Supremacy Of EU Law: The Case Of Dansk Industri V Estate Of A (AJOS)

The case of Dansk Induistri v Estate of A (Ajos) shines relatively recent light on the difficulties plaguing European Union Law, issues exacerbated by even more recent events. The supremacy of EU Law has always been strongly debated; Ajos is nothing new in this regard, however it is currently the most significant show of conditional supremacy in respect to its relevancy and strength of its noncompliance. This essay will first discuss the facts of the primary case as well as its related counterparts before fleshing out why the title statement has merit and that the decision of the Danish Supreme Court is a threat to the supremacy of EU Law.

In Ajos , the Danish Supreme Court (Højesteret) objected to the context of Council Directive 2000/78/EC (the Directive), which set a template for equal treatment in the workplace, naming Articles 1 (purpose), 2 (definition of equal treatment), and 6 (exceptions). The Directive attempts to cover all forms of discrimination of workers in regards to age, sexuality, religion and disability. This was compared to Paragraph 2a (3) of the Danish Salaried Employees Act (DSEA) , where severance pay is not allocated to the employee upon dismissal if they are entitled to an old-age pension from the employer which they joined before reaching the age of 50.

Mr Rasmussen was terminated by his employer, Ajos, at age 60. He wanted severance allowance (3 months according to paragraph 2a (1) of the DSEA, since he had been employed for more than 18 years). However, since he met the conditions stipulated in 2a (3), he was not allowed the severance according to national law. The heirs of Mr Rasmussen took this to the Danish Courts, bringing in the Directive to argue that there was discrimination based on age. This went up to the Højesteret, which referred two questions to the European Court of Justice (ECJ). Firstly, they asked whether the general principles of EU Law (in this case non-discrimination on grounds of age) can be interpreted as precluding national law. Secondly, it asked if in a dispute between private persons, whether a national court could challenge these unwritten general principles against the principles of legal certainty and the protection of legitimate expectations (to which they placed precedence on the latter). The facts of this case are very similar to that of Mangold , but with polar opposite decisions.

The first question was responded to by declaring the source of general principles prohibiting discrimination on grounds of age to be found in more than just the Directive, but in the preamble recitals 1 to 4 of said Directive, and in “various international instruments and in the constitutional traditions common to the Member States” (reaffirmed in Mangold and Kücükdeveci). The Directive is instead for the purpose of laying down the template (based on these ideals) that can be utilized as a stepping stone to oppose these cases of discrimination.

For the second question, ECJ responded that when national and EU law coincide, it is for the national courts to afford the protection to these private persons in full conformity to the EU provisions (such as in Pfeiffer and Kücükdeveci. While Directives cannot directly impose obligations on individuals, Member States are obliged to strive for the result that the directive is aiming to achieve and to take all appropriate steps to ensure this, rather than just relying on technicalities.

The ECJ effectively rebounded the Højesteret's arguments on the basis of principle, refuting their underhanded use of semantics and rules to avoid interpreting EU Law the way it was meant to be. Despite instructions from ECJ, the Danish Court refused to comply in the follow up case. They claimed that the Directive had already been contested in Ingeniørfereningeni and that the DSEA was important to their social policy goals. This had already been refuted by the ECJ that already established interpretation of national courts that is incompatible with EU law was not enough to support further claims that it is impossible for it to again interpret it wrongly.

The reason why such the challenge in this case is of such importance is that it undermines the groundwork laid out since the foundation of the EU: willing cooperation. In Wightman , on the separate subject of withdrawal from the EU, it was recently reiterated that the Union is made of "States which have freely and voluntarily committed themselves to those values, and EU law is thus based on the fundamental premise that each Member State shares with all the other Member States, and recognises that those Member States share with it, those same values." While this statement is theoretically sound, the existence of different perspectives on the level of supremacy leads to issues with practicality since the member states are not of a hivemind and will inevitably have differing opinions. An extension of the Monism vs Dualism, this basis of freedom of choice will inevitably lead to a wide spectrum of opinions. However, the beauty of the European Union lies in the Member State's willingness to put aside individuality to achieve a cohesive system that everybody can enjoy.

The idea of autonomy starting from Van Gen Den Loos means that some sovereign rights are given up to be part of a whole. Regardless of each state's initial reason to join, the end result is a system that is all-inclusive and relies on mutual trust and concession. One of the earliest attempts at deviation from this was Costa v ENEL , where the Italian Government attempted to effectively override the EEC Treaty of 1957 with newly enacted local law, relying on Italian constitutional law that more recent legislation is given precedence. This was quickly shut down by the ECJ: "…Member States have limited their sovereign rights…have thus created a body of law which binds both their nationals and themselves." It was here that the ECJ solidified the supremacy of Union Law.

In conclusion, it is easy to see why the decision by the Danish Courts in Ajos was so readily dismissed as an isolated incident . Such a ruling, if acknowledged, throws a spanner in the machine that is EU Supremacy. It does not help that it was perpetrated by the highest court in Denmark in clear defiance of the ECJ. The arguments raised by the former was easily deflected by the higher court on the grounds of morality, supremacy and what the unwritten principles set out to achieve; this is in counter to the usage of technicalities to support the confirmation bias of national law being correct and superseding EU Law. The correct move for the Højesteret would have been to ignore their inconsistent national legislation, such as in Simmenthal , but instead what transpired was the most controversial dispute to EU Law Supremacy.