestically and at EU level which confer specific protections on specified groups of persons [24-26].
- The appellant relies upon the Directive’s application “in relation to access to employment, to self-employment or to occupation” (article 3(1)(a)). However, the Court does not accept that her complaint relates to “access to... occupation” within the meaning of these words. [45].
- The concept of “access to... occupation” contemplates access to a sector of the market rather than to a particular post. The words must be understood in the context of article 3(1)(a) of the Directive and do not operate on the same level as the terms “employment” and “self-employment” [29-30].
- This interpretation finds support from other language versions of the text, from the lack of any reference to “occupation” in article 3(1)(c) concerning “employment and working conditions, including dismissals and pay” and from the internationally accepted meaning of “occupation” in the context of the International Labour Organisation’s Convention No 111, to which Convention the Directive refers in recital 4 [31-35].
- The legislative history confirms that it was not intended that article 3(1)(a) should encompass voluntary work. First, no reference was made to voluntary work in the European Commission’s original proposal or in the annexed impact assessment [37-38]. Second, a proposed amendment emanating from the European Parliament which would have extended article 3(1)(a) to include “unpaid or voluntary work” was not accepted by the Council [39-41].
- Subsequent to the passage of the Directive the European Commission has continued to review its implementation by Member States, without it ever being suggested that the apparent absence in the UK or any other Member State of general protection in respect of to volunteers amounts to a failure to properly implement the Directive [42].
- There is no scope for reasonable doubt about the conclusion that the Directive does not cover voluntary activity [46-48]. Recommendations by the French equivalent of the Equality and Human Rights Commission (EHRC) indicating otherwise carry no greater weight in the construction of the Directive than the EHRC’s own submissions before the Supreme Court in this case [49-51].
- Since article 3(1)(a) does not extend to voluntary activities of the sort undertaken by the appellant, it is unnecessary to consider the issues of EU law which would have arisen from a contrary conclusion, particularly the possible relevance and scope of the principle in either *Marleasing* or *Mangold* [58].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html